



Migration (Skilling Australians Fund) Charges Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 02 August 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Alan Tudge
Minister for Citizenship and Multicultural Affairs

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1 Name

This instrument is the *Migration (Skilling Australians Fund) Charges Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as section 3 of the <i>Migration (Skilling Australians Fund) Charges Act 2018</i> commences. However, the provisions do not commence at all if that section does not commence.	12 August 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Migration (Skilling Australians Fund) Charges Act 2018*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Migration Act;
- (b) nomination;
- (c) nomination training contribution charge.

In this instrument:

Act means the *Migration (Skilling Australians Fund) Charges Act 2018*.

annual turnover, for a nomination, means:

- (a) if the person liable to pay nomination training contribution charge in relation to the nomination operates a business in Australia—the **total ordinary income** (within the meaning of the *Income Tax Assessment Act 1997*) the person derived in the most recent income year (within the meaning of that Act) ending before the nomination day; or
- (b) in any other case—the total income the person liable to pay nomination training contribution charge in relation to the nomination derived in the

Section 5

ordinary course of business in the most recent financial year ending before the nomination day.

Migration Regulations means the *Migration Regulations 1994*.

nomination day, in relation to a nomination, means the day on which:

- (a) the nomination is made under section 140GB of the Migration Act; or
- (b) the application for approval of the nomination is made under regulation 5.19 of the Migration Regulations.

5 Amount of nomination training contribution charge—Subclasses 457 and 482

- (1) For the purposes of subsection 8(1) of the Act, this section sets out the amount of nomination training contribution charge payable in relation to a nomination of a kind mentioned in subsection 140ZM(1) of the Migration Act.

Note: Nominations of a kind mentioned in subsection 140ZM(1) of the Migration Act relate to temporary visas: see regulation 5.42 of the Migration Regulations.

- (2) Unless subsection (3) applies, the amount of nomination training contribution charge is the amount worked out using the formula:

$\text{Base amount} \times \text{Visa period}$

where:

base amount is:

- (a) if the annual turnover for the nomination is less than \$10,000,000—\$1,200; or
- (b) in any other case—\$1,800.

visa period is the number of years in the period of stay proposed in the nomination.

Note: The proposed period of stay may be 1, 2, 3 or 4 years: see subregulation 2.73(10) of the Migration Regulations.

- (3) The amount of nomination training contribution charge is nil if:
 - (a) the nomination is of an occupation for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream; and
 - (b) the occupation is minister of religion or religious assistant.

6 Amount of nomination training contribution charge—Subclasses 186 and 187

- (1) For the purposes of subsection 8(1) of the Act, this section sets out the amount of nomination training contribution charge payable in relation to a nomination of a kind mentioned in subsection 140ZM(2) of the Migration Act.

Note: Nominations of a kind mentioned in subsection 140ZM(2) of the Migration Act relate to permanent visas: see regulation 5.42 of the Migration Regulations.

- (2) Unless subsection (3) applies, the amount of nomination training contribution charge is:

- (a) if the annual turnover for the nomination is less than \$10,000,000—\$3,000; or

- (b) in any other case—\$5,000.
- (3) The amount of nomination training contribution charge is nil if:
 - (a) the nomination relates to a Subclass 186 (Employer Nomination Scheme) visa in the Labour Agreement stream; and
 - (b) the application for approval of the nomination identifies the occupation of minister of religion or religious assistant.

EXPLANATORY STATEMENT

Issued by the Minister for Citizenship and Multicultural Affairs

Migration (Skilling Australians Fund) Charges Act 2018
Migration (Skilling Australians Fund) Charges Regulations 2018

The Migration (Skilling Australians Fund) Charges Act 2018 (the SAF Charges Act) is an Act relating to the 'nomination training contribution charge' (the charge) payable by persons who are liable to pay the charge under the *Migration Act 1958* (the Migration Act) and the *Migration Regulations 1994* (the Migration Regulations). The charge is imposed on employers who nominate workers for temporary or permanent skilled work visas.

The SAF Charges Act commences on 12 August 2018. Section 7 of the SAF Charges Act imposes the charge payable under section 140ZM of the Migration Act. Section 140ZM is inserted by the *Migration (Skilling Australians Fund) Act 2018*, which also commences on 12 August 2018.

Section 10 of the SAF Charges Act relevantly provides that the Governor-General may make regulations prescribing matters required or permitted by the SAF Charges Act to be prescribed by the regulations. In addition, subsection 8(1) of the SAF Charges Act provides that the amount of the charge payable by a person in relation to a nomination is the amount:

(a) prescribed by the regulations; or (b) worked out in accordance with a method prescribed by the regulations. Subsection 8(2) of the SAF Charges Act provides that, without limiting subsection 8(1), the regulations may prescribe different charges or methods for: (a) different kinds of visas; or (b) different kinds of persons. Section 6 of the SAF Charges Act relevantly provides that the amount of the charge can be nil.

The *Migration (Skilling Australians Fund) Charges Regulations 2018* prescribe the amount of the charge applicable to nominations made from 12 August 2018, as follows:

- nominations that relate to temporary visas incur **a charge of AUD 1200 per year of the proposed visa period or, for businesses with an annual turnover of at least AUD 10 million, a charge of AUD 1,800 per year of the proposed visa period. This charge applies to nominations for the purpose of the new Subclass 482 (Temporary Skill Shortage) visa (Subclass 482), which commenced on 18 March 2018, and nominations of holders of the Subclass 457 (Temporary Work (Skilled)) visa (Subclass 457), which was repealed on 18 March 2018;**
- nominations that **relate to permanent visas incur a once only charge of AUD 3,000 or, for businesses with an annual turnover of at least AUD 10 million, a once only charge of AUD 5,000. This charge applies to nominations for the purpose of the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186) and the Subclass 187 (Regional Sponsored Migration Scheme) visa (Subclass 187); and**
- an exception in both of the above categories is that the charge is nil if the nomination is made pursuant to a labour agreement providing for the nomination of the occupation of Minister of Religion or Religious Assistant. This is a continuation of current policy,

which exempts religious organisations nominating Ministers of Religion under a Ministers of Religion Labour Agreement from the training benchmark requirements.

These amounts were determined as part of the 2017-18 Budget process. The revenue raised by the charge will offset expenditure from the Skilling Australians Fund (SAF), a training fund administered by the Department of Education and Training. The SAF provides funding for apprenticeships and traineeships in occupations that are in high demand and currently rely on skilled migration or have future growth potential, including in regional Australia.

The charge replaces requirements in the Migration Regulations requiring sponsors under the temporary sponsored work visa program, or employers nominating a worker for the Direct Entry stream of the Subclass 186 visa, to have recently spent:

- the equivalent of at least two per cent of their business' payroll in contributions to an industry training fund (training benchmark A); or
- the equivalent of at least one per cent of their business' payroll on the training of Australians (training benchmark B).

These training benchmark requirements are repealed by the related amendments to the Migration Regulations in the *Migration (Skilling Australians Fund) Regulations 2018*, which also commence on 12 August 2018.

The Regulations are part of a broad package of reforms for the employer sponsored skilled visa programs, announced by the Government on 18 April 2017. The reforms include the replacement of the Subclass 457 visa with the Subclass 482 visa, and related reforms to the permanent employer sponsored visas. These changes were implemented on 18 March 2018 by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.

The Department of Home Affairs (the Department) engaged with external stakeholders following the April 2017 announcement and considered feedback received. The reforms were also informed by earlier reviews including: the 2014 *Independent Review into the Integrity of the Subclass 457 programme*; the 2016 Productivity Commission Inquiry Report: *Migrant Intake into Australia*; the 2016 *Review of the Temporary Skilled Migration Income Threshold*; and the 2016 Senate Inquiry *A National Disgrace: The Exploitation of Temporary Work Visa Holders*. These reviews were subject to extensive consultation processes, including: individuals; academics; bodies and businesses who use the employer sponsored skilled visa programs; migration agents; representatives of foreign governments; the Ministerial Advisory Council on Skilled Migration; and government departments and agencies.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment A](#).

Details of the Regulations are set out in [Attachment B](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations, and has advised that the Regulation Impact Statement is compliant with the Government's requirements. The OBPR reference is 21946. The Regulation Impact Statement is at [Attachment C](#).

The Regulations were made before, but commence at the same time as, the SAF Charges Act (the empowering Act). The Regulations were therefore made in reliance on section 4 of the *Acts Interpretation Act 1901*.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations **commence on 12 August 2018.**

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration (Skilling Australians Fund) Charges Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

On 18 April 2017, the Government announced changes to the employer sponsored temporary and permanent skilled work visa arrangements. The *Migration Regulations 1994* (the Migration Regulations) were amended on 18 March 2018 to implement some of these changes, including:

- repealing the Subclass 457 (Temporary Work (Skilled)) visa (Subclass 457 visa) and introducing the new Subclass 482 (Temporary Skill Shortage) visa (Subclass 482 visa); and
- implementing complementary reforms to the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186 visa) and the Subclass 187 (Regional Sponsored Migration Scheme) visa (Subclass 187 visa).

This instrument is part of a further package of legislation, comprising two Acts and two sets of regulations, to support the introduction and collection of a ‘nomination training contribution charge’ from employers accessing workers under the temporary and permanent employer sponsored skilled work visa programs. The relevant Acts and the supporting regulations are:

- the *Migration (Skilling Australians Fund) Charges Act 2018* (the SAF Charges Act);
- the *Migration (Skilling Australians Fund) Charges Regulations 2018* (this instrument);
- the *Migration Amendment (Skilling Australians Fund) Act 2018* (the Amendment Act); and
- the *Migration Amendment (Skilling Australians Fund) Regulations 2018* (the Migration Amendment Regulations).

A separate Statement of Compatibility with Human Rights has been prepared in relation to the Migration Amendment Regulations. The four items of legislation all commence on 12 August 2018.

The nomination training contribution charge will offset expenditure from the Skilling Australians Fund (SAF), a training fund administered by the Department of Education and Training. The SAF will prioritise the funding of apprenticeships and traineeships in occupations that are in high demand and currently rely on skilled migration, or have future growth potential, including in regional Australia.

The nomination training contribution charge replaces requirements that employers sponsoring a worker under the Subclass 457 visa or nominating a worker under the Direct Entry stream of the Subclass 186 visa have recently spent:

- the equivalent of at least two per cent of their business’ payroll in contributions to an industry training fund (training benchmark A); or

- the equivalent of at least one per cent of their business' payroll on the training of Australians (training benchmark B).

The Amendment Act amends the *Migration Act 1958* (the Migration Act) to introduce the nomination training contribution charge payable under new section 140ZM of the Migration Act. The SAF Charges Act sets a charge limit for the nomination training contribution charge and provides for the indexation of the charge limit. It also provides that the amount of the nomination training contribution charge is to be prescribed in the Migration Regulations, and that the Migration Regulations may prescribe different charges for different kinds of visas or persons.

This instrument prescribes, for the purpose of the SAF Charges Act, the amount of the nomination training contribution charge, which will only apply to new nominations lodged on or after 12 August 2018. The amount payable depends on the annual turnover of the nominating business, whether the nomination relates to a temporary or permanent visa, and, in the case of the temporary Subclass 482 visa, the length of stay proposed in the nomination. In relation to annual turnover, the amount payable varies according to whether the annual turnover is AUD 10 million or more, in which case a higher amount is payable. For the permanent visas (Subclass 186 and Subclass 187), the amount is AUD 3,000 or AUD 5,000. For the Subclass 482 visa, the amount is AUD 1,200 per year or AUD 1,800 per year. For example, a nomination by a small business for the purpose of a Subclass 482 visa for the maximum period of four years would incur a nomination training contribution charge of AUD 4,800.

However, the instrument also provides that the amount of the nomination training contribution charge is nil if the nomination is for the occupation of 'Minister of Religion' or 'Religious Assistant' and is made for the purpose of the Labour Agreement stream of the Subclass 186 or Subclass 482 visa. This is a continuation of current policy, which exempts religious organisations nominating Ministers of Religion under a Ministers of Religion Labour Agreement from the training benchmark requirements.

Human rights implications

This instrument contributes, as part of the broader legislative package, to the provision of training opportunities for Australian citizens and permanent residents by prescribing the amount of the nomination training contribution charge to be paid by employers accessing overseas skilled workers under the temporary or permanent employer sponsored migration programs.

As noted above, the amount payable by the nominating employer depends on the type of visa sought, the visa period and the size of the nominating employer's business (in terms of annual turnover). For businesses with an annual turnover of AUD 10 million or more it is reasonable to charge a marginally higher base amount of the nomination training contribution charge than for small businesses with an annual turnover of less than AUD 10 million.

The SAF supports training of Australians and therefore their right to work. This is because the nomination training contribution charge will fund initiatives that improve training opportunities and outcomes for Australian citizens and permanent residents. Such initiatives engage Articles 6.1 and 6.2 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 6.1 of ICESCR recognises:

The right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 6.2 of ICESCR states that:

The steps to be taken by a State Party of the present Covenant to achieve the full realization of [the right to work] shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

This regulatory framework for the nomination training contribution charge supports the right to work under Article 6.1 in relation to Australian citizens and permanent residents. Funding a national training partnership through the sponsorship and nomination framework is an effective mechanism to promote training across a broad range of industries and occupations. The measure positively engages Articles 6.1 and 6.2 of the ICESCR as it is a mechanism for Australia to comply with these rights.

Freedom of religion

The Migration Regulations engage the right to freedom of religion under Article 18 of the ICCPR which states

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

This is because the Migration Regulations provide an exemption from the nomination training contribution charge for ‘Ministers of Religion’ or ‘Religious Assistant’ and is made for the purpose of the Labour Agreement stream of the Subclass 186 or Subclass 482 visa.

Conclusion

This Legislative Instrument is compatible with human rights as it promotes the training of Australian citizens and permanent residents in support of Article 6 of the ICESCR.

The Hon. Alan Tudge MP

Minister for Citizenship and Multicultural Affairs

Details of the *Migration (Skilling Australians Fund) Charges Regulations 2018*

Section 1 – Name

This section provides that the title of the Regulations is the *Migration (Skilling Australians Fund) Charges Regulations 2018* (the Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The table provides that the Regulations commence at the same time as section 3 of the *Migration (Skilling Australians Fund) Charges Act 2018* (the SAF Charges Act).

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in column 3, and information in it may be edited, in any published version of the instrument. Column 3 of the table will record the commencement date.

Section 3 – Authority

This section provides that the Regulations are made under the SAF Charges Act.

Section 4 – Definitions

This section defines certain terms used in the Regulations. In particular, section 4 defines ‘annual turnover’ and ‘nomination day’.

The concept of annual turnover is relevant to the amount of nomination training contribution charge that is payable in relation to a nomination. The amount of nomination training contribution charge is higher if the annual turnover of the nominating business is at least AUD 10 million (see sections 5 and 6). For a business operating in Australia, annual turnover is defined as the total ordinary income (within the meaning of the *Income Tax Assessment Act 1997*) the person derived in the most recent income year (within the meaning of that Act) ending before the nomination day. For a business not operating in Australia, annual turnover means the total income derived in the ordinary course of business in the most recent financial year ending before the nomination day. As the income reporting arrangements for businesses in overseas countries will vary from country to country, the reference to financial year has been included as a common standard. If necessary, a business can estimate the annual turnover for the financial year. As the only issue is whether the figure is more than AUD 10 million, it is not anticipated that the definition of annual turnover will cause any difficulty for nominating businesses even if it does not align with income reporting arrangements for the business.

Nomination day is defined to mean the day on which the nomination is made. The terminology of the definition reflects the two types of nominations that are subject to

nomination training contribution charge. Paragraph (a) of the definition refers to nominations under section 140GB of the Migration Act, which are nominations for the purpose of the Subclass 482 (Temporary Skill Shortage) visa (Subclass 482 visa). Paragraph (b) of the definition refers to applications for approval of nominations made under regulation 5.19 of the Migration Regulations, which are nominations for the purpose of the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186 visa) or the Subclass 187 (Regional Sponsored Migration Scheme) visa (Subclass 187 visa).

Section 5 – Amount of nomination training contribution charge – Subclasses 457 and 482

This item sets out the amount of the nomination training contribution charge that is payable for nominations in relation to holders of Subclass 457 (Temporary Work (Skilled)) visas (Subclass 457 visa) and holders of, or applicants or proposed applicants for Subclass 482 visas. Holders of the Subclass 457 visa are included because a Subclass 457 holder will require a nomination under the new Subclass 482 visa provisions to change employer or occupation. The previous Subclass 457 nomination provisions were repealed on 18 March 2018.

Subsection 5(2) provides that, unless subsection 5(3) applies, the amount of the nomination training contribution charge is AUD 1,200 per year of the proposed visa period or, if the nominating business has an annual turnover of AUD 10 million or more, the amount of the nomination training contribution charge is AUD 1800 per year of the proposed visa period. A note advises readers that the nominated period will always be one, two, three or four years. However the maximum period will not be available in all cases (see subregulations 2.73(10) and (11) of the Migration Regulations). Subject to those rules, the visa will be granted, if all visa criteria are satisfied, for the proposed period (see paragraph 482.511(a) of Schedule 2 to the Migration Regulations). For example, if a business with an annual turnover of less than AUD 10 million per year proposes a visa period of four years and a nomination for that period is permissible, the amount of the nomination training contribution charge will be AUD 4,800 and the Subclass 482 visa will, assuming that the criteria for visa grant are satisfied, be granted for a period of four years.

Subsection 5(3) provides that the amount of the nomination training contribution charge is nil if the nominated occupation is minister of religion or religious assistant and the nomination is made for the purpose of an application for a Subclass 482 visa in the Labour Agreement stream. Under the former Subclass 457 visa program, religious institutions seeking labour agreements to sponsor ministers of religion or religious assistants were not required to meet the standard training benchmarks for the training of Australian workers. This exemption recognised the specialised recruitment and employment arrangements of religious institutions and the absence of any labour market impact arising from the small number of overseas workers sponsored under these arrangements. The provision of a nil amount for the nomination training contribution charge maintains the status quo for religious institutions, which is also consistent with the fact that religious institutions will not derive any benefit from the Skilling Australians Fund.

The annual amounts of the nomination contribution charge (AUD 1,200 or AUD 1,800), and the AUD 10 million figure for annual turnover, were decided by the Government in the context of the 2017-18 Budget process, having regard to the existing training benchmark expenditure and funding for training Australians.

The replacement of the previous training benchmark requirements with a contribution to a government-managed training fund was a recommendation of both the 2016 Senate Inquiry *A National Disgrace: The Exploitation of Temporary Work Visa Holders* and the 2014 *Independent Review into Integrity in the Subclass 457 Programme*. The proposed amounts of the charge are in the order of magnitude recommended by the Senate Inquiry of AUD 4,000 per Subclass 457 visa holder. It is expected that the nomination training contribution charge will involve similar or lower costs for many businesses, particularly small businesses, than the training benchmark requirement, with improved training outcomes for Australians through projects funded by the Skilling Australians Fund (SAF). Based on an average Subclass 457 visa holder's salary of AUD 93,100 per year, a business nominating a Subclass 457 visa applicant would pay a minimum of AUD 1,862 per annum under training benchmark A. Training benchmark A, which is favoured by small businesses, requires annual expenditure of at least two percent of payroll into an industry training fund.

The distinction between the amounts for temporary and permanent employer sponsored migration programs recognises that a permanent visa is valid for a longer duration, and that some employers would have already paid the nomination training contribution charge at the temporary stage. The definition of small businesses as those with a turnover of less than AUD 10 million per annum aligns with taxation law, providing consistency for business.

Section 6 – Amount of nomination training contribution charge – Subclasses 186 and 187

This item sets out the amount of the nomination training contribution charge that is payable for nominations under regulation 5.19, which provides for nominations for the purposes of the Subclass 186 visa and the Subclass 187.

Subsection 6(2) provides that, unless subsection 6(3) applies, the amount of the nomination training contribution charge is AUD 3,000 or, if the nominating business has an annual turnover of 10 million dollars or more, the amount of the nomination training contribution charge is AUD 5,000. **As these are permanent visas, the nomination training contribution charge is a once only payment**, rather than a per year amount as is the case with nominations for the Subclass 482 visa.

Subsection 6(3) provides that the amount of the nomination training contribution charge is nil if the application for approval of the nomination identifies the occupation of minister of religion or religious assistant and the nomination is made for the purpose of an application for a Subclass 186 visa in the Labour Agreement stream. **There is no reference to the Subclass 187 visa because there is no Labour Agreement stream in that visa. All labour agreements for the purpose of nominating workers for permanent residence are covered by the Subclass 186 visa.** The reason for the nil amount is explained in item 5.

As noted in relation to the previous item, the amounts of the nomination contribution charge (AUD 3,000 or AUD 5,000), and the AUD 10 million figure for annual turnover, were decided by the Government in the context of the 2017-18 Budget process, having regard to the existing training benchmark expenditure and funding for training Australians.

As noted in relation to the previous item, the distinction between the amounts for temporary and permanent employer sponsored migration programs recognises that a permanent visa is valid for a longer duration, and that some employers would have already paid the nomination training contribution charge at the temporary stage. The definition of small businesses as

those with a turnover of less than AUD 10 million per annum aligns with taxation law, providing consistency for business.

Abolition and replacement of 457 visas

Regulation Impact Statement (OBPR ID: 21946)

Department of Immigration and Border Protection

August 2017

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Overview: Australia's employer sponsored skilled visa programme

1. The employer sponsored skilled visa programme, and the underpinning legal and regulatory framework, is the primary way the Australian Government regulates how non-citizens may enter and remain to work in Australia, as well as many of the circumstances in which they may work. It also provides mechanisms to ensure that migrants do not pose unacceptable health, character and security risks to the Australian community.
2. The employer sponsored skilled visa programme is part of the broader migration programme, and allows sponsoring businesses to nominate an appropriately skilled non-citizen to fill a temporary or permanent employment vacancy in Australia. This programme regulates both the sponsor and the migrant to facilitate certain policy outcomes, such as ensuring that employers only seek to fill vacancies with overseas workers where appropriately skilled Australian workers are not available.

Current regulatory framework

3. The employer sponsored skilled visa programme is comprised of the Temporary Work (Skilled) (subclass 457) visa (457 visa) and the permanent Employer Nomination Scheme (subclass 186) visa (ENS, 186 visa) and Regional Sponsored Migration Scheme (subclass 187) visa (RSMS, 187 visa) (permanent employer sponsored skilled visas).

**Top named industries for primary subclass 457, 186, and 187 visa grants
in 2016-17 to 31 March 2017¹**

Rank	Sponsor Industry	Total
1	Other Services	8,639
2	Accommodation and Food Services	7,224
3	Professional, Scientific and Technical	7,202
4	Information Media and Telecommunications	6,813
5	Health Care and Social Assistance	5,306
6	Construction	3,634
7	Education and Training	2,899
8	Manufacturing	2,525
9	Retail Trade	2,213
10	Financial and Insurance Services	2,017

¹ There were 16,452 visas granted to an industry, which is not specified in departmental reporting systems.

**Top occupations for primary subclass 457, 186, and 187 visa grants
in 2016-17 to 31 March 2017**

Rank	Nominated Occupation	Total
1	351411 Cook	4,635
2	141111 Cafe or Restaurant Manager	3,031
3	261312 Developer Programmer	2,334
4	351311 Chef	2,004
5	225113 Marketing Specialist	1,987
6	242111 University Lecturer	1,872
7	261111 ICT Business Analyst	1,834
8	224711 Management Consultant	1,550
9	221111 Accountant (General)	1,487
10	261313 Software Engineer	1,464

4. Only certain occupations are eligible for use under Australia's permanent and temporary employer sponsored skilled visa programmes.² Depending on which visa programme is applied for, applicants must nominate an occupation from either:

- the Medium and Long-term Strategic Skills List (MLTSSL), previously known as the Skilled Occupation List (SOL), which targets occupations that are relevant to the medium to long term skill needs of the economy; or
- the Short-Term Skilled Occupation List (STSOL), previously known as the Consolidated Sponsored Occupation List (CSOL), which targets occupations that are relevant to the short term needs of the economy.³

Additionally, the Direct Entry (DE) stream of RSMS can apply for Australian and New Zealand Standard Classification of Occupations (ANZSCO) skill level 1-3 occupations.

5. The SOL and the CSOL were replaced with the MLTSSL and STSOL on 19 April 2017, which involved a reduction of 216 occupations from eligibility for the 457 visa. The number of eligible occupations fell from 651 to 435. The replacement of the CSOL with the STSOL represented a significant shift in approach by limiting temporary migrant occupations to those in need in the Australian labour market and distinguishing between short and medium to long term needs. On 1 July 2017, the occupation lists were updated based on

² Further information on the occupation lists can be found at:

<http://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists>

³ CSOL was an expansive list of skilled occupations not based on labour market shortages, which was used to determine eligibility for sponsored temporary and permanent migration.

stakeholder consultation, labour market analysis, and advice from government departments to ensure they accurately reflect the skill needs of the Australian economy. These lists will be reviewed biannually.

Temporary employer sponsored skilled visa

6.The 457 visa allows employers to address temporary labour shortages by enabling businesses, as approved sponsors, to nominate overseas workers when an appropriately qualified Australian citizen or permanent resident is not available. It is an uncapped and demand driven temporary visa aimed at meeting genuine temporary skill shortages.

7.As of 31 March 2017, there were 95,360 primary 457 visa holders in Australia. To be granted a 457 visa, applicants must meet certain requirements including:⁴

- demonstrating that they have the skills and experience necessary to work in the nominated occupation;
- holding any mandatory registration, license or professional membership;
- demonstrating that they have the required English language skills, unless exempt;
- meeting health and character requirements;
- holding adequate health insurance, unless covered by Medicare;
- having no outstanding debts to the Australian Government; and
- providing biometrics if asked.

8.In the 2015-16 programme year there were 34,493 active sponsors in the 457 visa programme. There are two ways an eligible business can become an approved sponsor:

- apply to be a standard business sponsor; or
- negotiate a labour agreement.

9.To become a standard business sponsor, a business must:⁵

- be a lawfully operating business;
- have no relevant adverse information against their business; and
- if the business is in Australia:
 - meet training requirements;
 - demonstrate a commitment to employing local labour; and
 - not engage in discriminatory recruitment practices.

10.Alternatively, a business may be able to enter into a labour agreement if they have a demonstrated need for skilled migrants that cannot be met by the Australian labour market and which falls outside standard employer sponsored skilled visa programmes.

11.All businesses who sponsor a 457 visa holder must meet sponsorship obligations including:

- cooperating with inspectors;
- ensuring equivalent terms and conditions of employment;
- keeping records;

⁴ Further information about what a skilled overseas worker needs to do to apply for a primary 457 visa can be found at: <http://www.border.gov.au/Trav/Visa-1/457-#tab-content-1>

⁵ Further information about what an employer needs to do to apply for be a sponsor for the 457 visa programme can be found at: <http://www.border.gov.au/Trav/Visa-1/457-#tab-content-3>

- providing records and information to the Minister of Immigration and Border Protection (the Minister);
- notifying the Department of Immigration and Border Protection (the Department) when certain events occur;
- ensuring the visa holder participates in the nominated occupation;
- not recovering from, transferring or charging certain costs to another person;
- paying travel costs to enable sponsored people to leave Australia;
- paying costs to remove sponsored people who become unlawful non-citizens;
- providing training to Australians and permanent residents; and
- not engaging in discriminatory recruitment practices.

12. To nominate an overseas worker for a 457 visa, an approved sponsor must:⁶

- ensure that the overseas worker works directly for their business or for an associated entity of their business, unless the nominated occupation is exempt;⁷
- ensure that the overseas worker is afforded equivalent terms and conditions of employment to Australian workers;
- meet the 'genuineness' criterion;
- meet the Temporary Skilled Migration Income Threshold (TSMIT) requirements, set at \$53,900 as at 31 March 2017;
- not be subject to adverse information; and
- conduct Labour Market Testing (LMT) for professional, nursing and engineering occupations, unless it conflicts with international trade obligations.

Permanent employer sponsored skilled visa

13. The permanent employer sponsored skilled visas were introduced in their current form in 2012 and are demand-driven programmes, which allow employers to nominate skilled workers for permanent residence to fill genuine vacancies in their business. These skilled workers can be overseas or already in Australia on temporary visas.

14. While ENS applies nation-wide, the RSMS helps businesses in regional, remote or low population growth areas (outside the major metropolitan centres of Brisbane, Gold Coast, Sydney, Newcastle, Wollongong and Melbourne) to recruit the skilled workers they need to manage and grow their operations.

15. The ENS and RSMS visas each have three streams:

- the Temporary Residence Transition (TRT) stream is for subclass 457 visa holders who are nominated by their employer after having worked for two years in the same occupation;
- the Labour Agreement stream is for skilled migrants nominated by an employer who is party to a labour agreement; and
- the Direct Entry (DE) stream is for other employer nominated skilled migrants.

⁶ Further information about how a sponsor can nominate a skilled overseas worker can be found at:

<http://www.border.gov.au/Trav/Visa-1/457-#tab-content-4>

⁷ A list of exempted occupations can be found in the Legislative Instrument: *Specification of Occupations for Nominations in Relation to Subclass 457 (Temporary Work (Skilled)) for Positions other than in the Business of the Nominator* - IMMI 13/067.

16. In the 2016-17 programme year to 31 March 2017, there were 17,044 primary ENS visa grants and 5,228 primary RSMS visa grants. To be granted an ENS or RSMS visa, applicants must meet certain requirements including:

- having been nominated by an approved Australian employer (in regional Australia for RSMS) within the six months before the application;
- being under the age of 50 at the time of application, unless exempt;
- demonstrating that they have the skills and experience necessary to work in the nominated occupation, which may include an assessment by the relevant assessing authority;
- holding any mandatory registration, license or professional membership;
- demonstrating that they meet the required English language skills, unless exempt;
- meeting health and character requirements; and
- meeting other requirements of the relevant visa stream.

17. In the 2016-17 programme year to 31 March 2017, 8,315 individual businesses utilised the ENS and 2,933 individual businesses utilised the RSMS. To nominate a worker for an ENS or RSMS visa, a business must:

- actively and lawfully operate in Australia (in regional Australia for RSMS);
- have a genuine need for a paid employee to fill a skilled position;
- offer a skilled position in the applicant's field that is full time and ongoing for at least two years;
- pay a market salary rate;
- comply with Australian immigration and workplace relations laws;
- have no adverse information known about the business or any person associated with the business; and
- nominate the applicant in one of the three streams and meet the requirements of that stream.

Training benchmark requirements

18. The current training benchmark requirements are applicable to the 457 visa and the DE stream of the 186 visa. The current framework requires employers nominating a 457 visa applicant or 186 visa applicant in the DE stream to meet either:

- training benchmark A - The business must provide evidence of recent expenditure, to the equivalent of at least 2 per cent of the payroll of the business, in payments allocated to an industry-training fund that operates in the same industry as the business; or
- training benchmark B - The business must provide evidence of recent expenditure, to the equivalent of at least 1 per cent of the payroll of the business, in the provision of training to employees of the business.

The problem

19. The employer sponsored skilled visa framework is not effectively meeting the Australian Government's policy objective of enabling businesses to access skilled labour from overseas, when an appropriately skilled Australian is unavailable, while maintaining visa programme integrity. The current framework settings have resulted in:

- some businesses using the programmes where Australian workers are available.⁸ This problem resulted from an inability of the policy settings to make certain that businesses only access overseas migrants for occupations which had been identified as in shortage in the Australian labour market;
- some businesses and visa applicants not meeting the intended requirements of the programmes. This problem has arisen due to a number of legislative inconsistencies and gaps relating to the current policy settings, including English language, training benchmarks, genuine need, and skills assessment requirements;
- some individuals and businesses using the temporary visa programme primarily to seek longer term or permanent residence without a further control to determine they continue to meet Australia's social, economic, and skill needs.⁹ This has resulted from current policy settings, such as eligible occupation, English language and age requirements, failing to be set at the requisite levels;
- skills supplied by the visa programme not fully aligning with Australia's short or long term needs.¹⁰ This problem resulted from failures in the occupation lists to ensure that the occupations eligible for temporary skilled migration visas reflect Australia's short or medium to long term needs; and
- widespread criticism that the programme does not successfully balance the facilitation of skilled workers, and prevention of negative impacts on Australian and overseas workers.

20. The employer sponsored skilled visa programmes allow employers to address labour shortages by bringing in skilled overseas workers where there is no appropriately skilled Australian workers available. Whilst it is against the intent of the programme, there are many reasons that employers may seek to use an overseas worker instead of an available Australian worker. Some of these reasons may be that the employer:

- finds it more expeditious to employ an overseas worker than train an Australian worker;
- perceives the overseas worker to have desirable attributes that are lacking in an equivalent Australian worker; or
- is helping to achieve a migration outcome for the overseas worker.

21. The above shortcomings have led to:

- some overseas workers transitioning to permanent residence without having the attributes which optimise their economic contribution and settlement outcomes;
- displacement of Australian workers;¹¹
- continuing skills gaps; and

⁸ In 2016, the Department received approximately 15,000 enquiries, complaints, suggestions or compliments regarding the 457 visa programme. One of the main issues raised is that overseas workers are using the 457 programme to take Australian jobs.

⁹ Departmental data indicates that this pathway is taken by many, with 84 per cent of 186 and 187 visas granted from 1 July 2016 to 31 March 2017 being to individuals whose last substantive visa was a 457 visa.

¹⁰ This is supported by labour market analysis undertaken by the Department of Employment who provided advice to the Department in April 2017 identifying over 200 occupations, which were extraneous to Australia's labour market needs.

¹¹ The 2016 Senate Inquiry received evidence from several unions that 457 visa holders were being used to fill positions that could have been taken by qualified Australian workers, and were also displacing some Australian workers.

- overreliance on and an over-supply of skilled overseas workers in some occupations.

22. The 457 programme has been the subject of a number of enquiries and reviews. These reviews have involved wide consultation and feedback from a broad range of stakeholders, including industry peak bodies/associations, unions, government, businesses, migration agents and academics. The policy options set out in this document take this feedback into consideration.

23. Evidence of the problems within the employer sponsored skilled visa programmes can be found in:

- the 2014 *Independent Review into Integrity in the Subclass 457 Programme* (the 457 Integrity Review);
- the 2016 Senate Inquiry, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (the 2016 Senate Inquiry);
- the 2016 *Productivity Commission Inquiry Report: Migrant Intake into Australia* (the 2016 Productivity Commission Report);
- departmental sponsor monitoring activities outlined in the *Department of Immigration and Border Protection Annual Report 2015-16* (the 2015-16 Annual Report); and
- in the continuing stakeholder representations received by the Department.

24. The purpose of the 457 Integrity Review was to recommend a system that, operating in the national interest¹², was sound and resistant to misuse, and, at the same time, flexible and able to respond quickly to economic and business changes. The review examined:

- the level of non-compliance in the 457 visa programme;
- the current framework to better understand whether the existing requirements balance the needs of business with the integrity of the programme;
- the viability of a deregulation strategy of the current programme; and
- the appropriateness of the current compliance and sanctions.

25. The 457 Integrity Review found that, whilst contentious, there was strong support from businesses for a programme that enabled them to fill genuine workforce shortages. Unions also supported this function whilst highlighting the need to protect Australian jobs and vulnerable overseas workers. The Review found that Australians who experience difficulties in finding work see 457 visa holders as a threat.¹³

26. The 457 Integrity Review found that there was a “lack of responsiveness of the current occupation list” and that “employees...say that [the current system] is too easily subverted and, in practice, can turn into a free-for-all, to the disadvantage of Australians”.¹⁴ The 457 Integrity Review also found that the training benchmarks were flawed and should be abolished. The review made 22 recommendations, including

¹² As noted in the 2016 Productivity Commission Report, it is the broad intent of the visa programmes to meet Australia’s national interest (including national security and economic and social development).

¹³ The 457 Integrity Review, p23.

¹⁴ The 457 Integrity Review, p8.

reviewing the occupation lists, introducing a national training fund, publishing sponsor sanctions and providing the Department with tax file numbers (TFN).

27. The 2016 Productivity Commission Report examined the costs and benefits of temporary and permanent migration and looked at the scope for reforms within the current system that could deliver superior overall outcomes for the Australian community. The report found that younger and more skilled immigrants are more likely to make a positive economic contribution to Australia. It also noted that employment is a key indicator of integration, and that high levels of English language ability and qualifications result in better employment outcomes.
28. The 2016 Productivity Commission Report identified that significant gains could be made by recalibrating the intake of permanent skilled immigrants, by tightening entry requirements relating to age, skills and English language proficiency. For example, the Productivity Commission found that the fiscal benefit of skilled migrants decreases with age and recommended that the current 50 year age limit for the permanent employer sponsored skilled visa programmes be reduced. Migrants who arrive at a relatively young age, particularly those who are highly educated, generally contribute more tax revenue over their lifetime and make comparatively lower use of government-funded services.
29. The 2016 Senate Inquiry looked at the impact that the 457 visa programme has on employment opportunities for Australian permanent residents and citizens. The inquiry looked at concerns raised by employers seeking to efficiently supplement their workforce with overseas workers, and concerns raised by unions seeking to protect the wages, conditions and job opportunities of Australian workers.
30. The 2016 Senate Inquiry noted that for the 457 programme to be effective “the employment of 457 visa workers must match genuine, short-term skill shortages”. However, the inquiry found that there was evidence that there are occupations eligible for the current 457 programme where there is no skill shortage.
31. As indicated in the 2015-16 Annual Report, in 2015–16 the Department finalised the monitoring of 1390 temporary work sponsors, the majority of which were 457 sponsors. Approximately 58 per cent of sponsors monitored were considered to have satisfactorily met their obligations, while the remaining 42 per cent were found to be in breach of their obligations. Of the sponsors found to be in breach, a total of 372 sponsors were sanctioned (cancelling and/or barring the sponsor), 210 received a formal warning and 28 were issued with infringement notices totalling just under \$272,580. The top industries where employers were found to be in breach were Accommodation and Food Services, Other Services, Construction and Retail Trade. This rate is higher than in past years, reflecting improved targeting of risk. These results are indicative of the continued misuse of the programme by some businesses.
32. In 2016, the Department received approximately 15,000 enquiries, complaints, suggestions or compliments regarding the 457 visa programme by a range of stakeholders including individuals, legal and industry peak bodies, businesses and migration agents who use the

employer sponsored skilled visa programmes and domestic and foreign government representatives. Broadly, the issues raised include:

- overseas workers using the 457 programme to take Australian jobs;
- overseas workers being exploited; and
- certain programme settings make it more difficult for overseas workers to use the programme and prevent businesses and industries from meeting their needs.

33.The Government has already implemented several measures to address this problem. In particular, the Government has implemented the majority of the recommendations by the 457 Integrity Review, which included measures to strengthen integrity in the 457 visa programme, prevent abuse and protect Australian workers. However, whilst the measures implemented have gone some way to address the problem they have not completely solved it.

Why is Government action needed

34.The Government regulates the entry and stay of overseas workers in Australia. Given the competing views from employers, employees and employee organisations, the Government is required to balance these views to meet the national interest. It is therefore appropriate that the Government take action on this matter.

35.External reviews outlined above, and the Department, have identified several failures in the current employer sponsored skilled visa programmes, such as occupation lists that do not sufficiently support Australia's skills needs and policy settings that do not ensure sufficient programme compliance, are not set at requisite levels and have a number of legislative inconsistencies and gaps.

36.To resolve issues in the employer sponsored skilled visa programmes, the Government aims to achieve the following objectives:

- ensure that that employers only seek to fill vacancies with overseas workers where appropriately skilled Australian workers are not available;
- enhance integrity measures to prevent the misuse of the employer sponsored skilled programmes;
- ensure that skilled overseas workers have the necessary attributes to successfully contribute to Australia's social and economic prosperity, either temporarily or permanently; and
- meet Australia's skills needs through policy settings which distinguish between short and medium to long term needs.

37.To resolve issues in the employer sponsored skilled visa programmes, the Government needs to address the areas in which the programmes are currently failing, by:

- regularly reviewing and updating the occupation lists to ensure they support Australia's short and medium to long term skills needs;
- tightening policy settings to support programme compliance;
- ensuring that policy settings distinguish between short and medium to long term needs and are set at requisite levels to support settlement outcomes; and

- address legislative inconsistencies and gaps identified within the policy settings.

38. There are barriers that will impact the Government's ability to achieve its objectives:

- the Australian economy is dynamic. Policy settings will need to be responsive to Australia's changing skill needs while prioritising Australian workers; and there will continue to be people who seek to misuse the employer sponsored skilled visa programmes. Policy settings will need to mitigate risks as they arise.

39. If the Government does not take action, then the failures identified in the current employer sponsored skilled visa programmes will continue to result in integrity issues and suboptimal economic benefits.

Policy options

40. Three policy options have been considered:

- abolish and replace the 457 visa, and implement complementary reforms to the temporary and permanent employer sponsored skilled visas;
- reform the 457 visa; and
- retain the employer sponsored skilled visa framework without changes.

Option 1

Overview of Option 1

Temporary skill shortage visa

41. Under Option 1, by March 2018 the 457 visa would be abolished and replaced with a new Temporary Skill Shortage (TSS) visa with two streams. The two streams would enable greater control over settings by distinguishing between short-term and medium-term skills needs.

42. The Short-Term stream would enable employers to source genuinely temporary overseas skilled workers to fill short-term positions in a range of occupations for up to 24 months, until they can recruit and train an Australian if the role continues. This would be supported by a genuine temporary entrant requirement and provision for renewal of the visa onshore once only. The Short-Term stream would be underpinned by the STSOL.

43. The Medium-Term stream would enable employers to source highly skilled overseas workers to fill medium-term critical skill gaps for up to four years, with eligibility to apply for permanent residence after three years. The medium-term stream would be underpinned by the MLTSSL.

44. Other key features of the TSS visa, distinguishing it from the current 457 visa, include:

- a requirement that the primary applicant has at least two years relevant work experience;
- mandatory LMT in a prescribed manner, with limited exemptions to accommodate international obligations;

- a higher English language requirement for the Medium-Term stream of an International English Language Testing System (IELTS) score of level 5 overall, with a minimum of 5 in each component score; and
- a non-discriminatory workforce test to allow closer examination of applications from employers whose workforce is predominantly made up of overseas workers.

Complementary reforms

45. From the date of announcement, the Department would implement a number of complementary reforms leading up to the abolition and replacement of the 457 visa in March 2018.

Changes to temporary skilled employer sponsored visas

46. Changes to the 457 visa before the introduction of the TSS visa include:

- reducing the maximum duration of 457 visas issued for occupations that are on the STSOL to two years (unless international trade obligations require a longer period);
- removing the English language salary exemption threshold, which exempts applicants whose salary is over \$96,400 from the English language requirement;
- Processing efficiencies to expand the scope of sponsorship accreditation and streamline nominations for lower risk-sponsors, including trusted traders and government agencies;
- mandatory provision of penal clearance certificates;
- expanded skills assessments; and
- authorising the Department to publicly disclose the details of sponsors who are sanctioned for breaching the sponsor obligations framework.

Changes to temporary and permanent employer sponsored skilled visas

47. Proposed changes to both the temporary and permanent employer sponsored skilled visa programmes include:

- authorising the Department to collect and use TFNs of temporary and permanent skilled visa holders; and
- tightening and clarifying the training benchmarks policy settings, including regarding the requirements a training fund must meet, and the types of acceptable training expenditure. Then, from March 2018, replacing the training benchmarks with a levy to a government managed training fund payable by employers nominating a temporary or permanent skilled migrant.

Changes to permanent employer sponsored visas

48. Proposed changes to the permanent employer sponsored skilled visas include:

- specifying eligible occupations in the MLTSSL, with additional occupations available to support regional employers using the RSMS;
- extending the residence period required to apply for permanent residence from two to three years;
- paying a market rate salary not less than the TSMIT;¹⁵

¹⁵Currently, employers are required to pay the market salary rate to permanent skilled employer sponsored visa holders.

- more stringent age, English language, and relevant work experience requirements;
- requiring migrants who accessed regional concessions for their temporary visa to have lived in regional Australia in order to be eligible for permanent residency;
- requiring nominators to provide evidence of 'genuine need' for the person to work in the nominated position;
- removing the exemptions to the skills assessment and English language requirements for applicants earning at least \$180,001; and
- providing the ability to refund application fees where an application must be refused or withdrawn at no fault of the applicant.

Likely outcomes of Option 1

Australian labour market

49. As Australia's skills needs are constantly evolving and the skilled migration programme is designed to respond to those needs, use of the programme, and the impact of this option, will depend on labour market circumstances in the years ahead. In April 2017, 457 workers accounted for less than one per cent of the Australian workforce,¹⁶ and between 0.17 - 4.47 per cent of any industry.¹⁷ Therefore, the impact that the option 1 measures might have on the overall economy and particular industries is limited but will vary by industry and occupation. A key aspect of option 1 is six-monthly reviews of the occupation list to ensure it remains responsive to Australia's skills needs.

50. The measures in option 1 will have a higher impact on occupations that have the highest percentage of 457 workers compared to total employment. The maximum visa period of two years for occupations on the STSOL, such as Cooks, may result in an increase in the training and employment of Australians and/or a higher turnover of temporary skilled migrants. Of the top ten ANZSCO occupation groups with the highest percentage of 457 visa holders, there is only one ANZSCO occupation group (with the smallest historic 457 use) that does not have an occupation eligible for the 457 programme.¹⁸

Top ten ANZSCO occupation groups with highest percentage of 457 visa holders¹⁹

ANZSCO code	ANZSCO occupation group	Employed Total in May 2017 ('000)	457 visa holders at 31 May 2017	% of 457 visa holders to total employment
3514	Cooks	43.6	6168	14.16%
3125	Mechanical Engineering Draftspersons and Technicians	5.3	692	13.05%
2632	ICT Support and Test Engineers	12.2	1373	11.28%
2611	ICT Business and Systems Analysts	27.3	2900	10.63%

¹⁶ As at 18 April 2017, there were 92,896 primary 457 visa holders in Australia. This accounted for 0.78 per cent of the total Australian workforce, which was 11,922,100 as at February 2016.

¹⁷ Based on the same data as footnote 15, primary 457 visa holders accounted for between 0.17 - 4.47 per cent of the Australian workforce in an industry. The highest percentage (4.47 per cent) of primary 457 visa holders are in the Information Media and Telecommunications industry.

¹⁸ The Graphic Pre-press Trade Workers group only has one occupation, 392211 Graphic Pre-press Trades Worker, which is not currently eligible for the 457 programme.

¹⁹ Sources: Department of Immigration and Border Protection, BP0014 Temporary Work (Skilled) visa holders 2017-05-31 ULv100, and Australian Bureau of Statistics, 6291.0.55.003 - EQ08 - Employed persons by Occupation unit group of main job (ANSSCO), Sex, State and Territory, August 1986 onwards, released 22 June 2017.

3922	Graphic Pre-press Trades Workers	1.2	109	9.15%
2252	ICT Sales Professionals	12.8	1133	8.86%
6392	Retail and Wool Buyers	4.3	291	6.74%
1411	Cafe and Restaurant Managers	67.5	4391	6.50%
2613	Software and Applications Programmers	106.8	6545	6.13%
3123	Electrical Engineering Draftspersons and Technicians	8.7	509	5.82%

51. There are differing expert opinions on the impact that the option 1 measures might have on the Australian labour market. For example, Dr Birrell has argued that there it is very likely that these measures would significantly reduce the number of overseas workers on the employer sponsored skilled visa programmes, which will benefit domestic job seekers.²⁰ Whereas, Dr Wright has argued that whilst he agrees that the measures could reduce the number of overseas workers in these programmes, "any claim that a major reduction in workers on temporary visas would have a significant impact upon the Australian labour market is a bit far-fetched".²¹

Australia's ability to attract overseas skilled workers

52. The measures in option 1 are not expected to substantially affect Australia's competitive position among its peers (Canada, New Zealand, the United Kingdom and the United States) in attracting and retaining the best and brightest skilled migrant workers from around the globe that are in need in the Australian labour market. Visa settings are only one factor in a migrant's choice of destination, with other key aspects including lifestyle, taxation, and education. There are also other skilled migration options, such as Labour Agreements which allow employers with a demonstrated skill need that cannot be met by the Australian labour market to access skilled migrants in occupations outside the skilled occupation lists.

53. Some industries have expressed concern that the option 1 measures will impact on their international competitiveness to attract talent. This issue has predominately stemmed from removing the eligibility for permanent residency for some occupations. Some of those who expressed concern are:

- the tertiary education sector, which raised concerns about their ability to attract PhDs, researchers and academics; and
- multinational businesses, which raised concerns about their ability to attract Chief Executive Officers.

54. These concerns were considered as part of the review of occupation lists on 1 July 2017, and resulted in 23 occupations moving from the STSOL to the MLTSSL. Occupations on the MLTSSL are eligible for a visa of up to four years, and the option to apply for permanent residency. Occupations which moved from the STSOL to the MLTSSL include Chemist,

²⁰ The Australian Population Research Institute's research report: *The Coalition's 457 Visa Reset: Tougher Than You Think*, August 2017

²¹ Dr Wright, of the University of Sydney specialises in labour market regulation and immigration. Quotes sourced from A., 'Numerically insignificant': 457 visa overhaul unlikely to be a game changer for local jobs', *SBS News*, viewed 11 August 2017, < <http://www.sbs.com.au/news/article/2017/08/10/numerically-insignificant-457-visa-overhaul-unlikely-be-game-changer-local-jobs>>

Chief Executive or Managing Director, Environmental Research Scientist, Software & Applications Programmers (*nec*), and University Lecturer.

55. Option 1 will also affect the ability for employers to retain a temporary skilled migrant. This will only affect employers who are employing overseas workers in an occupation on the STSOL, which is subject to biannual reviews. These occupations will be restricted to visas of up to two years (unless international trade obligations require a longer period), and the visa holder will only be able to renew once onshore. However, these settings reflect the policy intent to address short term skill needs and encourage the training of Australians rather than reliance of overseas migrants. The industries that have the highest proportion of visa holders in occupations that are on the STSOL compared the MLTSSL are:

- Accommodation and Food Services;
- Arts and Recreation Services;
- Administrative and Support Services;
- Retail Trade; and
- Wholesale Trade.²²

Improving the quality of migrants

56. The tighter settings would improve the quality of temporary and permanent migrants and ensure they have the necessary attributes to successfully contribute to Australia's social and economic prosperity. They would also ensure that migrants have the necessary attributes to improve employment and community integration outcomes, and are able to successfully transition to permanent residency, if they are eligible. Key aspects include:

- more targeted occupation lists based on labour market analysis and stakeholder consultation that differentiate between short-term and long-term skills that are needed in the Australian labour market;
- reducing the current age limit for the permanent employer sponsored skilled visa programmes from 50 to 45 years will improve the fiscal contribution of these migrants;²³
- the increased work experience requirement for temporary and permanent employer sponsored skilled migrants recognises the importance of this attribute for effective productivity, workplace contributions and enhanced fiscal outcomes;
- higher English language requirements ensure that migrants are less vulnerable to exploitation, are able to integrate more easily in the workforce and community, and enable the transfer of skills from migrants to Australian workers; and
- enhanced character checking for the temporary employer sponsored skilled visa programme supports visa integrity and aligns with the way in which other visa programmes operate.²⁴ While applicants would incur regulatory costs associated with police checks, there is benefit in assessing this requirement before permanent residence to ensure that the Australian community is protected and that persons of concern are identified as early as possible.

²² This is based on visa holder data from 1 July 2012 to 30 June 2017 and the breakdown is for occupations that are on the STSOL or MLTSSL as at 1 July 2017.

²³ 2016 *Productivity Commission Inquiry Report: Migrant Intake into Australia*

²⁴ Further details on character and police certificate requirements can be found here:
<http://www.border.gov.au/Trav/Visa/Char>

57. Whilst the option 1 measures will improve the quality of migrants, they will also result in some migrants not being eligible to use the programmes. For example, recent graduates or those over 45 years old may not meet the new work experience or age requirements respectively. However, employers may look at other options to source skilled migrants who meet the new requirements where Australian workers are not available and there will continue to be exemptions to the age requirement.

Supporting Australia's skill needs

58. The proposed TSS settings under Option 1 would bring a sharper focus on Australia's labour market and skill needs by implementing more targeted, evidence based occupations lists that differentiate between short and medium term skill shortages. Option 1 supports Australia's skill needs by ensuring employers can only nominate occupations in short-term need for shorter visa periods with limited renewal (under the Short-Term stream), but can nominate occupations in medium to long-term need for longer visa periods (under the Medium-Term stream, and through permanent visas) and with no renewal limits.

59. Whether an occupation is, or is not, eligible for the employer sponsored skilled visa programmes will have the most significant impact on employers. For other option 1 measures such as increased English language, skill, age requirements or enhanced LMT, employers will still be able to source an overseas worker if there is a genuine need to fill a skills need. However, employers may need to source skilled overseas workers from outside of existing sources if those sources cannot meet the requirements. In some cases, this may delay, although not prevent, an employer from sourcing skill labour. Some employers may instead choose to recruit an Australian worker.

60. The 1 July 2017 occupation lists update considered several factors including labour market analysis, and advice from government departments. Stakeholder feedback was also considered, in particular feedback regarding skilled occupations that had been removed from eligibility on 19 April 2017 and that employers considered were still needed to fill skills gaps. For the for the subclass 186 and 457 visa programmes, the 1 July 2017 update included the addition of:

- 16 occupations to the STSOL. This included Aeroplane Pilot which had been removed from eligibility on 19 April 2017; and
- 20 occupations to the MLTSSL.²⁵

Regular review of the occupation lists enables stakeholders to provide timely feedback, and ensures the lists meet Australia's skill needs.

61. There will inevitably be differences of opinion as to the need to source overseas migrants in a particular occupation. The occupation lists review process continues to be refined and is designed to consider qualitative labour market data as well as qualitative feedback from industry, unions and the general community. The broad range of stakeholders that have provided input to the occupation list reviews demonstrates the interest in engaging in regular updates of occupation lists.

²⁵ More information on the 1 July 2017 changes to the lists of eligible skilled occupations can be found: <http://www.border.gov.au/WorkinginAustralia/Pages/summary-of-1-july-2017-changes-to-list-of-eligible-skilled-occupations.aspx>.

62. Labour Agreements will remain an avenue to sponsor skilled migrants in occupations not on the lists where there is a demonstrated need that cannot be met by the Australian labour market. Labour agreements are formal arrangements negotiated between an employer and the Australian Government that let an employer recruit an agreed number of skilled workers from outside Australia. They provide a flexible, tailored skilled migration arrangement for businesses and sectors with specific needs that sit outside the mainstream skilled migration programme.

63. The impact on business and visa holders who have made investments on the basis of meeting previous permanent residency criteria would be mitigated by grandfathering access to the permanent skilled employer sponsored visa pathway for existing 457 visa holders and applicants at the time of the Government announcement.

Incentivising employers to give priority to Australian workers

64. Option 1 would incentivise employers to give preference to appropriately skilled and available Australian workers by tightening the circumstances in which overseas workers could be employed. Measures that would incentivise employers to look to the Australian labour market include:

- better targeted occupation lists, and visa duration linked to the lists;
- limited onshore renewal, and a genuine temporary entrant requirement for the Short-Term stream of the TSS visa. These criteria reinforce the temporary nature of the Short-Term stream, and provide mechanisms to refuse a visa where a migrant is seeking to use temporary visas to establish longer term residence in Australia;
- restricting the ability to access permanent residence through the Temporary Transition stream to the Medium-Term stream of the TSS visa only;
- a national training fund levy which would improve training and employment outcomes for Australians, and reduce longer term reliance on overseas workers;
- a non-discriminatory workforce test to ensure employers are not actively discriminating against Australian workers; and
- mandatory LMT in a prescribed manner, with exemptions to accommodate international trade obligations.

65. The LMT measure will impact employers who have not previously needed to meet this criteria. In particular, this will affect employers of professional occupations. There is expected to be minimal impact employers who have previously sought to find an available and appropriately skilled Australian prior to hiring an overseas worker. Employers whose default approach was to source overseas workers will now have to first test the local labour market.

International obligations

66. Currently, the 457 visa is the primary visa that facilitates Australia's international trade obligations on the movement of natural persons. The measures in option 1 are consistent with Australia's international trade obligations, which include commitments regarding visa duration, and not imposing LMT and occupations.

Settlement Outcomes

67.As the Department’s submission to the Joint Standing Committee on Migration’s inquiry into migrant settlement outcomes notes, “poor settlement outcomes can have a detrimental effect on individual migrants’ lives as well as on the economy and society as a whole. Migrants must be equipped with the tools that assist with positive settlement outcomes, an ability and willingness to integrate, and an understanding of Australia.”²⁶ Characteristics of positive settlement outcomes include social and economic participation, and economic and physical well-being.²⁷ Settlement outcomes can be improved by measures in option 1 such as:

- extending the period from two to three years that employer-sponsored migrants must remain in their nominated position before being eligible for permanent residence, because they have had additional time to settle in Australia; and
- increasing, and removing exemptions to, the English language requirements.²⁸

Increased training opportunities for Australians

68.As the 2016 Productivity Commission Report noted, “ready access to temporary skilled immigration dampens incentives for employers to invest in skills and training”. This highlights the importance of a strengthened mechanism to improve Australian training outcomes. An overarching requirement for employers nominating an overseas skilled worker to pay a levy to a government managed training fund would improve training and employment outcomes for Australians and reduce longer-term reliance on overseas workers. This would also address the integrity concerns with the current training benchmark requirements, which were raised by the 457 Integrity Review.

69.The proposed new training fund contribution model aims to make compliance and monitoring simpler by removing the need to maintain complex records to demonstrate expenditure to meet the current training benchmark requirements, and replacing it with a levy paid to the Skilling Australians Fund (SAF).

70.It is expected that for most employers the cost of the SAF levy will be less than the costs under the training benchmarks, and Australian citizens and permanent residents will have improved training opportunities, with more transparent outcomes.

Addressing integrity risks

71.The Department has identified several legislative inconsistencies and gaps that present integrity risks, which make it easier for employers to misuse the programme. These risks would be addressed by the following measures:

- tightening the current training benchmarks and then replacing them with a national training fund levy;
- removing salary-based exemptions to English language (including the English Language Salary Exemption Threshold (ELSET)) and skills assessments

²⁶ Further information on the inquiry can be found at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/settlementoutcomes

²⁷ As noted in Appendix 20 to the Department of Immigration and Multicultural and Indigenous Affairs submission to the Joint Standing Committee on Migration report, *To make a contribution: Review of skilled labour migration programs 2004*.

²⁸ As noted in the 2016 Productivity Commission Report, an overseas worker’s English language ability is an important factor in integration and settlement outcomes.

requirements to address misuse, improve social cohesion, and decrease the risk of vulnerability in the workplace. This would have regulatory costs to individuals who otherwise would not have been required to provide evidence of English language competence or skills assessments and do not possess that evidence;

- requiring nominators to provide evidence of 'genuine need' for the person to work in the nominated position. This is to prevent positions from being fraudulently created for the purpose of facilitating the grant of a permanent visa;
- providing the ability to refund application fees where an application must be refused or withdrawn at no fault of the applicant;
- publishing details of sponsor sanctions. This would help to deter businesses from breaching their sponsor obligations by misusing the employer sponsored skilled visa programme, and address public about the integrity of this programme;
- enabling the Department to collect and use TFNs to strengthen compliance monitoring and targeting;
- expanding the skills assessment to cover cohorts of concern, for example, where particular combinations of occupation and nationality have been identified as an integrity risk; and
- requiring nominators to provide evidence of 'genuine need' for the person to work in the nominated position.

Regional Australia

72. Option 1 is likely to have a positive overall impact on regional Australia. It would recognise that employers in regional areas can find it harder to attract and retain skilled employees in comparison to metropolitan employers, and seek to address this through a number of mechanisms:

- regional employers would have access to a broader range of eligible occupations than would be available to metropolitan employers. This broader occupation list available under the RSMS would be extended to also apply to the two streams of the TSS visa;
- the maximum age at time of application for a permanent employer sponsored visa would be reduced from 50 to 45 years of age. However, there are existing age exemptions based on occupation, region (for medical practitioners), employer, salary, and for New Zealand citizens. If needed, these exemptions could be expanded in future to support regional Australia; and
- a requirement for temporary visa holders who accessed a regional occupation concession to have lived in a regional area for three years to be eligible for a permanent employer sponsored visa would ensure that migrants have a strong incentive to live and settle in regional Australia.

Addressing public concerns

73. The new framework addresses public concerns regarding negative impacts of the existing 457 visa programme on the Australian labour market. Implementing reforms from July 2017 to tighten the 457 visa and permanent skilled employer sponsored visa settings would address the concerns while the new framework is being built, and more closely align the current legislative framework with the future state of the employer sponsored skilled visa programme.

Regulatory costs

74. The Office of Best Practice Regulation (the OBPR) has agreed to the regulatory cost savings of \$1.193 million on average per annum for option 1. Not all measures in option 1 are expected to have a regulatory impact on businesses or individuals. The ones that do have been outlined below. Since the proposal is deregulatory, no regulatory offsets are identified.

Table 1: Regulatory burden estimate (RBE) table			
Average annual regulatory costs (from business as usual)			
Change in costs (\$ million)	Business	Individuals	Total change in costs
Extended LMT	- \$1.839		- \$1.839
Enhanced character assessment		- \$3.819	- \$3.819
Removal of ELSET		- \$1.596	- \$1.596
Educate sponsors on new visa framework	- \$0.445		- \$0.445
Expanded skills assessment		- \$0.116	- \$0.116
SAF levy	- \$0.351		- \$0.351
Removal of training benchmarks	\$9.359		\$9.359
Total, by sector	\$6.724	- \$ 5.531	\$ 1.193

Option 2

Overview of Option 2

75. Option 2 would involve retaining the 457 visa, and only implementing integrity reforms to the 457 visa. The key differences between Option 2 and Option 1 are:

- the 457 visa would be retained; and
- the Department would not reform the permanent employer sponsored skilled visas, but would instead consider changes as part of future visa reform.

76. The Department would introduce integrity measures to the 457 visa, including:

- condensing the occupation list and including additional occupation caveats;
- removing the ELSET;
- expanded skills assessments;
- enhanced character checking;
- publishing details of sponsors who have been sanctioned; and
- allowing the Department to collect and use TFNs of temporary and permanent skilled visa holders.

Likely outcomes of Option 2

77. Option 2 would go some way to improve quality and integrity outcomes for the 457 visa. However, it would not fix all the problems identified in the temporary employer sponsored skilled visa programme and would not address any of the issues with the permanent employer sponsored skilled visa programme until broader visa reforms were introduced. Waiting for broader visa reform means that these programmes will continue to face integrity issues and will in some cases be inconsistent with the temporary 457 visa programme.

78. Option 2 would not address some current issues inherent in the 457 visa framework. This includes not clearly distinguishing between short-term and medium-term skill needs. Occupation lists and visa validity policy settings which differentiate between short and medium-term skills needs would go some way to addressing this issue. However there would be no mechanism to prevent longer term residence for skills that were only in temporary need and for preventing visa holders and sponsors from seeking to use the temporary programme as a vehicle for permanent migration.
79. Option 2 would also run the risk of creating an imbalance between the temporary and permanent employer sponsored skilled visa settings, with permanent settings being lower in some cases, and create uncertainty as to potential future further changes to permanent residence.
80. Like option 1, it is expected that the measures in option 2 will have a limited impact on the overall economy and particular industries, which would vary by industry and occupation. Also, the measures in option 2 are not expected to substantially affect Australia's ability to attract and retain talent. Unlike option 1, the measures in option 2 won't affect the ability for employers to retain a temporary skilled migrant, as there is no shortened visa stream with restrictions on onshore renewal.
81. Industry stakeholders and migration programme users are expected to be less critical of the changes in Option 2 than Option 1. However, the Department expects there would still be criticism of tightening access to the Australian labour market for overseas workers.

Addressing integrity risks

82. There would be no measures implemented to address the integrity risks in the permanent employer sponsored skilled visa programmes. This would result in continuing misuse by some employers. However, some but not all of the integrity risks for the 457 visa programme would be addressed through the following measures:
- publicly disclosing the details of sponsors who are sanctioned for breaching the sponsor obligations framework;
 - enabling the Department to collect and use TFNs to strengthen compliance targeting and outcomes;
 - updating the skilled occupation lists;
 - expanded skills assessments; and
 - removing the ELSET.
83. The current training benchmarks would continue to exist unchanged. Therefore, the following problems would also continue:
- a lack of transparency;
 - no demonstrable training outcomes; and
 - the benchmarks are overly complex and inequitable.
84. As mentioned in Option 1, removing the ELSET and introducing enhanced character checking would increase regulatory costs to individuals.

Addressing public concerns

85. Not replacing the 457 visa would fail to address public concerns about the employer sponsored skilled migration visa programme. This could impede effective reform to the temporary skilled migration visa programmes and the Government's ability to support the Australian economy by facilitating access to skilled labour.

Supporting Australia's skill needs

86. One of the problems with the current settings of the 457 visa programme is that migrant intake is not necessarily reflecting Australia's short, medium and long-term needs. A significant factor is that the 457 programme has become a de-facto pathway to permanent residency. This issue would continue with Option 2 and would result in the skills needs of the Australian economy not being adequately met, as visa settings other than the occupation lists would not differentiate between short and medium-term skills shortages.

87. The occupation list would be condensed, more targeted, and would differentiate between short and medium-term skills shortages. However, the current 457 visa framework would not effectively implement these changes as it lacks the regulatory mechanisms proposed under Option 1 for the Short-Term and Medium-Term stream of the TSS.

Improving the quality of migrants

88. The tighter settings would slightly increase the quality of overseas migrants using the 457 visa programme. Key aspects include:

- more targeted occupation lists based on labour market analysis and stakeholder consultation that differentiate between short-term and long-term skill needs; and
- mandatory penal clearance certificates.

89. Option 2 would not ensure that policy settings are set at requisite levels to support settlement outcomes support. It would not include measures to support skilled overseas workers to have the necessary attributes to successfully contribute to Australia's social and economic prosperity on a permanent basis.

Incentivising employers to give priority to Australian workers

90. Whilst the 457 visa programme currently has some incentives to prioritise Australian workers, Option 2 would not provide further incentives. Therefore, situations would continue where employers do not use the 457 visa programme to meet genuine temporary skill needs, and instead hire skilled overseas workers rather than training and or employing appropriately skilled Australians.

Option 3

Overview of Option 3

91. Option 3 would involve retaining the employer sponsored skilled visa programmes with no changes (status quo).

Likely outcomes of Option 3

92. Option 3 would not address the current problems with the temporary and permanent employer sponsored skilled visas. In particular, it would not address the issues within the current framework settings which have resulted in:

- some businesses using the programmes where Australian workers are available;
- some businesses and visa applicants not meeting the intended requirements of the programmes;
- some individuals and businesses using the temporary visa programme primarily to seek longer term or permanent residence without a further control to determine they continue to meet Australia's social, economic, and skill needs; and
- skills supplied by the visa programme not fully aligning with Australia's short or long term needs.

Consultation

93. The Department provided an interim Regulatory Impact Statement (RIS) to the OBPR at an earlier decision point. The OBPR agreed to the provision of an interim RIS on the basis that a final RIS would be prepared to inform the final decision point.

94. The Department has drawn on consultation with and feedback received from a broad range of stakeholders to identify issues addressed through the reform, and to obtain stakeholder views on the proposed reforms. The Department identified the following interested stakeholders:

- individuals, legal and industry peak bodies, and businesses who use the employer sponsored skilled visa programmes;
- migration agents whose clients use the employer sponsored skilled visa programmes;
- foreign government representatives; and
- federal government departments and agencies, including:
 - the Department of Foreign Affairs and Trade;
 - the Attorney-General's Department;
 - the Department of the Prime Minister and Cabinet;
 - the Department of Finance;
 - the Australian Tax Office;
 - the Department of Health, Austrade;
 - the Department of Education & Training;
 - the Department of Employment;
 - the Department of Human Services;
 - the Department of Industry, Innovation and Science;
 - the Department of Social Services; and
 - the Treasury.

95. The Department's consultation process included individual meetings, roundtables, interdepartmental committee (IDC) meetings, submissions, and feedback received through other channels. A range of reforms developed as a result of these consultations have already been implemented. The main consultative processes included:

- the 457 Integrity Review, which met with over 150 stakeholders and received 189 written submissions;
- the 2016 Productivity Commission Report, which received over 100 public submissions, met with a range of stakeholders in Canada, New Zealand, the United States and Australia;
- the 2016 Review of the Temporary Skilled Migration Income Threshold, which involved consultation through 19 one-on-one meetings, a forum with 11 attendees and 40 written submissions;
- the 2016 Senate Inquiry, from the Senate Education and Employment References Committee;
- consultation with and input from the Ministerial Advisory Council on Skilled Migration;
- meetings of the Skilled Migration Officials Group;
- IDC meetings between the Department and other federal government agencies and departments;
- eight roundtables in Melbourne, Sydney and Canberra; and
- meetings, and associated correspondence, with individual stakeholders.

Stakeholder feedback

96.The feedback from the consultations can be summarised as follows:

- there is broad support for the intent of the reforms and the use of skilled overseas workers where skilled Australians are not available, so long as those employing them offer employment and training opportunities for Australians;
- there are some concerns about the impact of the reforms in limiting access to skilled migrants (expanded on below); and
- there is some support to further tighten policy settings than is proposed.

Stakeholder feedback

97.Stakeholder consultation shows that the Government needs to consider a wide range of varying, and often opposing views. The Department continues to consider feedback raised by stakeholders in the development of the TSS visa and future reviews of the occupation list.

98.During the consultation, the Department has considered and subsequently addressed many concerns raised by stakeholders. Some of these have been outlined previously in this RIS and others are outlined in this section.

Initial feedback

99.Initial media after the Government's reform announcement made 18 April 2017 (which reflect the option 1 measures) highlighted both support for and concerns of some stakeholders. Some stakeholders, such as the Australian Industry Group, agreed that the programme needed significant reform, and this could be achieved by replacing it with a new visa that more clearly defined its purpose – to address skill shortages that exist in the Australian economy²⁹. The Australian Chamber of Commerce and Industry supported the

²⁹ Sydney Morning Herald, Business welcomes 457 visa changes, warns on red tape, 18 April 2017

need for a reset in the way in which the Government handled temporary skilled visas³⁰. Other feedback was mixed where stakeholders expressed support for certain aspects of reform, and concerns regarding other measures.

100. Concerns raised centred on the occupation changes which had immediate impact.

Through the consultation process, the Department considered a number of concerns raised by stakeholders and made some adjustments to address these concerns, such as:

- expanding the number of eligible occupations, particularly on the MLTSSL, on 1 July 2017 where there was evidence to support an ongoing need for particular occupations. This took into account feedback from employers within the horse racing sector, science and research sector, IT tech and retail sector, tertiary sector and the aviation industry;
- clarifying that the work experience requirement would be assessed in a way that reflects the nature of the particular occupation, including experience in related occupations where relevant. This feedback addresses concerns raised by the tertiary education industry, the medical sector, arts and performance sector and the science and research sector; and
- providing for a high salary exemption to the English language requirement for intra-company transferees. This addressed concerns raised by some of Australia's trading partners about the impact of removing the ELSET.

New policy settings for the TSS visa

101. Stakeholders raised concerns regarding the new policy settings for the TSS visa, including:

- the reduced visa lengths and access to permanent residence, and whether this would impact on Australia's ability to attract talent;
- the reduction in occupations available, and whether this would impact application numbers for permanent skilled employer sponsored visas;
- the two years' work experience requirement, which would negatively impact the tertiary industry, the medical sector, arts and performance sector and the science and research sector;
- increased English language requirements, ELSET removal and introduction of mandatory police checks, which could negatively impact an employer's ability to access and recruit overseas workers;
- replacing the training benchmarks with a government managed training fund levy would add to existing training costs for some businesses, and may not address specific skills gaps in those businesses; and
- the reforms could increase red tape and negatively impact businesses.

Australian labour market

102. Some members of the public and unions raised concerns about the negative impact of the current temporary employer sponsored skilled visa programme on the wages, conditions and job opportunities for Australian workers will continue under the new TSS visa.

³⁰ Australian Chamber of Commerce and Industry, Media Release: migration changes will help make system sustainable, 18 April 2017

Transitional arrangements

103. Concerns were raised about how the reforms would impact existing and future visa holders and applicants, particularly regarding:

- how existing 457 visa holders would be affected where their occupation has been removed from the relevant skilled occupation list; and
- how exemptions, such as to the age and English language requirements, would apply.

Integrity of the employer sponsored skilled visa programmes

104. Stakeholders raised concerns about whether the integrity measures would go far enough to address the exploitation of overseas workers.

Consultation

105. Stakeholders were critical about the lack of transparency and engagement about the reforms prior to the Government's announcement. Notwithstanding this criticism, stakeholders appreciated the early engagement by the Department on the specific policy settings, following the announcement.

Regional Australia

106. Stakeholders sought clarification on how the reforms would provide regional concessions. Stakeholders suggested that the Government should consult further with regional Australia and the agricultural sectors on the reforms.

Visa processing

107. Stakeholders sought clarification on whether the reforms would lead to processing efficiencies or impact visa processing timeframes.

Best option

108. The recommended option is to abolish and replace the 457 visa, and implement complementary reforms to the temporary and permanent employer sponsored skilled visas (option 1). This option has a deregulatory impact.

109. Option 1 is the preferred option as it:

- provides a comprehensive and complementary package of reforms to the temporary and permanent employer sponsored skilled visa framework;
- incentivises employers to only seek to fill vacancies with overseas workers where appropriately skilled Australian workers are not available;
- has enhanced integrity measures to prevent the misuse of the employer sponsored skilled programmes;
- meets Australia's skill needs through policy settings which distinguish between short and medium to long term needs;
- ensures that skilled overseas workers have the necessary attributes to successfully contribute to Australia's social and economic prosperity, either temporarily or permanently; and
- provides increased training outcomes for Australians.

110.Options 2 and 3 would not fully differentiate between the short, medium and longer-term skilled labour needs of the Australian economy, and would run the risk creating an imbalance in temporary and permanent employer sponsored skilled visa settings.

111.Options 2 and 3 would not enable the employer sponsored skilled visa programmes to better meet Australia's labour market and economic needs.

Implementation and evaluation

112.Option 1 would have IT systems, processing, resourcing and legislative implications. The Department undertakes changes to legislation and systems using its Change Management Framework. This includes a detailed implementation plan with risk management strategies.

113.The Department proposes a phased approach for implementing Option 1, with integrity and quality measures introduced between April and December 2017, and the new TSS visa and SAF levy introduced in March 2018. The Department would leverage existing systems, processes and monitoring governance arrangements.

114.Amendments to the *Migration Act 1958*, Migration Regulations 1994, legislative instruments, and policy would be required to change settings for the temporary and permanent employer sponsored skilled visas. Publishing sponsor sanctions and sharing TFNs may also require changes to the *Tax Administration Act 1953* and the *Income Tax Assessment Act 1936*. The proposal to establish a government managed training fund would require taxing Bills.

115.It is possible that legislation to enable the Department will not be passed by Parliament. This would mean:

- in the case of sharing TFNs, the Department would not benefit from an enhanced compliance targeting or enhanced long term research on skilled migration employment outcomes. The overall rating for these risks has been assessed as medium. If this legislation were not to pass, the Department would continue compliance targeting and research using other client identifiers, however this would be less effective than TFN sharing;
- in the case of publishing sponsor sanctions, the Department would not publish sponsor sanctions. This has been assessed as a medium risk. If this legislation were not to pass, the Department would consider other public facing communication strategies to further deter sponsors from breaching their obligations, however, these would be less effective; and
- in the case of the government managed training fund, the Department would have to consider other options to improve training outcomes for Australians. This has been assessed as a high risk.

116.To prepare stakeholders to transition to these arrangements, the Department has developed a communications plan and is continuing to engage closely with stakeholders about the reforms. This engagement plan includes:

- maintaining up to date information about the reforms on the department's website, including factsheets with timelines and frequently asked questions and answers;
- maintaining a register of issues to inform future policy directions;
- ongoing feedback through broader visa reform stakeholder consultation; and
- engagement with stakeholders through existing fora:
 - Ministerial Advisory Council on Skilled Migration;
 - Senior Migration Officials Group;
 - annual migration planning;
 - net overseas migration forecasting;
 - migration agents; and
 - public information.

117. After the measures have been implemented, the Department will evaluate them through existing processes, as well as specific reviews as required. The Department will take into account both internal and external stakeholder feedback to determine if the Government's objectives have been met. As previously stated, the Government aims to achieve the following objectives:

- ensure that that employers only seek to fill vacancies with overseas workers where appropriately skilled Australian workers are not available;
- enhance integrity measures to prevent the misuse of the employer sponsored skilled programmes;
- ensure that skilled overseas workers have the necessary attributes to successfully contribute to Australia's social and economic prosperity, either temporarily or permanently; and
- meet Australia's skill needs through policy settings which distinguish between short and medium to long term needs.