Northern Territory Department of Business Response

Inquiry into the Current Framework and Operation of Subclass 457 Visas, Enterprise Migration Agreements and Regional Migration Agreements.

The current framework and operation of subclass 457 visas, Enterprise Migration Agreements, and Regional Migration Agreements, including

(a) their effectiveness in filling areas of identified skill shortages and the extent to which they may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements;
(b) their accessibility and the criteria against which applications are assessed, including whether stringent labour market testing can or should be applied to the application process;
(c) the process of listing occupations on the Consolidated Sponsored Occupations List, and the monitoring of such processes and the adequacy or otherwise of departmental oversight and enforcement of agreements and undertakings entered into by sponsors;
(d) the process of granting such visas and the monitoring of these processes, including the transparency and rigor of the processes;
(e) the adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities;
(f) the economic benefits of such agreements and the economic and social impact of such agreements;
(g) Whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on such visas;
(h) the capacity of the system to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights;
(i) the role of employment agencies involved in on-hiring subclass 457 visa holders and the contractual obligations placed on subclass 457 visa holders;
(j) the impact of the recent changes announced by the Government; and
(k) any related matters.

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PREAMBLE

The Northern Territory Department of Business welcomes the opportunity to provide input into the inquiry on the current framework and operation of the Temporary Work (Skilled) Subclass 457 visa, Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs). This response also provides comment on policy changes to the Subclass 457 visa program that are proposed for implementation from 1 July 2013.

The Subclass 457 visa is promoted by the Department of Immigration and Citizenship (DIAC) as a mechanism designed to respond to labour market change that enables employers to gain timely access to overseas workers to address their workforce shortages.

Statistics published by DIAC show that the Subclass 457 visa continues to deliver significant numbers of skilled workers to Australia. However since 2009 successive policy changes have considerably reduced the utility of this visa to service employers' needs in the Northern Territory's unique labour market environment.

THE NORTHERN TERRITORY ENVIRONMENT

Labour Market

Compared with other Australian jurisdictions, the Northern Territory labour market is buoyant. The Northern Territory has a relatively young and skilled workforce, high participation and low unemployment.

The distribution of jobs is highly skewed towards the major population centres and the issues facing urban and remote workforces are markedly different. Employment is concentrated in a few industries, particularly in public administration, safety, construction, health care and social support.

Major projects attract considerable investment to the Northern Territory and generate significant employment opportunities across industries and the spectrum of skills. These projects tend to have short lead times and generate high demand for skilled labour.

The demand for workers in the Northern Territory can be competitive as businesses respond to external conditions and strive to meet their workforce needs. The US$34 billion Ichthys liquefied natural gas project is expected to provide a significant boost to the Territory economy and generate an unprecedented demand for skilled workers.

Growth factors have contributed to widespread labour and skills shortages. This can be seen in the steady increase in demand for workers, including seasonal and short-term workers, from outside the Northern Territory.

The Territory has a larger and under-utilised Indigenous working age population when compared with other jurisdictions. Approximately 25% of the Territory's resident population lives outside major regional centres. Of this, about 80% are Indigenous. The tendency is for jobs to be close to major centres while many Indigenous Territorians live in regional or remote areas. Differences between employment outcomes for Indigenous and non-Indigenous Territorians are also significant, especially in remote areas, where little or no private employment exists.

In the five years to 2010-11, the Northern Territory economy grew by an average of 4% each year[1] Over the same period, the Northern Territory's workforce has grown by almost 22 000 people or an average of 4% each year.[2] Nationally, employment grew by an average of 2.4% over the same period.[3]

Employment growth in the Northern Territory was particularly strong in the following industries:

- construction
- mining
- education and training.[4]

The drivers behind this increase in employment were a combination of strong population growth (averaging 2% each year[5]) and the increasing demand for workers associated with a number of major projects.

March 2013 statistics indicate that the Northern Territory labour market is performing well. The Northern Territory's unemployment rate is 4.2% and the participation rate (the proportion of Territorians aged 15 years and over either employed or looking for work) is 72.9%, the highest rate of all jurisdictions.[6]

The most recent data available from the Australian Bureau of Statistics indicates that the Northern Territory has a total population of 236 300, of which 123,600 are employed. [7]

Solid employment growth is expected to continue in the Northern Territory over the five years to 2017.

Deloitte Access Economics forecasts that an additional 16 000 people will be employed in the Northern Territory between 2012 and 2017, equating to an average annual increase of 2.5%.[8]

The Centre of Policy Studies at Monash University forecasts employment in the Northern Territory will increase by almost 20 000 jobs or an average of 2.6% in each of the five years to 2016-17. Over the same period, national employment is forecast to grow by 1.4%.[9]

Over the five years to 2016-17, the major industry drivers of growth in the Northern Territory are expected to be:

- health
- construction
- education and training.[10]

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[1] ABS Cat No 5220.0 Australian National Accounts

[2] ABS Cat No 6202.0 Labour Force, Australia.

[3] Ibid

[4] ABS Cat No 6291.0.55.003 Labour force Detailed, Australia, Quarterly

[5] ABS Cat No 3101.0 Australian Demographic Statistics

[6] ABS Cat No 6202.0 Labour Force, Australia.

[7] Ibid

[8] Deloitte Access Economics Employment Forecasts, December quarter 2011

[9] Centre of Policy Studies (Monash University) Monash Employment Forecasts, 2011

[10] Centre of Policy Studies (Monash University) Monash Employment Forecasts, 2011

Growth is forecast to be strongest in the following occupations:

- professionals such as registered nurses, teachers and community services professionals
- clerical and administrative workers such as contract, project and program administrators and general clerks
- technicians and trades workers such as electricians, carpenters, joiners, chefs, plumbers and mechanics.[11]

Major projects, such as the Ichthys LNG project, are expected to place high demands on the construction and connected industries. Pit Crew Management Consulting Services forecast that construction jobs in the Northern Territory will peak in mid-2013, with an increase of 5 500 jobs.[12]

Occupations in Shortage or Demand

Since 2005 the Northern Territory Government has published the Northern Territory Occupation Shortage List (NTOSL). The NTOSL was developed in response to stakeholder requests for more information about occupations experiencing shortages and recruitment difficulties.

During the review of the 2011 NTOSL it became evident that stakeholders required a more predictive list and this has driven the development of the Northern Territory Skilled Occupation Priority List (NTSOPL).

Industry, union and government stakeholders were consulted extensively during the development of the NTSOPL which is list of occupations that are in high demand or considered critical by business and industry in the Northern Territory.

The NTSOPL provides guidance in the following areas:

- informing business and industry workforce planning and development
- decision-making relating to occupational shortages
- defining priorities in the allocation of training funding (i.e. linking training funding to skills demand)
- defining priorities in the allocation of employer incentives for apprentices and trainees
- guiding recruitment activities
- informing workforce impact analysis for major projects
- identifying occupations to be targeted through skilled migration programs.

The NTSOPL involves both quantitative and qualitative assessment processes. The quantitative process is a comparative analysis of each occupation against economic indicators such as employment level, skill level, and forecast employment and replacement rates. The forecasts provide the forward-looking element. The qualitative process comprises industry, through the training advisory councils and industry associations providing current “on-the-ground” intelligence of occupation-specific issues. The final list is a consolidation of these two processes and is reviewed and updated annually.

[11] Ibid

[12] Report commissioned by Department of Business and Employment from Pit Crew Management Consulting Services, 2011

Access to Workers

One of the key issues facing the Northern Territory is the lack of a suitable workforce within the region whether it is suitably skilled workers or people who can be trained and up-skilled. The most recent data available shows that the Northern Territory has an unemployment rate of 4% compared to a rate of 5.4% Australia wide. Further the participation rate in the Northern Territory is 74.1% compared to a national rate of 65.3%. [13]

In the Northern Territory the challenges of very low numbers of both unemployed workers and those not engaged in looking for work is further compounded by a number of other factors.

There are a number of major projects coming on line in northern Australia and the close proximity of some of these projects to the Territory's major population centres will create a significant drain upon the labour force of Northern Territory Small to Medium Enterprises (SMEs).

The Ichthys LNG project, which is currently in its construction phase, is by far the largest private sector infrastructure project that has been developed in the Northern Territory and one of the largest in Australia.

Experience during the construction of a LNG plant by Conoco Phillips between 2006 and 2008 has informed this department's understanding of the impact this much larger Ichthys LNG project will have on the Northern Territory's labour market. Further the department understands the important role temporary visas, such as Subclass 457 visas, can play in alleviating short term skills shortages. Between 2006 and 2008 the workforces of Northern Territory SMEs were substantially depleted by the worker demands of the Conoco Phillips project and the resources industry's capacity to pay. For the first time many Territory SMEs were forced to look to overseas workers to bolster their workforces.

During that period many of the workers were sponsored by Northern Territory employers under the former Regional Subclass 457 visa arrangements and came from countries in South East Asia and the subcontinent. Many of those sponsored would be unlikely to qualify under the current Subclass 457 visa policy framework. Some of the policy changes proposed for 1 July 2013 will make the program even less responsive.

The Northern Territory's low population base means that the absolute number of skilled and workers who could be up-skilled to meet this increasing workforce demand is extremely low. With an over overall workforce of 123,600 in March 2013,[14] the Northern Territory's current labour force is not sufficient to absorb significant variations in labour market demand. As a consequence it is heavily reliant on attracting skilled and unskilled labour from interstate and skilled workers from overseas.

Population immobility within Australia and even within regions of the Northern Territory is a barrier to inter and intrastate migration. The Northern Territory expends significant resources on an interstate workforce attraction program. This program actively targets

[13] ABS Cat. No. 6202.0 Labour Force, Australia.

[14] ABS Cat No 6202.0 Labour Force, Australia

areas of high unemployment across Australia (as identified by the Department of Education, Employment and Workforce Relations) and includes promotional events and online and print media marketing campaigns. However the Northern Territory's experience is that interstate worker attraction activities alone are not sufficient to effectively address skills shortages.

Training and Up-skilling

The Northern Territory's Employment Strategy 2012-15 provides an overarching strategic workforce planning and development framework to guide significant financial commitment and efforts to ensure the Northern Territory has the skills, capabilities and workforce to meet the needs of economic growth. The strategy, developed over eight months through research and consultation with Northern Territory industry, unions and the community, has the primary foci of:

- Increasing the Northern Territory local workforce and capability
- Supporting sector specific workforce strategies
- Increasing Indigenous workforce participation
- Increasing the responsiveness in the training system (VET Reform)
- Supporting business and industry to improve productivity

As at July 2012 the projected 2012 -13 employment and training budget for programs is approximately $90 million.

Recurrent funding to contracted Registered Training Organisations is on an annual basis of negotiated profiles outlining the level of delivery across respective industry sectors and Australian Qualification Framework (AQF) levels.

Approximately 30% of the funding was directed to training conducted in regional, remote and very remote locations across the Northern Territory.

Apprenticeship and traineeship training activity equates to approximately $15 million through the User Choice Funding Program. Twenty five percent of the apprentices and trainees identified as Indigenous.

To support apprentices and trainees and their employers, the Department invests approximately $5.9 million in funded support programs including travel and accommodation subsidies for apprentices and trainees who are required to travel more than 50 kilometres from their home to undertake off-the-job training. This includes interstate travel where there are no providers delivering in the Northern Territory.

The Northern Territory Government provides employer incentives for identified occupation shortages and disadvantaged groups and apprentice and trainee (workwear/workgear) incentives to assist apprentices and trainees with the cost of purchasing work wear.

The pre-employment/pre-apprenticeship program provides funding for specific industry training. This training is aimed at assisting unskilled or semi-skilled people to gain the essential skills that will increase their opportunities to take up and successfully complete an apprenticeship or traineeship or gain employment.

Approximately $2.8 million funding support is provided to community organisations through the Indigenous Responsive Program. The program provides funding specifically for Indigenous people, for the delivery of accredited and non-accredited training that links to work-ready or employment on site in Indigenous communities. In 2011 the Northern Territory Government funded 149 programs to over 1 944 Indigenous students located across 50 communities in the Northern Territory under this program.[15]

Buildskills is a Northern Territory initiative that aims to minimise the effect of current and emerging skill shortages and to increase the productivity of the Territory workforce. This is achieved through providing industry specific training to up-skill or re-skill the existing workforce.[16].

This range of programs supports a number of reforms and training outcome targets within the National Partnership Agreement (NPA) on Skills Reform. The Northern Territory was the first jurisdiction in Australia to finalise the Skills Reform Implementation Plan. Under this NPA the Northern Territory will access an additional $18 million from the Australian Government for a range of training reforms and to meet growth training targets from established baselines. Major reforms include elements such as the entitlement for all Territorians to their first Certificate III and loans for VET students undertaking diploma and advanced diploma courses.

The Northern Territory has committed to ambitious growth targets in training outcomes over the next five years which include additional efforts to achieve

- 2 500 VET qualification completions
- 4 561 commencements in Certificate III
- 1 310 commencements by Indigenous Territorians
- 40 437 unit completions
- 541 trade commencements

Skill shortages are still very evident in the Northern Territory, particularly in most trade and a number of professional occupations. A high demand for skilled labour is expected to continue and with the Territory currently experiencing nearly record low unemployment rates, finding suitably skilled workers is problematic for businesses.[17]

Current estimations under the NT Employment Strategy 2012 -15 are that the Northern Territory will commit $450 million over three years to assist businesses and employers build the workforce they require to meet the estimated growth.

Despite the enormous training effort made by the Northern Territory there will be an ongoing demand for qualified experienced workers from overseas to support the economic growth of the Northern Territory and the up-skilling of the local workforce.

15 Source – DET Annual Report 2010-11

16 Ibid

17 Source – Annual National Report of the Australian Vocational and Technical Education System, 2009

The Role of Employment Agencies

In general employment agencies involved in on-hiring Subclass 457 visa holders in the Northern Territory are involved in either supplying trades' workers to major mining or construction projects or placing health workers.

In the health industry many positions filled by Subclass 457 visa holders sponsored by labor hire agencies are with the Northern Territory government, in public hospitals and the provision of government or government funded in home care programs. There are several reasons why labor hire companies involved in on-hire of health and social services staff have a key role to play:

- The Northern Territory Government is often unable to offer direct employment because of a number of factors including the difficulty in filling multiple part-time positions located in remote areas of the Northern Territory.
- A requirement to respond quicker to short term employment needs.
- The greater ease of operations for smaller service providers allowing them to focus on service provision rather than human resources activities.

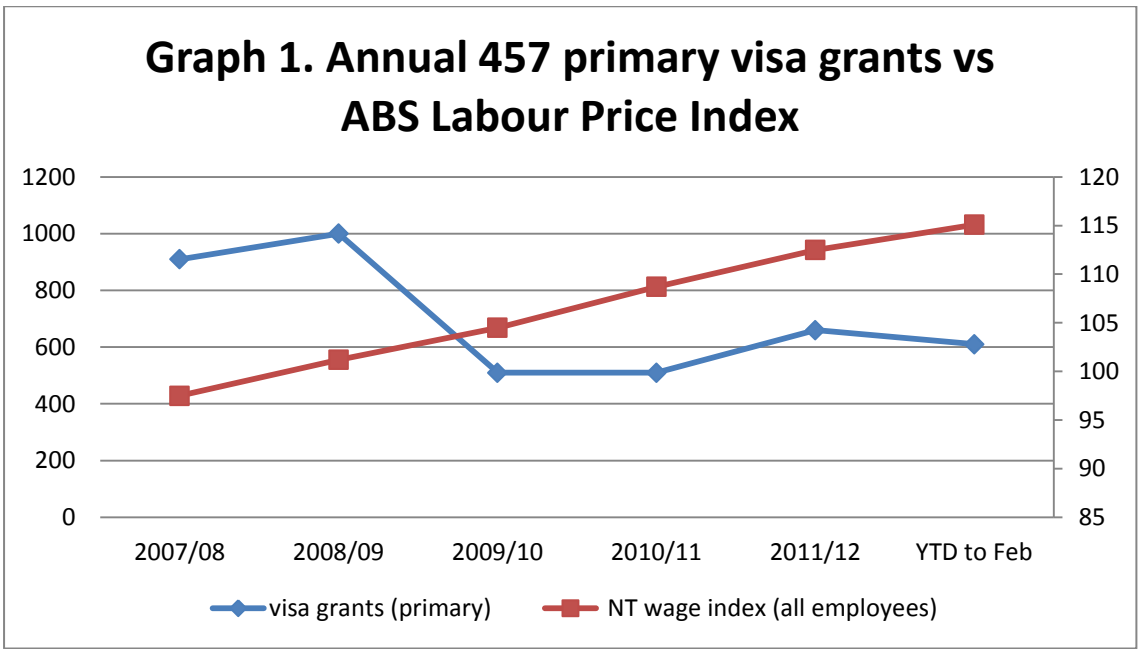
The use of labour hire/on hire arrangements are key in some industry sectors. They provide the flexible workforce that is required to effectively respond to some employment environments.

GENERAL IMPACTS OF SUBCLASS 457 POLICY

The current program does not effectively respond to skills shortages in the private sector in the Northern Territory. Ideally, if the Northern Territory program numbers were demand driven, changes in labour market indicators and economic indicators would be reflected in the numbers of Subclass 457 applications and grants. For example:

- Visa applications and grant numbers should increase as wages increase. Wages growth should be a measure of unmet labour demand.
- Visa applications and grant numbers should align with the unemployment rate. In an environment with an extremely low unemployment rate Subclass 457 visa numbers (and the numbers of employees migrating to the Northern Territory though other means) should grow until the local labour market needs are met. Labour market experts and academics generally agree that the natural rate of unemployment (about 5%) is an acceptably low unemployment rate.

However in the Northern Territory this is clearly not the case. When tracked against the Australian Bureau of Statistics Labour Price Index for the Northern Territory, there is no correlation between the increasing cost of labour and Subclass 457 visa grants. (Graph 1).



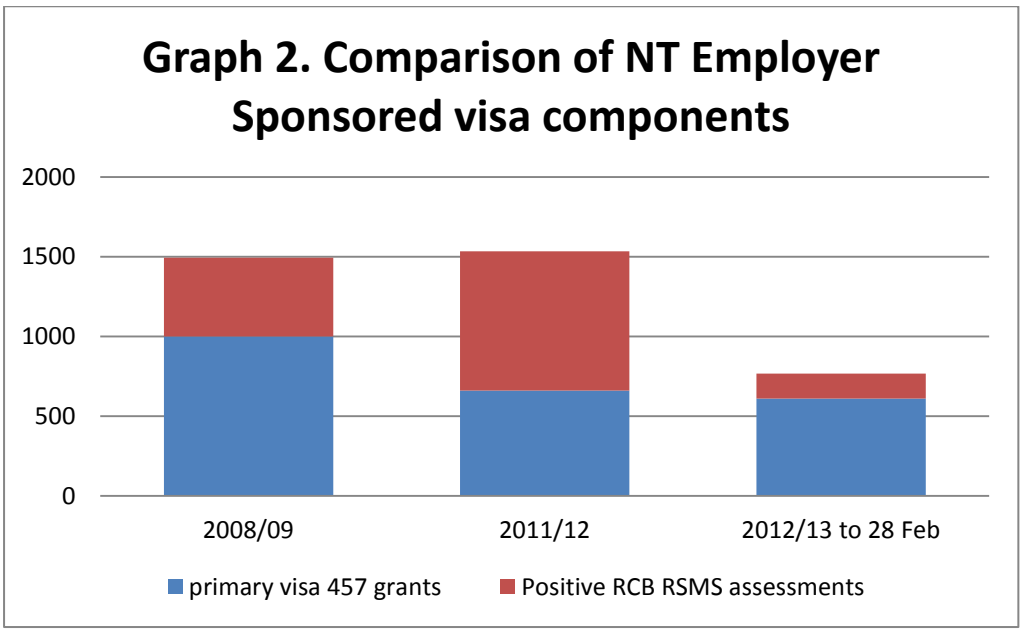
Statistics released by DIAC show a minor drop in primary Subclass 457 visa applications to 640 applications made during 1 July 2012 to 28 February 2013, compared to 660 for the same period in the previous year. [18]

In isolation these figures appear to indicate that the ability of the Subclass 457 visa in meeting skills shortages has not been affected adversely by an increase in the CPI indexed Temporary Skilled Migration Income Threshold (TSMIT). However these statistics are not an accurate reflection of the capability of the Subclass 457 visa program to assist in meeting workforce shortage in the Northern Territory.

Graph 2 shows, when both the temporary and permanent employer sponsored visas (Subclass 457 and the Regional Sponsored Migration Scheme Subclasses 119 and 857) are taken into consideration, the overall number of skilled overseas workers sponsored by Northern Territory employers between 2008-09 and 2012-13 has almost halved.[19] This is despite the fact that labour market conditions in the Northern Territory remain relatively unchanged.

[18] Subclass 457 State/Territory Summary reports, DIAC

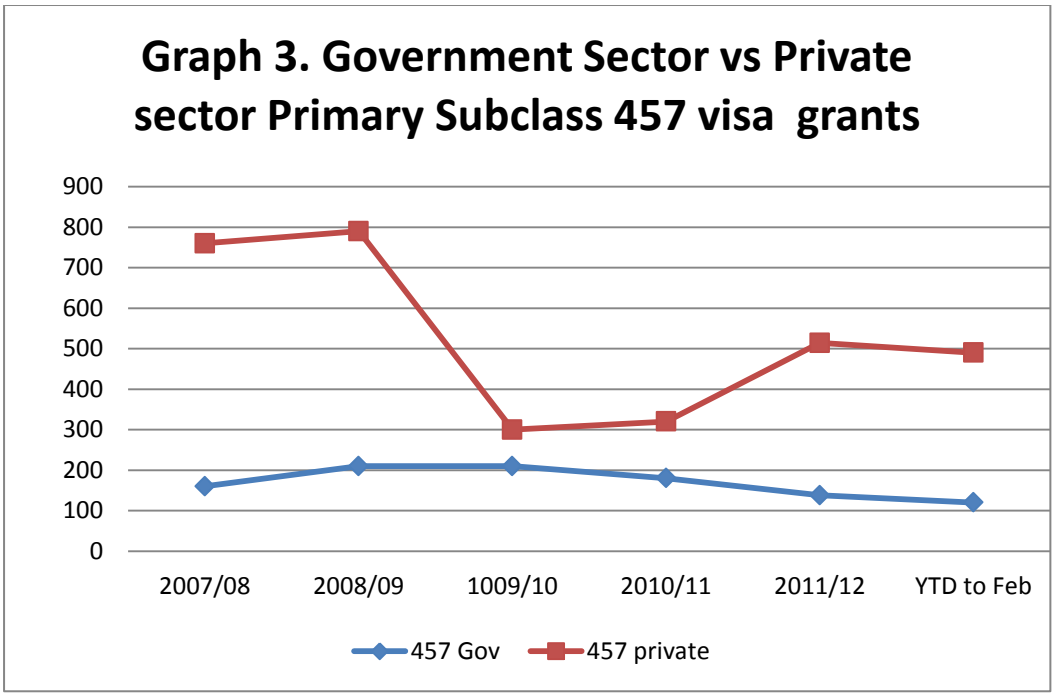
[19] Ibid



Policy changes to the Regional Sponsored Migration Scheme (RSMS) on 1 July 2012 have considerably reduced the utility of that scheme while the lengthy processing delays of up to 12 months for the permanent employer sponsored visas means that the RSMS is not responsive to workforce requirements.

Additionally a year to year comparison of the Subclass 457 visa trends in grant numbers for the Northern Territory private sector and government sponsored applicants considerably differ.

Graph 3 shows that there have been significant fluctuations for the private sector sponsorship between 2007-08 and 2012-13 while government sponsorships have remained relatively steady. [20]



[20] Subclass 457 State/Territory Summary reports, DIAC

In the Northern Territory, reduction in the number of Subclass 457 visa applicants being sponsored by the private sector, has been in response to changes in the program itself rather than being driven by market demand.

In particular a significant drop in Subclass 457 sponsorship numbers was observed in 2008-09 coinciding with the removal of the Regional 457 and the introduction of TSMIT, vocational English requirements and formal skills testing for selected occupations and nationalities.

Monitoring and Compliance

As highlighted earlier in this submission the Northern Territory has a relatively small workforce. While the majority of this workforce is located in Darwin and other major population centres, some workers are spread over a very large area.

Although DIAC officers face challenges in monitoring the employers and their sponsored workers who are located in remote locations, the small size of the Northern Territory's workforce and its population also bring the benefit of information transfer within the business and wider communities. This enables issues relating to inappropriate employment practices to be readily identified.

The Department commends the DIAC compliance personnel in the Northern Territory office and their monitoring efforts. However it is clear that population size places Northern Territory employers who sponsor workers on Subclass 457 visas under much greater scrutiny than that to which employers in major population centres are subject. DIAC clearly faces challenges in its monitoring of employers in larger metropolitan centres.

Experience in the Northern Territory indicates that the majority of employers are responsible employers who treat their workforce fairly, meet their sponsorship commitments and employ their overseas workers under Australian employment and conditions. However, as with all other regulated environments, there will be a small minority of employers who seek to gain an advantage and breech their sponsorship obligations.

To maintain the Australian community's confidence in the Subclass 457 visa program, DIAC's monitoring and compliance functions must be well trained and sufficiently resourced to ensure that aberrant employment practices are identified quickly and the offending employers penalised appropriately.

SPECIFIC IMPACTS ON NORTHERN TERRITORY SMALL AND MEDIUM ENTERPRISES (SMEs)

The Temporary Work (Skilled) (Subclass 457) and the RMAs must be responsive to labour market demands to enable SMEs to address skill shortages quickly

English Language

As a result of the current English language level, now mandated for all Subclass 457 visa applicants in trade level occupations, there are fewer countries from where skilled technical/trade workers can be sourced. Even in source countries where English is commonly used e.g. the Philippines and India, the number of people with trade skills who can achieve the vocational English levels in all of the four IELTS testing bands is

limited. The English benchmark is even more of a challenge for trade level workers in countries where English is not commonly used.

While this is true for a wide variety of trade occupations, it is particularly relevant to those trades and countries where artisan methods are employed in training such as the Asian culinary trades that are identified in shortage in the Northern Territory. The Department of Business has been approached by several employers in the hospitality industry who are unable to attract suitably skilled cooks from within Australia despite undertaking extensive national advertising. Some of these have curtailed their trading while others have indicated that they are seriously considering their future business options. They simply cannot continue in their businesses as they are unable to either recruit workers with the required skills from within Australia or identify overseas cooks and chefs who are able to meet the English requirements of the Subclass 457 visa.

The Department appreciates that there are issues regarding employee exploitation, and health and safety for the Subclass 457 visa holders who have lower English levels. However there are other approaches through which these could be effectively addressed including:

- imposing mandatory inductions/occupational health and safety training for all overseas workers
- mandating the use of non language specific safety symbols or multilingual signs in workplaces sponsoring employees with lower English levels
- mandatory English language training for overseas workers whose English falls below the current Subclass 457 requirements after their arrival in Australia.

Temporary Skilled Migration Income Threshold

Embedding the Temporary Skilled Migration Income Threshold (TSMIT) as the base level for all positions nominated under the Subclass 457 has also reduced its value in addressing identified short term skills shortages. There are a number of skilled occupations on the Consolidated Skilled Occupation List (CSOL) where, while the overall earnings of the nominated position will be above TSMIT, the base rate of pay and guaranteed earnings in the Northern Territory falls below TSMIT.

Despite numerous requests from this department, DIAC has been unable to provide details of the actual elements that were factored into its calculation of TSMIT. However, it is understood that TSMIT is:

- Designed to reflect the living costs for a family of four that has no access to Australian Government support such as Medicare and Family Benefits
- Intended to ensure that overseas workers receive an income sufficient to ensure they do not become a burden on the Australian economy, or be tempted to breach their visa conditions by taking additional employment to support themselves and their family.

The Department questions the general applicability of the TSMIT. It is our experience in the Northern Territory that many overseas skilled workers nominated under the Subclass 457 visa are either single or do not have four in their family. Further, often overseas workers who have dependents choose not to dislocate their families from their home countries when they come to Australia to work on a temporary visa.

Labour Agreements

The Australian Government highlights Labour Agreements as appropriate vehicles to enable employers to sponsor overseas workers into positions that do not meet the criteria for the mainstream Subclass 457 visa.

DIAC's Labour Agreement process is more attuned to the needs of large corporations that have dedicated human resource functions within their organisations and that require significant numbers of overseas workers. The experience of Northern Territory employers suggests that the current process is arduous, lengthy and, in many cases, beyond the capacity of many Northern Territory SMEs.

In theory it is possible for employers to seek concessions to all mainstream Subclass 457 visa criteria through negotiating a Labour Agreement e.g. skill level, English language requirements and the application of TSMIT. However recent experience suggests that the only concession to which DIAC will give positive consideration is the inclusion of semi-skilled occupations.

Labour Agreements are not effective mechanisms for the majority of Northern Territory private sector employers who need to access only a small number of overseas workers.

The Northern Territory's tourism industry provides a good example of the challenges for Northern Territory employers. Around 90% of the operators in that industry are sole traders or micro and small businesses that are owned and solely operate in the Northern Territory. It is recognized within that industry there is potential for the quality of overseas visitor experiences in the Northern Territory to be negatively impacted without specialist language guides. This is of particular concern at a time with market pressure from a high Australian dollar and a decline in tourist numbers resulting from the economic crises in Europe and United States, both are key source tourist markets for the Territory.

Some Northern Territory SMEs also encounter challenges in gaining DIAC approval as Standard Business Sponsors for the current Subclass 457 visa and Labour Agreement frameworks.

Accessibility issues include:

- For employers to be approved to access the program they must meet a range of eligibility criterion. Many of these make no concession for the unique regional characteristics of the Northern Territory. An extremely tight labour market, lack of worker mobility and low population base present difficulties to many SMEs in meeting the criteria of the Subclass 457 visa program.
- Many Northern Territory SMEs do not have the resources, capacity or stamina to negotiate a Labour Agreement with DIAC.
- Very long lead times are required to negotiate Labour Agreements and therefore the value of these mechanisms as effective tools for meeting skill shortages is questioned.

Forecasting skill shortages in detail (occupations and numbers) is recognised as an inexact science. Often employers can experience short lead times between the identification of a need and the requirement for the workforce to be in place. The

experience in the Northern Territory is that Labour Agreements can take 12 months or more to put into place.

Labour Market Testing

The Northern Territory supports labour market testing in the Subclass 457 visa framework where insufficient independent evidence is available to show that there is a regional skill shortage in the occupation sought.

Where an occupation has been shown to be in shortage through a rigorous analysis process or other reputable sources such as regional DEEWR skills shortage list, it would appear that nothing will be gained by requiring further labour market testing.

The Northern Territory Government commits significant resources to undertaking detailed labour market analysis that identifies and forecasts skills shortages. This labour market analysis factors in a wide range of data and information including local training pipelines, replacement rates, economic indicators and workforce mobility within the Northern Territory and from other areas of Australia and industry and union feedback. This has been address in detail on Page 3 of this submission.

Skill Assessments

The Subclass 457 visa criteria also mandate that people in trade occupations and citizens of a select group of countries to undertake formal skills assessments. The time and costs associated with these skills assessments is burdensome on both the workers and employers. The responsiveness of the Subclass 457 visa is further reduced when skills assessments cannot be completed on a timely basis. The lead time for assessments in some countries can be up to three months.

A degree of confusion has been introduced in the skills assessment processes following policy changes to the permanent employer nominated schemes on 1 July 2012. Skills assessments are now mandated for all occupations for people nominated through the Direct Entry stream unless an applicant holds a relevant Australian qualification. It would appear that the confusion has arisen because insufficient information is available on the different skills assessments and their applicability.

In general SME employers do not view the mandatory skills assessment as a particularly useful tool as it is not a gauge of the work readiness of their potential employees.

Regional Migration Agreements (RMAs)

The Commonwealth Government announced Regional Migration Agreements (RMA) and Enterprise Migration Agreements as 2011-12 budget initiatives.

The RMAs were launched as special mechanisms to address workforce shortages specific to various regions of Australia while the EMAs were announced as custom-designed, project-wide migration arrangements to address the unique workforce needs of mega resources projects.

The Department was proactive in seeking to establish RMAs for the Territory to support Northern Territory SMEs to address their current and projected workforce shortages.

In February 2012, in a joint statement, the Australian/Northern Territory Governments announced that the Top End of the Northern Territory would be the first region to have a RMA. The Northern Territory's interim RMA submission was lodged with the Australian Government on 30 April 2012.

The Northern Territory's final RMA submission was lodged in late 2012.

The predicted workforce demands of major resource projects in northern Australia, including the Darwin based Ichthys LNG project, and the impact it is believed they will have on Northern Territory SMEs' workforces were the catalysts for the Northern Territory seeking RMAs for the Territory. Experience suggests that SMEs in regions proximate to where these projects are located will struggle to retain their workforces as they are not able to match the salaries being offered by the resources sector.

It is understood that the Australian Government is yet to endorse the guidelines for RMAs. Further DIAC cannot finalise its consideration of the Northern Territory's RMA submission until the government's policy is in place. The Australian Government's policy and the DIAC processes are not yet known. Consequently the final composition and elements of RMAs for the Northern Territory are also yet to be determined. Therefore it is not possible to provide informed comments or assessments of the impact and benefits of the RMAs or on how responsive they will be to labour market demands.

In its RMA submission the Northern Territory has proposed options to address a range of barriers that SMEs encounter in sponsoring overseas workers under the current Subclass 457 visa framework. For these agreements to be effective mechanisms through which workforce shortages in the Northern Territory can be addressed they must be flexible and provide efficient mechanisms under which SMEs can sponsor overseas workers.

While it is understood that the Ichthys LNG project will meet the criteria for consideration for an EMA, the Department has had no experience involvement in the EMA processes to date. Further it believes that its likely involvement will be providing any Northern Territory labour market research and analysis that is relevant to the project.

Given the significant impact which mega projects have on state/territory labour markets and economies, the Department believes that it is important that input is provided by the relevant state/territory government on any proposed EMA before it is finalized.

In the Northern Territory skilled migration programs are viewed as important and complementary to efforts by government and industry in developing and upskilling the local workforce and interstate worker attraction initiatives. Use of temporary visa programs will support, rather than detract from, local employment and training efforts within the Northern Territory labour force.

The Department does not believe that access to any Subclass 457 visas, RMAs or EMAs will impact on the training efforts of either the private sector or government in the Northern Territory.

Overseas recruitment is costly for SMEs and introduces additional risks. The Department believes that difficulties in accessing adequately skilled workers within Australia will be the only driver for Territory employers to seek to recruit from overseas.

Proposed Policy Changes to the Subclass 457 Visa

On 23 February 2013 the Minister for Immigration and Citizenship announced an intention to tighten regulations in order to address what are viewed as integrity issues with the program. The proposed changes are expected to be implemented on 1 July 2013.

It would appear that regulation drafting deficiencies have occurred in the policy changes made to the Subclass 457 visa in 2009. As a consequence some unforeseen practices have emerged. While understanding the need to make the changes to address these issues, the Department believes that, as well as seeking to address these anomalies, the additional regulation changes that have been proposed will further decrease the effectiveness of the Subclass 457 visa in addressing workforce shortages in tight labour markets, such as that in the Northern Territory.

The recent changes to be implemented on 1 July 2013 are expected to have a detrimental effect on the ability of Northern Territory businesses to fill skills shortages, provide goods and services, provide training to locals and encourage economic and investment activity in the Northern Territory.

<u>English Language</u>

Details publicly released by DIAC do not make clear the occupations that will be exempted from English language requirements of IELTS 5 or OET equivalent. However it would appear that DIAC is seeking to align the Subclass 457 visa English language requirements to the English requirements for the Temporary Transition Stream of the Employer Nominated Scheme (ENS) or Regional Sponsored Migration Schemes (RSMS). If this is the case it is assumed that the occupational exceptions for the English language will be the same as those for ENS and RSMS.

The Northern Territory Department of Business believes that such an approach will be a barrier to the growth of investment in the mining/mineral exploration activities, particularly from China.

The exemption for positions that have guaranteed earnings of $92 000 per annum will continue to facilitate the entry of senior managers to oversight investment activities. However the imposition of English language requirements on professionals and semi-professional positions will pose challenges to mining exploration and development activities.

It would appear that DIAC is assessing the industry impact of the proposed English changes based simply on numbers or percentages affected. However this national approach does not take into consideration that some industries are primarily located in regional Australia e.g. mining/resources industries. There could be major

consequences for the viability and development of projects even though the proposed changes have been assessed by DIAC to only impact on a small percentage of the overall Subclass 457 nominations.

Careful examination and consideration should be given to how the changes to the English language requirements will impact on overseas investment in the resources sector in Australia.

It is understood that DIAC's intent behind the proposed English language change is to remove impediments for Subclass 457 visa holders to move to permanent residence under the sponsorship of their employer. However the English language requirement is just one of the barriers for this transition.

DIAC has not sought to impose an age requirement of Subclass 457 visa applicants even though any overseas worker who enters Australia on a Subclass 457 visa after the age of 48 years will not have access to the Temporary Transition pathway to permanent residence as they must work on their temporary visa for two years to qualify to access that pathway and they must be under the age of 50 years when they lodge their permanent residence visa application.

If DIAC is seeking to align the Subclass 457 and employer nomination permanent visa English language criterion to ensure that Subclass 457 visa holders are not stuck as temporary residents, then there is another overseas worker cohort impacted by the age criteria for permanent residency.

Reduction of the Approved Sponsorship Period for Overseas and Start Up Businesses

Limiting the period of approved sponsorship for start up businesses and overseas business sponsors to 12 months has the potential to inhibit overseas investment into the Territory particularly in the mining and resource industries.

Mining exploration and development projects have long lead times and mandating time limits on an overseas business sponsor will place an added administrative burden onto these start up projects.

The Department believes that in assessing overseas business sponsors and start up businesses DIAC should focus on the sponsor's financial capacity to meet their obligations rather than mandating a term for the visa.

Again the Department urges DIAC not to focus on embedding practices that are simple to administrate at the expense of encouraging and facilitating business investment and development.

Limiting Numbers for the Approved Sponsorship Period

The Department believes that it will be very difficult for an employer to predict future workforce needs or to demonstrate likely shortages before any of the positions they are seeking to fill are advertised. Restricting an employer's 'need' for overseas workers when they apply for sponsorship impacts their ability to react quickly to business opportunities if they cannot find suitable Australians to fill essential roles. While the amendment proposed will make administration of the scheme and assessment of business sponsors simple for DIAC case officers, in areas where

there are tight labour markets such as the Northern Territory it has the potential to negatively impact on business and the delivery of services.

Mandatory eLodgement

One of the proposed 1 July 2013 changes to the Subclass 457 visa program is to mandate elodgement for the sponsorship, nomination and visa application processes. The Department is concerned about the impact of the implementation of 'electronic only' migration applications on SMEs particularly those in regional Australia.

The Department believes that service and support for all clients must be a major consideration in any changes to DIAC's skilled migration schemes and urges DIAC to consider the circumstances of small regional employers. There are a significant number of Territory employers who do not have ready access to electronic networks with band width or systems with capacity to support elodgement.

Experience with the electronic systems recently implemented by DIAC e.g. the system for all permanent employer nominated program applications implemented on 1 July 2012, suggests that these systems have not been developed with an understanding of the needs of clients. DIAC systems contain a number of glitches which complicate their use making the process extremely time consuming particularly for infrequent SME users.

While appreciating that within an environment of tightening budgets there is a need to achieve efficiencies through electronic systems, this Department believes that it is important for all new systems to be sensitive to the capability and capacity of the users and the technology through which they are accessed.

Strengthen the Enforceability of the Existing Training Benchmarks

While supportive of the philosophy behind DIAC's training benchmarks for Subclass 457 visa sponsors, the Department is aware that some businesses, particularly those in regional and remote Australia are unfairly penalised by the mandated training benchmarks.

Where possible it is essential that employers contribute to the training of Australian workers. However there are situations where training, particularly in forms that the DIAC training benchmarks dictate, is not achievable. Examples of this include:

- Owner-operator businesses that require an additional tradesperson in order for them to take on increased work and provide the necessary supervision to take on an apprentice.
- Businesses operating in regional and remote locations where there is a very small pool of potential workers from which to either employ and/or train.
- Newly established businesses and those businesses operating in industries of activities where there is a long 'lead time' such as mining exploration.

While agreeing that to be effective the training benchmarks must be enforceable, the Department believes DIAC should consider alternative approaches for employers in situations where the training benchmark cannot reasonably be achieved and to increase flexibility for decision makers in such circumstances.

To move to strengthen the enforceability of training benchmarks will not necessarily achieve greater integrity. Some employers seeking to “avoid” their obligations for expenditure on training will continue to create new artificial entities. Strengthening enforceability will not prevent this practice.

Conclusion

The Department of Business believes that temporary visa frameworks such as Subclass 457 visas, Labour Agreements, Regional Migration Agreements and Enterprise Migration Agreements will be essential to meeting the fluctuating workforce demands in the Northern Territory.

Suitable visa mechanism and programs are integral to ensuring not only the continued economic growth of the Northern Territory but also the ongoing provision of key essential services.

The Northern Territory dedicates significant resources to attracting suitably skilled (and also unskilled workers) from across Australia to the region. However, even with targeted campaigns in areas identified by DEEWR as being high unemployment areas, the lack of labour market mobility from the eastern seaboard towards the Northern Territory has meant that such strategies have not been as successful as had been predicted.

Migration and temporary visas to facilitate the entry of workers from overseas with the skills that are in demand within the Northern Territory are considered to be complementary to training and up skilling of the local workforce and worker attraction from other states of Australia.

The Northern Territory is entering a period of unprecedented growth and development. This could be jeopardised when there are insufficient workers with the level of skills that are required to fill positions providing key goods and services.