

# Robust New Foundations

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'A report commenting on the 457 Independent Integrity Review and the South Australian State Government Submission.'

Mark Glazbrook, 5 September 2014

## Overview

The biggest problem facing South Australian employers seeking to access the 457 visa programme is the minimum salary level requirement, known as the Temporary Skilled Migration Income Threshold (TSMIT). This threshold currently sits at \$53,900, and is limited to a certain number of eligible occupations. These requirements are a significant part of the programme in metropolitan and high population growth areas, however, in regional and low population growth areas, employers need to be able to have access to a greater range of eligible occupations and salary levels consistent with the relevant award or market salary rates of pay. Such a programme should also exist in geographical locations where economic activity is less than the national average in order to stimulate greater economic activity and population growth.

Regrettably, many South Australian employers cannot fill vacancies due to the excessively high nature of the existing 457 minimum salary level and due to limitations on the approved list of occupations that are eligible to employ 457 visa-holders. I believe that the list of eligible occupations should mirror that which is available under the permanent Regional Sponsored Migration Scheme (RSMS) program in areas that are defined as regional, with the exception of Perth - which is neither regional nor a low population growth area.

The current independent review of the integrity of the subclass 457 visa programme provides South Australia and other regional and low population growth areas an opportunity to have changes made to the 457 programme which will significantly benefit and assist the business sector, assist with economic development, create more jobs and training opportunities within the local economy and deliver an overall positive economic effect and increased population to affected areas.

There is a widely-held perception that 457 visa holders take jobs at the expense of unemployed and Australians. What this view fails to consider is how many existing jobs 457 workers support and how many new jobs they create. 457 visa holders live in our community, they shop in our retail sector, they drive cars on our roads and spend their money in our local economy, all whilst providing significant benefits to those businesses where they are employed.

## Background

### What is the 457 programme?

The Immigration Department's overview of the 457 programme states that:

*"The 457 visa is primarily intended to provide streamlined entry arrangements for businesses needing to recruit skilled staff from overseas on a temporary basis. The 457 visa program is designed to fill skill shortages that cannot be met from the local labour market."*

### How many people currently hold a 457 visa?

- Currently there are 108,870 primary 457 visa holders in Australia.
- Of this figure, 3100 primary 457 visa holders live in South Australia.
- In the last program year (2013/2014), 1660 primary 457 visas were granted in South Australia.

This represents only 3.2% of the total 457 programme, or approximately 30 visa grants per week. Approximately 12.8% of all 457 visas granted in South Australia work for the State Government

*(Source: Subclass 457 quarterly report, quarter ending at 30 June 2014)*

### What type of work do people on 457 visa do?

The top 5 occupations granted a 457 visa in South Australia for the 2013/14 program year were as follows:

1. General Practitioners (140)
2. University Lecturers (80)
3. Cooks (80)
4. Resident Medical Officers (70)
5. Mechanical Engineering Technicians (60)

Additionally, the average salary of someone employed on a 457 visa in South Australia was \$84,400.

*(Source: Subclass 457 quarterly report, quarter ending at 30 June 2014)*

### Why is the 457 programme so important?

In South Australia the answer is twofold. Firstly, the 457 programme helps to fill roles in businesses that cannot be sourced locally, and secondly to help boost our state's ailing population growth rate.

As reported in the [Migration Council Australia's "More than Temporary: Australia's 457 Visa Program,"](#) surveys showed that 71 per cent of 457 visa holders intended to apply to become permanent residents following the expiration of their visa. The survey also indicated that many 457 visa holders viewed the programme as a pathway to permanent residency in Australia. About half (48 per cent) of all 457 visa holders indicated the reason for applying for the visa was to live in Australia or to become a permanent resident.

These statistics are important when considering future population targets in South Australia. If South Australia only attracts approximately 3% of the total 457 programme, its' share of the

permanent skilled migration program will also be significantly lower due to the demand-driven nature of Australia's migration program.

It goes without saying that the 457 programme should always only be available where genuine skill shortages and genuine positions exist, and not where employers or visa applicants intentionally set out to manipulate the program to achieve a migration outcome. However, where the genuineness and bona fides of the position, business, employer and/or visa applicant can be demonstrated, it is crucial that employers be able to access this programme without Federal limitations or benchmarks which are set higher than those which exist in regional or low population growth areas.

## South Australia's submission

### *Disagreeances*

Regrettably, the submission made by the South Australian Department for Manufacturing, Innovation, Trade, Resources and Energy (DMITRE) (since renamed the Department of State Development, and referred to hereafter as the submission) to the independent review of integrity in the Subclass 457 visa programme, whilst making some valid recommendations, fails to fully support the needs of businesses and the greater South Australian economy. In some instances, the submission could be accused of making recommendations that would make it more difficult for businesses and individuals to meet the relevant eligibility criteria.

An example of this is the submission's calls for higher English-language requirements, something that would be extremely detrimental to many businesses operating in South Australia. However, the submission does also recommend a reduced income threshold for regional areas – important considering all of South Australia is considered regional for migration purposes.

None of the recommendations made in the submission would significantly impact the South Australian state government's usage of the 457 programme, however, it is my view that a change to the English-language requirements would have a severely negative impact on many local businesses. It is also worth noting that the South Australian state government remains the biggest user of the 457 programme in South Australia.

Furthermore, the submission states:

*“Any employer who has made his/her employee/s redundant and subsequently applies to recruit overseas skilled workers through the 457 programme within six to eighteen months of making the employee/s redundant, is denied access to the 457 visa programme”*

This is a point to which I must disagree, as doing business in the somewhat volatile state and economy of South Australia means that in some instances, businesses will be forced to make redundancies. Where this is the case, businesses should not be automatically excluded from use of the 457 programme, as this could be detrimental to future growth and development, consequently threatening the security of other positions in businesses within which a 457 worker may be required to satisfy demand.

The submission also states that:

*“...a competent level of English is essential to function effectively in a predominantly English speaking work environment like Australia’s,”*

and,

*“It must be acknowledged that poor English language skills are detrimental to a migrants future.”*

This view directly contrasts with the findings of noted Australian historian and academic John Hirst in his book *“Australian History in 7 Questions.”* In his book, Mr Hirst highlights the importance of Australia’s post-war migrant intake as a major influence on the shaping of our contemporary society, discussing the success with which migrants have integrated into Australian society since the end of World War II, permeating throughout all social classes and intermarrying with Australian families and other migrant groups at a high rate. The successful integration of these post-war migrants led to Mr Hirst’s labelling of the period as *“one of the most successful migration experiences in history,”* due to the way in which it helped Australia to expand its economy and build our nation into a significant world power. Crucially, this highly successful migration program was founded on non-English speaking migrants, predominately originating from Greece and Italy.

The submission also recommends that:

*“In the metropolitan area, organisations that have a large labour force would be the appropriate ones to become sponsors. However, this should not be the case in regional areas.”*

As well as stating:

*“[The 457 programme’s] role is to be a short-term measure to assist employers who need to fill their skills shortages urgently while their staff are trained and up skilled for the occupation that had been identified as in shortage.”*

This statement is factually incorrect, as the programme does not include any provision which requires businesses to train or upskill their staff for the occupation that had been identified as being in shortage.

In response to the question *“How do the existing requirements fit with the intention of the 457 programme?”* the submission states:

*“The programme should be more skewed to Small and Medium Enterprises (SMEs) and regional businesses rather than metropolitan businesses filling skills needs, which should not exist, if appropriate recruitment is observed and wages are commensurate with the occupation.”*

Furthermore, the submission goes on to say that:

*“Employers should be responsible for paying fees as they have made the decision that they need to recruit an overseas skilled worker.”*

I also disagree with this statement and believe that visa applicants should be able to contribute towards the payment of the relevant migration fees associated with this process, as the figures contained in the Migration Council Australia’s report suggest that an overwhelming majority of 457 visa applicants are using this program as a stepping stone to permanent residency. Additionally, employers should not be held to account due to skill shortages which exist and subject to higher

costs of doing business. Employers should also be permitted to recoup costs in certain situations where it can be seen that a visa holder has abused the program and an employer to gain entry to Australia.

On the question of IELTS and English language ability, the submission suggests that all applicants should be able to meet a minimum requirement of IELTS 6 across all bands. This would have an extremely detrimental impact on businesses who employ skilled trade people from overseas such as cooks and chefs in Thai, Japanese, Indian, Italian and Greek restaurants to name a few. For this reason, I believe that English-language guidelines would be much better to be individually assessed and set, based on the nature of the nominated occupation.

However, on the question about whether increasing the transparency would improve the integrity of the 457 visa programme, the submission states:

*“It is not the lack of transparency that is affecting the integrity of the programme. It is a combination of unscrupulous migration agents, employers who do not wish to invest in their staff and believe that the 457 visa programme is a cheaper option that will allow them to bring in labour that is inexpensive.”*

And

*“There is also the media that needs to be educated.”*

Whilst unregistered and unscrupulous migration agents are of significant concern to the migration profession, the submission provides no evidence to support these claims. Therefore, I would question what information the South Australian government has based these statements on. If it were to turn out that these claims were unsubstantiated, the State Government should be made to retract this statement.

On balance, I do not believe that migration agents significantly affect the integrity or transparency of the programme. There have been many cases of widespread fraud within the programme stemming from both registered migration agents and unregistered practice, however, the only way which I believe it will be possible to overcome such actions is to introduce a streamlined application process for migration agents who meet higher ongoing eligibility and assessment criteria and demonstrate greater professionalism and integrity. Any registered migration agent who is found to have knowingly, intentionally or deliberately provided or assisted in the provision of false or misleading information in support of any visa application should face significant disciplinary actions.

### **Agreeances**

On a more positive note, the submission states:

*“It must be acknowledged that there is considerable difference in the skill needs of regional employers and those in the metropolitan areas. Consideration should be given to accessibility to the 457 visa programme by not only large, but small to medium sized enterprises in non-metropolitan/regional areas.”*

As the entire state of South Australia is considered regional for migration purposes, on face value these recommendations do appear to acknowledge the difficulties faced in regional and low population growth areas such as Adelaide and regional South Australia, and which are less prevalent

in heavily populated metropolitan areas such as Melbourne and Sydney.

The submission also contains a recommendation that only organisations that have a large labour forces being appropriate to become sponsors in metropolitan areas. Whilst this is inconsistent with the intent of the program, this should not affect businesses operating in metropolitan Adelaide as the entire state of South Australia is considered regional for migration purposes. If this recommendation and the submission did however, target Adelaide as metropolitan, it would have a significantly detrimental impact on many employers based in metropolitan areas in South Australia.

Furthermore, the submission did also support two different TSMIT's or minimum salary levels when it stated:

*"It would be beneficial to work on two different TSMIT's – one for the metropolitan area and one for the regional area."*

This is a recommendation that I am strongly in support of.

## My recommendations

I was the only migration agent and Migration Solutions was the only South Australian migration business to make a recommendation or submission to the review.

My top 5 recommendations to the review are:

1. Re-introduce the regional 457 programme, which allows regionally adjusted salaries based on the award or market salary rates and all ANZSCO skill level 1 to 3 in addition to many level 4 occupations.
2. Allow visa applicants to contribute towards costs involved in the application process.
3. Remove limitations on cooks based on the location of employment.
4. Introduce an economic migration program for regional/low population growth areas that have low gross state product to facilitate economic growth through increased population.
5. Amend visa condition 8107 to allow greater flexibility when changing employers.

All recommendations aside from those marked "not for publication" – such as the South Australian DMITRE submission - can be viewed at:

<http://www.immi.gov.au/pub-res/Pages/reviews-and-inquiries/submissions.aspx>

*Please Note: The DMITRE submission does not clearly define if the author is considering South Australia as regional or if they are recommending that there should be two distinct definitions in South Australia, metropolitan and regional. If this were to be the case, the submission would be extremely detrimental to businesses in metropolitan areas of South Australia.*