9 May 2014

457 Integrity Review Secretariat
Department of Immigration and Border Protection
6 Chan St
BELCONNEN ACT 2617

By email: 457.Integrity.Review@immi.gov.au

Dear Sir/Madam

Independent Review of the 457 Programme

The Law Council congratulates the Government on the establishment of this review and welcomes the opportunity to make a submission to the Independent Panel on the integrity of the 457 visa programme.

Should you have any questions regarding the Law Council's submission please direct them to Ms Nicole Eveston, Administrator, International Law Section at ils@lawcouncil.asn.au.

Yours sincerely

MARTYN HAGAN
SECRETARY-GENERAL

GPO Box 1989, Canberra
ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612

Telephone **+61 2 6246 3788**
Facsimile +61 2 6248 0639

Law Council of Australia Limited
ABN 85 005 260 622
www.lawcouncil.asn.au

Law Council
OF AUSTRALIA

Independent review of the 457 programme

Independent Panel

30 April 2014 (extended deadline to 7 May 2014)

GPO Box 1989, Canberra
ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612

Telephone **+61 2 6246 3788**
Facsimile +61 2 6248 0639

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Acknowledgement

1. This Migration Law Committee of the Law Council of Australia's International Law Section (ILS) prepared this submission. **Attachment A** provides a profile of the Law Council of Australia. **Attachment B** provides a profile of the ILS.
2. The Law Council acknowledges the assistance of the Law Institute of Victoria (LIV) Migration Law Committee in the preparation of this submission.
3. The ILS and LIV migration law committees are comprised of legal practitioners experienced in immigration law. Many members are accredited specialists in immigration law and many have extensive experience in advising corporate clients in representing visa applicants from the smallest to the large publicly listed companies.

Introduction

4. The Law Council congratulates the Government on the establishment of this review and welcomes the opportunity to make a submission to the Independent Panel on the integrity of the 457 visa programme.
5. The Independent Panel will examine the integrity of the 457 programme in the context of a series of reforms made to the programme over recent years, including the introduction of the *Migration Legislation Amendment (Worker Protection Act) 2008*, the *Migration Amendment (Temporary Sponsored Visas) Act 2013*, and changes to the *Migration Regulations 199*
6. The Independent Panel will:
    a) determine the level of non-compliance by sponsors in the subclass 457 programme, both historically and under the current regulatory framework;
    b) evaluate the regulatory framework of the subclass 457 programme and determine whether the existing requirements appropriately balance a need to ensure the integrity of the programme with potential costs to employers in accessing the programme;
    c) report on the scope for deregulation while maintaining integrity in the programme; and
    d) review and advise on the appropriateness of the current compliance and sanctions.

Key considerations and questions

Terms of reference 1

What was the level of non-compliance or fraud by sponsors in terms of both regulatory requirements specifically, and the intent of the programme, before and after the 1 July 2013 reforms including the subsequent implementation of the labour market testing (LMT) requirement?

7. The 2013 Senate Legal and Constitutional Affairs References Committee's Inquiry into the Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements highlighted that there is limited level of fraud in the 457 visa programme. Nonetheless, the Senate Committee and

stakeholders, including the Law Council, accepted that an effective monitoring regime needs to be in place to maintain public confidence.

8. The 2013 reforms which introduced new powers to the Fair Work Ombudsman's (FWO) assist in reducing the levels of non-compliance or fraud by introducing another layer of experienced investigators, and allowing inter-agency cooperation.

9. Feedback suggests the LMT requirements have no impact on the levels of non-compliance or fraud.

10. To assist the Law Council to make an informed comment, it is incumbent upon the DIBP to publish data on the levels of non-compliance or fraud and the impact of the 2013 reforms. The Law Council would welcome any initiatives that would allow for this data to be made publicly available. Transparency would also assist in maintaining public confidence in an effective monitoring regime.

Are there circumstances or situations that are more likely to lead to greater non-compliance in the programme?

11. Sponsors' lack of awareness of their individual obligations is probably the greatest reason for non-compliance. Feedback suggests that sponsors experience issues with non-compliance at the monitoring stage where conduct that the sponsor genuinely believed was compliant is interpreted as being non-compliant by delegates. For example, paying cash to employees but keeping detailed records / payslips etc is found to be a breach of the obligation to keep records. DIBP's view (when monitoring) is that the cash payments are not able to be recorded even where employers keep scrupulous records of what was paid and when. Therefore, greater awareness and education about obligations and how they are practically assessed could assist with compliance.

12. The 10-day window obliging sponsors to notify DIBP of prescribed events (Reg 2.84) can be difficult for sponsors to comply with, particularly for larger organisations which typically have layers of bureaucracy which staff need to navigate from the point at which a decision might be made, through to where it has to be communicated to the DIBP. Therefore, the Law Council supports any measures which would introduce more flexibility to assist sponsors with compliance, and would encourage a pragmatic approach be adopted by DIBP in dealing with technical breaches by sponsors.

Terms of reference 2 and 3

How do the existing requirements fit with the intention of the 457 programme?

13. This is substantively addressed in the points below.

What types of organisations should be allowed to become sponsors? How effective are the current restrictions on newly established business and overseas business sponsors?

14. The programme currently permits essentially every type of recognised business type to become a sponsor, and the Law Council does not support any reduction in the current types of permissible sponsors.

15. The newly-established business limitation (under which businesses which have been in operation for less than 12 months may only have a sponsorship approved for 12 months) imposes an additional burden on businesses and visa holders. Under this policy, visa holders are similarly only entitled to a 12 month visa within the life of the initial sponsorship. If the business breaches any of its sponsorship

obligations it would be subject to sanctions regardless of its age, and so the requirement to lodge another sponsorship application (and in all likelihood new nomination and visa applications for approved visa holders) is a burdensome and unnecessary expense.

16. Further, in light of the current visa application fees of $1035 per adult and $260 per child, and in particular the Subsequent Temporary Application Charge of $700 per person, this can be a costly exercise for visa applicants and/or sponsors, depending on who is paying the costs associated with the visa application process. The extremely high visa application fees (for what could potentially only be a visa required for a few weeks or months) also acts as a potential disincentive to companies applying for the visa. The 457 programme was always intended to be able to quickly and flexibly respond to specific skills shortages, and these recent visa application fee increases arguably act against that intention.

Are there any aspects of the sponsorship framework or nomination process that could be made to work more efficiently or effectively?

17. The discretion of Delegates of the Minister to decide whether or not a nominated occupation is 'genuinely required' for the sponsor's business has seen some highly subjective decisions being made by case officers. The Law Council's view is that if the business is subsequently subjected to monitoring, and the position is determined not to be genuinely required for the business, then there are sanctions available to DIBP. Feedback suggests the vast majority of applications are for genuine positions, and the requirement to show the 'genuine need' for the position to the satisfaction of case officers at the application stage is an additional burden on sponsors when applying, noting that it is difficult to expect a delegate to understand what may be operationally required for the vast range of businesses who apply for 457 visas.

18. In situations where a business with sponsored 457 workers is sold to a new entity which wants to take over the workers, but does not have a sponsorship in place, the new entity needs to apply for sponsorship approval and then lodge a nomination seeking to transfer each of the workers to the new sponsorship. Unfortunately, this process can be prolonged, and during this period the original sponsor, the visa applicant and the proposed new sponsor are all potentially exposed to sanction if any delays are encountered.

19. While recent reforms such as strengthening the links between the FWO and the 457 visa programme, and the schedule 8107 amendments are to be applauded, a more flexible approach could help protect visa holders and sponsors being exposed to this type of sanction when the circumstance is timing which is out of their control.

Are the current sponsorship obligations satisfactory?

20. Feedback suggests that sponsors are being penalised (sometimes heavily, with sponsorship bars or fines) for inadvertent acts or omissions that are considered during subsequent monitoring to be breaches of their obligations.

21. The Law Council recommends the DIPB consider implementing a 'Sponsor Hotline' (funded through visa application fees), similar to the 'Ethics Hotlines' established for lawyers in which sponsors are encouraged to call to check if a particular course of action would be considered to be a breach of sponsorship obligations. This could either be anonymous, or sponsors could elect to have this

request for guidance noted on their file for future monitoring purposes. This would lead to far better outcomes for sponsors and applicants.

22. While the DIBP produces a collection of guidelines to assist and guide officers who are required to consider applications for visas and in the performance of their functions and powers, it is of note that there is a lack of policy guidance in respect of sponsorship obligations. Given the nature and extent of the DIBP powers in this area, the Law Council recommends that the DIBP provide guidelines which are a companion to the Regulations and which provide guidance to Departmental officers and migration lawyers and agents on the interpretation of the Regulations and include comment or policy interpretation on general principles and procedural issues as well as matters arising directly from the Act. This will enable a better understanding of sponsorship obligations and sponsorship monitoring. In any penalty regime which is significant, there should be clear guidance on what constitutes a breach so that the approach taken is both consistent and transparent.

Are fees and associated costs appropriate for this programme and who should be responsible for paying fees?

23. The current visa application fees, particularly when factoring in the Subsequent Temporary Application Charge (STAC), can be extremely expensive when one considers that the 457 is a temporary visa. A family of four affected by the STAC now pays $5,390 in visa application fees for an application that would have cost $455 on 30 June 2013.[1] This is especially prohibitive when the applicant is applying for a visa with a sponsor that is a start-up company, and will only get a 12 month visa as a result, and will face making another application in 12 months time. The Law Council recommends the DIBP re-consider the fee structure and see if there could be a more equitable structure in place.

24. The sponsorship obligation change which requires sponsors to pay for all costs associated with the sponsorship and nomination costs is also singular within the migration programme. The previous obligation was simply that sponsors 'could not recover' the cost of making the application from applicants. If applicants volunteered to cover these costs themselves, this was not a breach of the sponsorship obligations. Under the current obligations, this would be a breach.

25. The Law Council recommends that DIBP consider making it permissible for applicants to be able to pay at least legal costs (if not perhaps the visa application fees) of sponsorships and nominations. Frequently, visa applicants approach their employers with a view to being sponsored in order to permit them to remain employed. The same prohibitions on applicants paying a sponsor's legal costs and visa application fees do not, for example, extend to the ENS and RSMS programmes, or indeed any other visa categories.

Are the requirements of labour market testing suitable, including the current scope for exemptions and protected occupations?

26. The Law Council applauds measures put in place to exclude almost 70% of occupations from LMT. However, the Law Council's view remains that LMT is not necessary, and recommends that the current regulations be repealed as soon as practicable.

[1] $1035 per adult applicant, $260 per applicant <18 + $700 per applicant STCA.

Are the current training benchmarks appropriate and/or adequate for ensuring that employers provide training opportunities to Australians?

27. The 1% or 2% expenditure requirements can place an onerous financial burden on employers, particularly in industries such the hospitality industry which has a far greater emphasis on on-the-job training (as opposed to formal or structured in-house training). The Law Council's view is that there should be a demonstrated commitment to training Australian workers, but without necessarily pegging it to a particular figure. The assessment of the training benchmark could also be amended to allow calculations of a broader range of bona fide training activities. The current benchmark has the potential to exclude genuine employers whose training may be primarily conducted on the job.

How effective is the market rates framework for ensuring that 457 visa holders are provided with Australian terms and conditions of employment and how should the market rate be determined and assessed?

28. The Market Salary Rate (MSR) framework is arguably effective in protecting overseas workers in situations where there is an equivalent Australian worker. However, this is also able to be circumvented by establishing that the Australian worker is not 'equivalent' either by reference to a position description or job title. The concept can be confusing to employers, particularly when assessed in combination with the TSMIT below.

Is the application of a Temporary Skilled Migration Income Threshold (TSMIT) appropriate and is it set at the appropriate level? If so, how should it be indexed?

29. TSMIT was intended to replace the 'Minimum Salary Level'. However, despite efforts by DIBP to distinguish it from being a 'minimum salary', in practice employers still treat this as a minimum salary in many trades. The result of this is that when searching for job advertisements to prove that a nominated salary of (for example) $53,900 plus superannuation is the MSR for a particular occupation, there are a plethora of job advertisements at exactly this salary.

30. The Law Council recommends the DIBP consider the reintroduction of a simple minimum salary, on the basis that 'the market' will determine whether employers are prepared to employ workers at or above this level.

How effective are skills assessments in ensuring 457 visa holders have the skill for the nominated position? Is there something that could be done to improve and or streamline the requirement for the business?

31. The Law Council has no objection to an overseas worker without Australian qualifications undergoing an independent skills assessment process to establish their abilities. The situation is different however where onshore applicants, often already working for the sponsor in the nominated occupation, are required to undertake a skills assessment because they cannot establish that they meet the educational requirements for the occupation as per the ANZSCO dictionary (for example Certificate III plus 2 years on the job training or Certificate 4 for trade occupations). In some instances skills assessment bodies require a minimum number of years of work experience before enrolling an applicant in a skill assessment program, regardless of the fact that they may already be working part time for the sponsor in the occupation in which the sponsor is seeking to sponsor them on a 457 visa.

In what circumstances should 457 visa applicants be required to undertake an English language test? Are the current English language requirements appropriate?

32. There should be a uniform application of English language criteria (ie remove the $96,400 plus superannuation threshold) whereby applicants may pay a VAC2 fee if they have less than functional English in order to pay for lessons to improve their language skills. However, sponsors should ultimately have some direction regarding whether a prospective applicant is sufficiently skilled to undertake work in the nominated occupation.

Is the Consolidated Sponsored Occupations List (CSOL) an appropriate source for occupations relevant to the 457 visa?

33. The list of occupations could be expanded. The mechanisms by which occupations are added or removed to the CSOL is unclear to the majority of users of the system, and the CSOL itself has a highly eclectic list of occupations.

34. For the purposes of certainty there needs to be a list like the CSOL in place, however the list itself could be reviewed more frequently (and more transparently) in order to quickly respond to actual skills shortages. Alternatively, it should be possible to nominate an occupation that is not currently on the CSOL where sponsors can demonstrate that the position itself is genuine and is genuinely needed by the sponsor.

How should the composition of the CSOL be determined?

35. There is little public information as to how the composition of the CSOL is currently determined. As part of maintaining confidence in the 457 programme this information should be publicly available and include information on the nature and extent of consultation with the broader business community.

Is there a more effective way to define nominated positions than ANZSCO, to capture emerging occupations and to provide clarity of positions between skill levels?

36. There should be a more discretion be allowed to delegates to find that a particular occupation fits within the broad definition of a particular occupation, especially in circumstances where there are emerging or ill-defined occupations. ANZSCO was never intended to be binding – it was always intended as a guide for case officers, however case officers refuse applications on the basis that a particular job description does not fit sufficiently neatly within the ANZSCO definition.

What role can registered migration agents play in improving the integrity of the 457 visa programme?

37. Migration lawyers and/ or agents are required to obtain accurate instructions from clients and ensure that clients' applications meet the relevant regulatory framework. By acting in regard to 457 visa matters, migration lawyers and/or agents can also provide advice to clients in respect of the criteria to be and the obligations of approved sponsors including in the context of sponsorship monitoring.

Would providing improved support and information to employers and visa holders on their rights and obligations help to improve the integrity of the 457 visa programme? If yes, how might this be implemented?

38. The introduction of a funded 'hotline' service as described above, and reintroduction of the 457 policy mailbox could help improve the integrity of the 457 visa programme. DIBP has removed practitioners' access to the 457policy@immi.gov.au mailbox, which was a useful tool in circumstances where the applicable policy did not cover a particular fact situation. While such a mailbox set-up is clearly open to abuse by practitioners, the Law Council submits that any

arrangement that proactively assists sound applications in being made (or in the alternative, stops clearly incorrect applications from being lodged) is a far more cost beneficial approach than refused applications clogging up the Migration Review Tribunal.

Are Department of Immigration and Border Protection outreach officers utilised effectively by stakeholders in providing information on the 457 visa programme?

39. While the Law Council has no data available on the effectiveness of outreach officers in providing information on the 457 visa programme, anecdotally it is understood that there is significant variance from officer to officer as to the nature and extent of the information that is provided.

What impact do labour agreements have in terms of managing non-compliance or fraud in the 457 programme?

40. The Law Council is aware that the DIBP has cancelled labour agreements due to non-compliance. As a general rule, it is understood that the labour agreement process requires a company to meet numerous criteria and provide extensive documentation which specifies the criteria to be met and the obligations of the company and the Commonwealth. As labour agreements generally provide a pathway to recruit overseas skilled workers where the standard 457 visa arrangements do not meet the needs of industry and it is to the benefit of Australia, the Law Council does not support the increased use of labour agreements as a purported mechanism to manage non-compliance or fraud in the 457 programme.

Would increasing transparency improve the integrity of the 457 visa programme, and if so how might this be implemented?

41. The Law Council supports greater transparency in the DIBP administrative decision making process. This is increasingly becoming more important in light of e-lodgement where there is often little opportunity to confer with the decision-maker in regard to an application or a matter of concern and which is compounded by the increasing resource constraints that the DIBP faces in regard to visa processing. More often it is becoming the case that the sponsorship, nomination and visa application are processed in 3 different states, and as such there can be significant variations in the way in which a particular application is processed as between DIBP offices. This can in turn lead to significant differences in decisions for what is essentially the same application. The Law Council's view is that DIBP should be doing all it can to encourage transparent, consistent decision making.

42. Practitioners are often faced with circumstances in which a technically legally correct decision to refuse an application is made by a case officer, but which on an objective view is incorrect – for example decisions which involve subjective analysis by a case officer. Most commonly, the response of senior management to complaints by practitioners is that sponsors and applicants have recourse to merits review via the Migration Review Tribunal (MRT). However, an MRT review is currently taking, on average, 18 months for 457 matters, which is impractical for sponsors and applicants alike. The Law Council would welcome amendments to either regulations or policy which would permit decisions to be vacated and re-assessed by senior management

Terms of reference 4

In what way can the potential for non-compliance or fraud in the 457 visa programme be more effectively managed?

43. The Law Council's preferred methodology is improving sponsors' understanding of their obligations and a more educative approach in relation to monitoring. The Law Council has been advised that the vast majority of sponsors wish to be, and are, compliant with their obligations.

Could employers be provided with greater incentives to comply with the requirements of the 457 visa programme? If so, how might this be implemented?

44. Sponsors could be rewarded with the option of receiving a longer subsequent sponsorship (say 5 or 6 years) if there are no monitoring issues arising out of a previous sponsorship (assuming that monitoring has occurred). There could be a reduction in nomination application fees for 'model' sponsors in subsequent applications. There is already an accredited sponsor program, and so this could be implemented practically. It would also be worth looking at awarding 'accredited' status to physically smaller sponsors where they can demonstrate a sound compliance record.

Could the system be improved to reward employers with a history of strong compliance? If so, how might this be implemented?

45. As the DIBP undertakes targeted monitoring based on its own analysis of risk factors, the subclass 457 programme also enables streamlined processing of meritorious visa applications. In this context, the DIBP can offer employers with a history of strong compliance fast-tracked visa processing. This should serve to further encourage employers to maintain a history of ongoing compliance.

Are the existing range of sanctions and administrative actions (such as cancelling a sponsorship or barring a sponsor) satisfactory, and how effectively are they being applied?

46. An unintended consequence of penalties for the sponsors is that the visa applicants are impacted by the penalties at the time they proceed to apply for ENS or RSMS visas, and there exists 'adverse information' about the sponsor as a result of the sanctions. For example, it is not a visa applicant's fault if their employer has not paid for training as part of a previous sponsorship, however it is ultimately the applicant's problem in that it could lead to the associated nomination being refused as a result. Whether the sanctions are appropriate in achieving an outcome depends entirely on the sponsor: a sponsor that has only ever employed a single 457 visa holder and has no intention of sponsoring anyone else is unlikely to be unduly concerned about a 6-month sponsorship bar.

Are the range of civil penalty provisions (infringement notices and civil action) and criminal sanctions satisfactory, and how effectively are they being applied? Are there any further actions that could be considered to enhance integrity?

47. The Act includes a significant range of civil penalty orders that can be imposed or infringement notices that can be issued as an alternative to civil penalty provisions. For example, if a person fails to satisfy a sponsorship obligation prescribed by the Regulations, a person contravenes a civil penalty provision which imposes a maximum penalty of $10,200 (60 penalty units) for an individual and $51,000 (300 penalty units) for a body corporate. There are also many significant criminal penalties under the Act. The DIBP already has significant powers to enable it to

maintain the integrity of the subclass 457 programme. The question is not one of adequate powers but rather how effectively the DIBP undertakes sponsorship monitoring in the context of its significant resource constraints and the relative lack of information and policy guidelines. The Law Council supports initiatives that would increase the level of resourcing in this area and the implementation of comprehensive policy guidelines.

Could cooperation between the Department of Immigration and Border Protection and other agencies during monitoring be improved?

48. The Law Council acknowledges the close working relationship occurring between the FWO and the Monitoring Integrity area of the DIBP. The Law Council notes that the FWO has a higher number of officers and has established competencies that are of assistance to complement the DIBP particularity regarding salary levels and comparison of an employee's duties. The Law Council cannot comment any further on the interaction between DIBP and other agencies during monitoring.

49. The Law Council is also aware of the DIBP Temporary Working Visas and Data Matching Programme Protocol which has been developed to assist the Australian Taxation Office (ATO) to effectively detect, and deal with compliance risks in respect of persons who hold temporary working visas (including subclass 457 visas). The Temporary Working Visas and Data Matching Programme Protocol is used in the ATO Risk Detection Models to undertake targeted administrative action relating to tax return integrity, income tax and goods and services and tax-non-compliance and fraud. The ATO is also able to, where appropriate, share information with the DIBP relating to visa holders not complying by the conditions of their Temporary Working Visas. It is understood that the nature and extent of the data that will be provided is extensive and as such should enhance the ATO's existing risk detection models and systems so as to identify and better respond to fraud.

Has the inclusion of powers to the Fair Work Ombudsman been useful in improving compliance?

50. The Law Council considers that the inclusion of powers to the FWO has been useful in improving compliance.

Could the way the Department of Immigration and Border Protection responds to allegations of non-compliance, fraud and exploitation be improved, and if so how?

51. The Law Council is keen to ensure that sponsors continue to be given adequate timeframes to respond to any non-compliance allegations, and would also like to see timeframes set for DIBP responses following submissions being sent in to DIBP.

52. The Law Council also recommends that DIBP consider developing cooperative links with community organisations and association to assist persons in particularly vulnerable circumstances to get representation.

Is information about workers' rights and responsibilities under Australian law readily accessible to 457 visa holders in appropriate formats?

53. As far as the Law Council is aware, this information appears to be readily available and promoted by DIBP.

Should the provision of such information by the employer form part of the sponsorship obligations under the 457 visa programme?

54. The Law Council's view is that this requirement goes beyond what employers would be expected to undertake for their Australian employees. If DIBP is keen to ensure that 457 holders are provided with this information, it could be easily included in visa grant advice to clients.

Is there an appropriate balance between regulatory requirements and compliance with the overall benefits and risks of the programme?

55. The introduction of FWO inspectors were the subject of a great deal of publicity at the time of introduction, however the Law Council does not have current figures about whether there has been an increase in sanction activity.

Are the Department of Immigration and Border Protection's compliance activities adequately resourced and its systems appropriate to monitor compliance and ensure integrity in the 457 visa programme? How might these be improved?

56. Anecdotally, monitoring activity lags behind visa approval activity and the consensus seems to be that there is a lack of funding for this area as well. It is a key requirement that DIBP makes it as easy as possible for sponsors to understand what those obligations are. There are likely to be far better outcomes for sponsors and applicants if DIBP takes an educative approach to possible non-compliance, particularly in circumstances where any non-compliance appears to be inadvertent. The DIBP have potent existing sanctioning powers available for egregious breaches of sponsor obligations, and the Law Council's view would be that DIBP could use the powers currently available without the need to expand them further.

Other considerations

57. There appears to be growing inconsistencies by differently constituted MRT members in relation to decision on visas being voided where a nomination or sponsorship has lapsed or is not being subject to review. Some inter-agency work could be done to resolve these inconsistencies.

Conclusion

58. The aims of temporary migration programs include allowing skilled people to work in Australia, contributing to economic growth, and tourists, students and working holiday makers contributing to social, cultural, economic and international relations. The over use of compliance procedures can at times make it unnecessarily difficult for the 457 visa programme to fulfil this purpose. The Law Council supports any measures which would increase economic activity by assisting employees to import skills where positions cannot be filled by someone in Australia and that would remove compliance procedures which are found to be unnecessarily burdensome and ineffective at promoting compliance.

59. The subclass 457 visa programme is part of a complex legislative and policy regime the complexity of which is often underestimated. It is subject to frequent and ongoing change in response to changing Governmental priorities. Recent reforms have included redefining sponsorship obligations, expanding powers to monitor and investigate possible non-compliance of those obligations, enhancing measures to address identified breaches of obligation, and improving information sharing between Government agencies and levels. There are also significant criminal sanctions, for example employers who provide false and misleading information, could face penalties of up to 10 years' imprisonment or a fine of $110,000 or both. Administrative sanctions, include cancellation or suspension of

an employer's entitlement to sponsor 457 visa workers and the cancellation of the visa holder's visa. The Government's reform agenda should ensure that the subclass 457 programme is more responsive to market needs while protecting the employment and training opportunities of Australians and the rights of overseas workers. The constant re-engineering of the subclass 457 visa programme does not necessarily result in better law or regulation. The Australian Government has announced that it plans to cut about $1 billion of unnecessary and costly legislation and regulation every year. The Law Council is of the view that the subclass 457 programme is already highly complex and potentially "overregulated". The issue is not more regulation, but the more effective use of the DIBP monitoring, enforcement and sanctions powers while at the same time making the DIBP's processes more transparent and accountable. This methodology will best serve to maintain the integrity of the subclass 457 visa programme.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the Constituent Bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12-month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2013 Executive are:

- Mr Michael Colbran QC, President
- Mr Duncan McConnel President-Elect
- Ms Leanne Topfer, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Dr Christopher Kendall, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Attachment B: Profile of the International Law Section

The International Law Section (ILS) provides a focal point for judges, barristers, solicitors, government lawyers, academic lawyers, corporate lawyers and law students working in Australia and overseas, who are involved in transnational and international law matters, migration and human rights issues.

The ILS runs conferences and seminars, establishes and maintains close links with overseas legal bodies such as the International Bar Association, the Commonwealth Lawyers' Association and LAWASIA, and provides expert advice to the Law Council and its constituent bodies and also to government through its Committees.

Members of the 2013-14 ILS Executive are:

- Dr Gordon Hughes, Section Chair
- Dr Wolfgang Babeck, Deputy Chair
- Ms Anne O'Donoghue, Treasurer
- Mr Fred Chilton, Executive Member
- Mr John Corcoran, Executive Member
- Mr Glenn Ferguson, Executive Member
- Ms Maria Jockel, Executive Member
- Mr Andrew Percival, Executive Member
- Dr Brett Williams, Executive Member.

The ILS Committees are:

- The Alternative Dispute Resolution Committee (Ms Mary Walker, Chair)
- The Comparative Law Committee (Dr Wolfgang Babeck and Mr Thomas John, Co-Chairs).
- The Human Rights Committee (Dr Wolfgang Babeck and Mr Glenn Ferguson, Co-Chairs)
- The Migration Law Committee (Mr Erskine Rodan, Chair and Ms Katie Malyon Vice-Chair)
- The Trade & Business Law Committee (Mr Andrew Percival, Chair)