



## **Senator Chris Evans**

Leader of the Government in the Senate  
Minister for Immigration and Citizenship

### **Speech to AiG Breakfast Forum Sydney – 14 September 2009**

#### **Access with integrity – 457 visa reforms**

**\*\*\* Check against delivery \*\*\***

Today, 14 September 2009, marks an important milestone in the Government's reforms to improve the integrity of the Subclass 457 visa program while ensuring employers can continue to access the skills they need where shortages exist.

The changes that take effect today include:

- Requiring 457 visa holders to be paid the same as Australian workers doing the same job in the same workplace, to ensure that Subclass 457 visa holders cannot be used to as a cheap source of labour;
- A common set of monitoring and inspection powers between the Department of Immigration and Citizenship and the Fair Work Ombudsman, to reflect the fact that 457 visa holders will now have the same rights and entitlements as local workers;
- A clearer set of obligations for employers when sponsoring overseas workers, to remove many of the uncertainties that existed under the old regime including shifting the obligation to cover health costs onto the visa holder;
- For the first time, the ability to impose civil penalties on employers who breach those obligations; and
- Allowing the Department of Immigration and Citizenship to data match with the Taxation Office to assist in identifying potential breaches or abuse of the Subclass 457 visa program.

It is important to note that employers of existing 457 visa holders will have until 1 January 2010 to align the visa holders' wages with local workers.

Before I speak more about these reforms and how they complement other changes the Government has implemented and will implement in the future it is important to understand the context of these changes.

In the development of these reforms the Government has remained focused on improving the integrity of the program while ensuring it continues to provide the skills needed in the economy.

The objective of the Subclass 457 visa is to ensure that skilled workers are able to come to Australia quickly to meet industry, economic and labour market needs without impacting on the employment and training opportunities of Australians or undermining their terms and conditions.

Consistent with that objective the Rudd Government has made it clear that overseas workers are not to be employed ahead of Australians.

The Government recognises that the Subclass 457 visa program plays an important role in the Australian economy. It complements Australia's labour market needs, supporting economic growth and makes Australia more competitive in the global economy.

However the program will only be able to fulfil that role if the the broader community has confidence in its integrity.

Over the past five years that confidence was tested, with a series of abuses coming to light involving the exploitation of overseas workers and the use of the program to source cheap overseas labour, particularly when used in conjunction with the previous Government's WorkChoices industrial relations laws.

These abuses followed the increased use of temporary overseas workers from 2005 onwards in response to widespread skill shortages due Australia's strong economic growth. Over a few short years, employers brought in large numbers of trades level workers under a program initially intended to be used to employ professionals.

It was clear that the Subclass 457 visa program was not designed to cope with that shift and the cases of exploitation that emerged often involved trade or related occupations and people from non-English speaking backgrounds.

Unfortunately the previous Government responded to those cases of exploitation with a series of blunt measures that impacted on the whole program. There was no real attempt to manage the risk.

When the Labor Government came to office in November 2007, waiting times for a subclass 457 visa approval had blown out to many months with a backlog of 14 672 applications. All at a time when the demand for skilled labour was at its height.

One of the first things I did as a Minister was direct the department to improve processing times for subclass 457 visas and by July 2008 the wait for a visa had dropped dramatically and the number of cases on hand had been reduced to 8 760 applications. As of 4 September, there were 4 174 Subclass 457 visa applications on hand.

At the same time the Government saw the need to improve public confidence in the program given the abuses that had occurred through 2006 and 2007.

I do not see improved responsiveness and better integrity as mutually exclusive aims, if you manage the risks properly and ensure that extra integrity measures are targeted at the areas that we know are most likely to see exploitation.

One of the key reasons I established the Skilled Migration Consultative Panel, with representatives from industry (including the AiG), government and unions, to advise the Government on changes to the subclass 457 program was to ensure that we got the balance right.

That Panel has proven to be a very good forum for employers and unions to exchange views and inform the Government's policy development. Earlier this year I agreed to make the Panel a permanent forum to advise the Government on skilled migration and as the Minister value its contributions.

In terms of improving the integrity of the Subclass 457 visa program and building public confidence, the Government commissioned a review by industrial relations expert, Ms. Barbara Deegan in 2008.

Reporting late last year that Review found that the Subclass 457 program had systemic weaknesses, including:

- the use of a Minimum Salary and not market salary rates which allowed overseas workers to be employed on wages below Australians doing the same job;
- a failure to address the vulnerability of people in lower skilled occupations from non-English speaking countries;
- a lack of transparency amongst government agencies over where 457 visa holders are employed; and
- fraudulent claims of skill levels and capabilities that often saw overseas workers then trapped in low skilled jobs.

As an immediate response to the concern over transparency last year I announced that the Commonwealth would provide relevant State based work safety agencies with data on the location of 457 visa holders to allow those agencies to target those workplaces as appropriate.

Having considered the recommendations of the Deegan Review the Government announced in April this year some changes to the Subclass 457 program.

Those measures included:

- Increasing the English language skills to IELTS 5 for all trades and chefs and lower skilled occupations from 14 April 2009 to ensure that overseas workers are better able to understand their rights and seek assistance if they feel they are being exploited;

- Introducing formal trade assessments from 1 July for all trades and chefs from countries that are not low risk countries to ensure that overseas workers have the skills they claim;
- Introducing a requirement that employers have a strong record of employing local labour and non discriminatory employment practices; and
- Requiring ASCO 5-7 occupations to be sponsored through labour agreements to better control the access to semi-skilled overseas workers in regional areas.

The announcement of those changes in April this year also flagged some of the changes due to take effect today, most importantly the move to market based wages.

Those changes required legislative backing through the *Worker Protection Act* and in some cases further consultation with stakeholders, which is why they were not implemented earlier.

Of the measures that take effect today the introduction of market rates for 457 visa holders is perhaps the most important as it ensures the proper price signals are in place for employers to find local workers first.

The principle is that subclass 457 visa holders will be paid the same as an Australian worker doing the same job in the same workplace.

This has raised the issue of lower paid occupations, where Australians may earn \$38,000, which is below the current MSL. The Government was concerned that while the Australia worker is eligible for a range of benefits and payments, for example Family Tax Benefit, the overseas workers is not. For that reason a new minimum income threshold has been set which will ensure that overseas workers do earn enough to sustain a reasonable standard of living.

In the context of the move to market based wages the Government has implemented the recommendation of the Deegan Review to place the cost of health onto the visa holder, so that they will be required to take out private health insurance. Note that this is another cost faced by the overseas worker that their local counterparts do not face, hence the need for the minimum income threshold.

This new obligation on health insurance is part of the new set of obligations that will apply to both sponsors and visa holders from today. They are largely based on the existing undertakings but should be much clearer to understand for employers and visa holders.

The provisions that allow DIAC to exchange information with the ATO will also be important in allowing us to better target monitoring activity.

The combination of the changes announced in April and those that take effect today represent a fundamental reform to the subclass 457 program, with the aim of both maintaining access to skills while ensuring that the public has confidence in the system.

While those changes bring us a long way forward from where we were at the start of 2008, there is still more to do.

Going forward the Government has committed to implementing an accreditation system and establishing Regional Employment Authorities to replace the current Regional Certifying Bodies in 2010.

The Consultative Panel has already begun considering the issues around both of these measures.

The accreditation system is about better managing the risk. An employer who has a good track record, a known history of compliance and is bringing in skilled occupations on market rates should not necessarily receive the same treatment as an employer that DIAC has not seen before that wants to bring in tradespeople employed on wages that appear to be below the market rate.

The accreditation system will be designed to 'triage' employers into the appropriate stream and ensure that DIAC applies the right suite of checks.

Accredited business sponsors would have a higher level of trust as a result of their history of compliance with immigration requirements and sponsorship undertakings. Accredited business sponsors would receive faster processing and undergo less monitoring. Accreditation should provide efficiencies for both DIAC and business sponsors and enables DIAC to spend more time on higher risk applicants.

A formal application process for accreditation status would also provide greater transparency and equity than an informal process of allowing accreditation status to be accorded informally on the basis of past performance and compliance with sponsorship obligations.

Accreditation would apply to reliable sponsors, with a strong track record of compliance with immigration and workplace legislation. These would include state, territory and Commonwealth departments, and large companies, many of whom have large volumes and long standing sponsorship arrangements. Many of these organisations are already subject to other checks including monitoring for publicly listed companies under corporations law or regular audits and Ombudsman scrutiny for government agencies.

The Regional Employment Authorities will provide input on local labour market conditions, to ensure the program is responsive to the different pressures that exist across the country while also allowing for some transparency in cases that do not meet the standard sponsorship requirements (e.g. ASCO 5-7s).

I would like to take the opportunity to also highlight the increasingly important role the Subclass 457 visa program is playing in Australia's permanent skilled migration program.

The number of subclass 457 visa holders sponsored for permanent migration has grown rapidly over the last two years and in 2009-10 it is expected that over 35,000 permanent skilled visas will be granted to former 457 visa holders.

The Government has been encouraging employers to sponsor their workers for permanent residency and it appears that many are now doing so.

These visas are granted to people who are already here in jobs, with an employer who wants to keep them and who have had an opportunity to experience life in Australia and want to remain.

I see these as good migration outcomes.

I have been conscious to ensure that any changes to the Subclass 457 visa program do not act to stop or hinder this flow of temporary visa holders onto permanent visas.

To conclude, today marks a significant step forward in the reform of the Subclass 457 visa program.

The changes that take effect today, in combination with those changes that were implemented earlier this year, reflect the findings of the Deegan Review and are aimed at improving the integrity of the program while ensuring employers can continue to access the skills they need.

These changes reflect a better management of risk in this program and follow extensive consultation with the stakeholders.

The Government recognises the importance of Subclass 457 visa program in delivering the skills our economy needs and that demand for those skills will only increase as the economy begins to recover from the impact of the global financial crisis.

That is why the Government is focused on ensuring the Subclass 457 visa program is designed for the long-term.

The changes implemented this year, and the further changes to be implemented next year, will put the Subclass 457 visa program on a long-term footing to meet the demands of both current and future economic needs.

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