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By email: migrant.intake@pc.gov.au

Productivity Commission
GPO Box 1428
Canberra City ACT 260
Attn: Mr Paul Lindwall – Presiding Commissioner

Dear Commissioner

MIGRANT INTAKE INTO AUSTRALIA – PUBLIC INQUIRY

With Australia's economy entering a post-mining boom phase it is essential to have an adaptive and responsive skilled migration programme that plays its part in making Australia a more productive nation.

Many of the legislative and policy requirements of the employer-sponsored permanent visas and points-tested visas are frustratingly counter-productive.

Whilst we acknowledge that DIBP conducts its own reviews of its skilled migration programme, the outcomes of these reviews are often contradictory and illogical.

For example following DIBP's review of the employer-sponsored visa programme in 2011 the 'exceptional circumstances' age waivers were removed and replaced by an upper age limit of 49 years.

Australian businesses are now unable to nominate for permanent residence highly skilled and experienced 457 visa workers aged 50 or older who would otherwise have been well placed to train their Australian work colleagues, with the resulting gains in productivity.

Although there are age limit 'exemptions' these are too narrow in scope and have unrealistically high income thresholds to be of any real assistance.

Australia's skilled migration programme, including the 457 visa program (as the 'entrée' visa to employer-sponsored migration) needs to be changed.

A more productive and efficient skilled migration program is fundamentally important in helping to raise living standards within the Australian community.

Information request 11.2 - The Commission is seeking information on the English-language requirements for the Temporary Residence Transition stream of the employer-nominated (subclass 186) visa, including:

- **the benefits and costs of having a lower English-language requirement than other skilled immigration streams ('vocational' rather than 'competent')**
- **the benefits and costs of the exemption from English-language testing for immigrants who have undertaken five years education with all tuition in English.**

Submission 1: European Union nationals should be exempt from the 457 visa English language requirement

Under the current 457 visa programme unless exempt, a 457 visa applicant must have one of the following English language test scores:

- an Occupational English Test (OET) score of at least "B" in each of the four components, or
- a Test of English as a Foreign Language internet-based test (TOEFL iBT) total score of at least 36 with a score of at least 3 for each of the test components of listening and reading, and a score of at least 12 for each of the test components of writing and speaking, or
- a Pearson Test of English (PTE) Academic overall test score of at least 36 with a score of at least 30 in each of the four test components, or
- a Cambridge English: Advanced (CAE) overall test score of at least 154 with a score of at least 147 in each of the four test components, or
- an International English Language Testing System (IELTS) overall test score of at least 5.0 with a score of at least 4.5 in each of the four test components.

A 457 visa applicant is exempt from an English language test if they:

1. hold a valid passport from the United Kingdom, Republic of Ireland, Canada, USA or New Zealand; or
2. have completed at least 5 years of full-time study in a secondary and/or higher education institution where the instruction was delivered in English; or
3. are offered a base salary of at least $96,400pa.

The reasons for the 457 visa English language requirement are included at page 63 of the September 2014 '*Independent Review into the Integrity of the subclass 457 visa Programme*' ('the Azarias Review'):

'The English language requirement is an important part of the 457 programme. It provides protection to 457 visa holders by helping them understand their rights, minimise the risk of occupational health and safety incidents in the workplace and help to facilitate their participation in Australian society. It is also an essential requirement for the Employer Nomination Scheme ("ENS"), Regional Sponsored Migration Scheme ("RSMS") and General Skilled permanent residence pathways.'

See:https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/streamlined-responsive-457-programme.pdf

The Azarias Review recommends that consideration be given to extending the English language exemptions beyond the current 5 countries:

"*Recommendation 7.4*

That consideration be given to expanding the list of nationalities that are exempt from the need to demonstrate they meet the English language requirement."

We agree with the Azarias Review recommendation and submit that *all* nationals of the European Union (EU) member states should be exempt from providing evidence of English language (unless required for mandatory occupation registration or licensing).

Only exempting visa applicants from English-speaking former British colonies is out of date as it fails to recognise the level of sophistication, intelligence and English skills of other nationalities.

The EU currently consists of 28 member states, with the majority being advanced countries with sophisticated labour protection laws.

The European Commission explains:

"The EU & labour law

EU policies in recent decades have sought to

- achieve high employment & strong social protection,
- improve living & working conditions,
- protect social cohesion.

The EU aims to promote social progress and improve the living and working conditions of the peoples of Europe - see the preamble of the Treaty on the Functioning of the EU.

As regards labour law, the EU complements policy initiatives taken by individual EU countries by setting **minimum standards**. In accordance with the Treaty - particularly Article 153 - it adopts laws (directives) that set minimum requirements for

- working & employment conditions,
- informing & consulting workers.

Individual EU countries are free to provide higher levels of protection if they so wish. While the European Working Time Directive entitles workers to 20 days' annual paid leave, for example, many countries have opted for a more generous right to the benefit of workers."

See: http://ec.europa.eu/social/main.jsp?catId=157

Protected by robust labour laws EU nationals are permitted to work in any EU member state without first having to sit a language test.

It is clear that EU-passports holders will not allow themselves to be exploited by rogue Australian employers.

There is no logic in requiring a French or German national or other EU passport holder to sit an English test before they can work in Australia on a 457 visa.

For example our client, a Japanese multinational electronics company wished to sponsor an Austrian Engineer, who was working at the company's Salzburg office, for a seven month 457 visa as he was needed to attend to highly specialised work on its digital equipment located at their Sydney office.

There was a considerable delay whilst the 457 visa applicant booked his IELTS test, sat the test and waited for his test result to issue, all for a seven month 457 visa for a highly specialised position.

This is surely '*overkill*' and benefits no one, apart from the owners of the English language tests.

We also have an Australian-Italian client, who originally comes from Sardinia, a region famous for producing Italian cheeses.

The client owns a mixed-livestock farm in Victoria which supplies his Italian restaurant in Melbourne with organic vegetables and meat.

The client has informed us that he "*...would love to be able to make Sardinian-style Italian cheeses, has all the right contacts in Sardinia*" but is unable to sponsor a Sardinian Cheesemaker as he would not pass the Vocational English test.

In addition, despite evidence of a shortage of Cheesemakers in Australia the occupation of Cheesemaker has been removed from the Consolidated Sponsored Occupations List (CSOL).

The following ABC news article explains the shortage of Cheesemakers in NSW:

"A NSW cheesemaker says he can't expand his booming business because he can't find staff.

John Christensen, from New England Cheese at Nowendoc, milks 90 goats and 80 Jersey cows and manufactures products for 30 Sydney supermarkets.

He's got five positions vacant and has been forced to look overseas to fill them.

"Our biggest problem is that universities, Melbourne University (Gilbert Chandler campus) and Charles Stuart at Wagga Wagga, closed down their food technology courses for cheese making," he said.

"There's nowhere else, no TAFE colleges, no-one is set up at the moment for training."

See: http://www.abc.net.au/news/2013-02-26/desperate-shortage-of-qualified-cheese-makers/6136138

Submission 2: ETA-eligible passport holders should also be exempt from the 457 visa English language requirement

Non-EU passport holders who are eligible for an Electronic Travel Authority (ETA) should also be exempt from the 457 visa language requirements.

The current non-EU ETA eligible countries are Andorra, Brunei, Hong Kong (SAR of China), Iceland, Japan, Liechtenstein, Malaysia, Monaco, Norway, Republic of San Marino, Singapore, South Korea, Switzerland, Taiwan, United Kingdom–British National (Overseas) and the Vatican City.

See: https://www.border.gov.au/Trav/Visa-1/601-

Countries are included on the ETA-eligible list if DIBP deems their nationals to be at lower risk of overstaying in Australia.

ETA-eligible applicants are unlikely to overstay, are not 'desperate' to remain in Australia and are therefore less likely to be exploited by rogue Australian sponsors.

Submission 3: Consideration should be given to removing or lowering the 457 visa English language requirement for non-EU and non-ETA eligible nationals

The positive impact of the digital revolution and smart phones during the last 6 years on developing countries cannot be overstated.

Isolation with the resulting vulnerability and risk of exploitation of migrants has been reduced with the ready access to mobile phones and the internet.

There is significantly less risk of say a Pakistani Cook being exploited by his Australian employer if he has access to his community in Australia, his family back home and translated Australian labour laws and worker protection agencies via his mobile phone.

We have also noticed a significant improvement in the level of English amongst young Vietnamese and Nepalese nationals during the last 5 years. This is, we believe as a direct result of the digital revolution and smart phones. Young people from developing countries realise that to improve their prospects they must speak English.

The underpayment of international students by 7-Eleven franchisees is not related to the visa holder's English skills. International students must pass an English test to qualify for their student visa.

The international students underpaid by 7-Eleven franchisees are predominantly from the Indian subcontinent, which is made up of relatively poor countries with weak labour laws.

The international students were exploited by their fellow countrymen, who were given a 'sheen' of respectability through the ownership of a 7-Eleven franchise.

Unfortunately the exploitation of migrants by their ethnic brethren is as old as migration itself.

It is well documented that following Poland's accession to the European Union on 1 May 2004, Polish nationals have helped fill trade skill shortages in the United Kingdom, without first having to pass an English language test.

Unless English is required for mandatory occupational registration or licensing e.g. Medical Professionals we submit that the Australian Government should consider following the example of the European Union and remove the language requirement entirely from its 457 visa programme.

Alternatively the English language test level for non-EU, non-ETA eligible passport holders should be reduced to Functional English for all 457 visa occupations.

If DIBP has concerns about particular 457 visa occupations such as Cooks then a Vocational English level could be retained for occupations of concern.

What is clear is that the current out-of-date and restrictive 457 visa English language regime is hindering the productivity of Australian businesses.

We note that Dr David Ingram's submission to the Productivity Commission includes an Executive Summary of his '*Report on the Needs Analysis of the Beekeeping Industry'*, an industry which currently experiencing severe skill shortages.

At page 19, paragraph V of his submission Dr Ingram explains:

"The English language needs of the foreign workers were discussed. It was evident that their English language needs for work purposes are very low, certainly lower than the present requirements".

Submission 4: The Employer Nomination Scheme permanent visa English language requirements should be reduced and waived if 'exceptional circumstances' exist

To align with our 457 visa English-language submissions, EU and ETA-eligible passport holders should also be exempt from having to provide evidence of English at the ENS visa stage.

We also submit that Functional English is an acceptable level of English for non-exempt ENS visa applicants.

By the time that an ENS visa applicant applies for his or her ENS visa they would have been working for their Australian employer for at least 24-months i.e. they have proved that they have the ability to work within the Australian workforce.

Prior to its removal on 1 July 2012 by the Labor Government, an ENS visa applicant who could show that 'exceptional circumstances' existed could either provide evidence of the lower Functional English or pay a second application charge for post-migration English language tuition.

Exceptional circumstances included severe skill shortages or working in an occupation that requires unique or specialised skills such as those required of an Italian Cheesemaker.

We submit that these 'exceptional circumstances' provisions should be reintroduced to the ENS visa programme allowing the payment of a second application charge for post-migration English language.

We also submit that the ENS Direct Entry Stream should also have a Functional English requirement, reduced from the current 'Competent' English level.

As an ENS visa is an unconditional visa the applicant is free to leave an exploitative employer once his or her visa is granted i.e. there is little justification in having the higher Competent level of English.

Any concerns that DIBP has about the bona fides of the nominated occupation, either at the 457 Nomination or ENS Nomination stage can be dealt with by requesting evidence that the position is genuine.

Under the current regime a marginally competent Cook will qualify for a visa if they pass the English test however a highly competent and talented Cook who cannot pass the English test will be unable to qualify and Australia will miss out on those skills.

Clearly a migrant's skills are more important to Australia than his or her English skills.

Information Request 11.1 – The Commission seeks feedback on the use of the Consolidated Sponsored Occupations List in the immigration pathway from temporary to permanent employer-sponsored skilled immigration.

Submission 1: Regional 457 visa sponsors should be allowed to sponsor occupations not included on the CSOL.

We refer the Commission to our submission above explaining that there are severe shortages of occupations that are not included in the CSOL such as the occupation of 'Cheesemaker'.

Consideration should be given to either expand the current CSOL or allowing regional 457 visa sponsors, such as Farmers to sponsor off-list occupations at the trade level and above for 457 visas.

Submission 2: The Current 457 visa Trades Recognition Australia skills assessment regime should be curtailed

457 visa applicants from 12 specified countries must undergo a mandatory 457 visa Trades Recognition Australia (TRA) skills assessment if applying for one of the 25 listed trade occupations.

The countries are Brazil, China, Fiji, Hong Kong SAR, India, Macau SAR, Papua New Guinea, Philippines, South Africa, Thailand, Vietnam and Zimbabwe.

The trade occupations include Automotive Electrician, Baker, Cabinetmaker, Carpenter, Carpenter and Joiner, Chef, Cook, Diesel Motor Mechanic, Electrician (General), Electrician (Special Class), Fitter (General), Fitter and Turner, Fitter-Welder, Joiner, Metal Fabricator, Metal Machinist (First Class), Metal

Fitters and Machinists (not elsewhere classified), Motor Mechanic (General), Panelbeater, Pastrycook, Pressure Welder, Sheetmetal Trades Worker, Toolmaker, Vehicle Painter, Welder (First Class).

TRA explains the reasoning for a mandatory skills assessment as follows:

"457 skills assessments determine if applicants have the skills and experience necessary to work in Australia at the trade level for their occupation so they can contribute immediately to the Australian workforce."
See: http://www.tradesrecognitionaustralia.gov.au/programs/457/pages/default.aspx

We submit that the TRA 457 visa skills assessment regime should be scaled back.

We provide the following example:

An Indian national has been working as a fulltime Cook at the international 5-star Grand Hyatt Hotel in Mumbai for 2 years. Prior to joining the Grand Hyatt the applicant had completed a vocational course at a local college which included industry training at the Grand Hyatt.

One would expect that a Cook working at an international 5-star hotel in Mumbai will have the skills and experience necessary to work in Australia as a Cook.

We submit that Chefs, Cooks, Bakers and Pastrycooks who have worked for international hotels for say 12-months and/or who have a recognised relevant qualification as described by ANZSCO should not be required to undergo the time-consuming and expensive TRA 457 visa skills assessment.

Similar exemptions should apply to the other trade occupations currently on the mandatory TRA 457 visa skills assessment list.

Submission 3: Direct Entry Stream ENS visa applications - 1. State & Territory Government trade assessing authorities should be authorised to assess ENS visa trade skills and 2. Skills assessments should not be required if the ENS visa applicant holds a mandatory registration, licence or mandatory membership of professional body.

1. <u>State & Territory Government trade assessing authorities</u>

Prior to 1 July 2012 there was scope within the ENS visa regulations and DIBP policy for State and Territory-based Government trade assessing authorities to assess an ENS visa applicant's trade skills if they were being nominated by an employer within that State or Territory. See Gazette Notice F2005L00806 dated 17 March 2005:

*"For occupations which have TRA * (TRA * des* [sic] *Recognition Australia) listed as the Assessing Authority in column 2 of this table, the relevant Assessing Authority is TRA* ***or the Department of Industrial Relations, or a body nominated by that department for the purpose of trade skills assessment, in the State or Territory where the visa applicant has been nominated to work****."* [Emphasis added]

See: https://www.comlaw.gov.au/Details/F2005L00806/Download

In response to a query by the writer, in April 2005 Mr Peter Jobe, DIBP Director Business Development, Canberra confirmed acceptance of the NSW Government's trade assessment for ENS visa applications.

Following Mr Jobe's confirmation, DIBP accepted trade skills assessments from the NSW Department of Education and Training's Vocational Training Tribunal (VTT).

Many dozens of our firm's ENS visa trade applicants underwent NSW VTT trade skills assessments, which were mostly conducted at a TAFE and included a comprehensive full day practical and theory assessment.

The other authorised ENS visa trade assessing authority was the Australian Government's Trades Recognition Australia (TRA) assessing authority, which is based in Canberra.

At the time the VTT's trade skills assessments were far superior to TRA's skills assessments which were assessed purely on the papers, i.e. unlike the comprehensive VTT trades test, there was no practical TRA test and no theory TRA test.

The deficiencies in TRA's trade assessment process became abundantly clear when the writer consulted with ENS visa applicants who, having failed the NSW VTT practical and theory trade tests obtained a positive TRA skills assessment on the papers.

Inexplicably and without notice, on 1 July 2012 the option of being assessed by a State and Territory-based Government assessing authority was removed from the ENS visa regulations.

The VTT Manager at the time, Mr Andrew Mavrakakis expressed his displeasure to the writer that the VTT was no longer able to provide trade skills assessments for migration purposes.

From 1 July 2012 the Australian Government assessing agencies, TRA and Vocational Education and Training Assessment Services (Vetassess) became the only assessing authorities for ENS visa trade occupation applicants.

The removal of the State and Territory-based assessing authorities from the ENS visa programme was probably motivated by the then Labor Government wishing to monopolise the trade assessment process and its resulting revenue stream.

We submit that the option of being assessed by a State and Territory-based assessing authority should be reintroduced for ENS visa trade applicants.

NSW Government trade assessments are currently conducted by the NSW Department of Industry State Training Services - Vocational Training Review Panel (VTRP) as authorised by the Apprenticeship and Traineeship Act 2001.

See:
https://www.training.nsw.gov.au/skills_trade_recognition/trade_recognition/#What_is_trade_recognition?

http://www.training.nsw.gov.au/businesses/apprenticeships_traineeships/rules_regulations/

The devolution of trade assessments to the State and Territory Government assessing authorities is a positive, not a negative initiative.

Consideration should also be given to authorise State and Territory trade assessing authorities to conduct trade assessments for points-tested visa e.g. for subclasses 189 and 190 visa applicants who are currently residing in the State or Territory, say on a Working Holiday visa.

2. Skills assessments should not be required if the ENS visa applicant holds a mandatory registration, licence or mandatory membership of a professional body

Prior to 1 July 2012 ENS visa applicants were not required to provide a skills assessment in their nominated occupation if the applicant held a mandatory registration, licence or mandatory membership of a professional body e.g. a Panelbeater who had a NSW trade certificate issued by the NSW Government was not required to provide a TRA skills assessment as he/she was already eligible to work in his/her nominated trade in NSW.

The wording in Gazette Notice F2005L00806 dated 17 March 2005 is as follows:

For occupations which have a mandatory requirement for a person to hold a licence or registration of a particular kind, or to be a member (or a member of a particular kind) of a particular professional body, in order for that person to work in Australia in that occupation, the relevant Assessing Authority is the body specified in column 2 of this table ***or*** *the body which administers the licence, registration or membership for that occupation.*

These sensible provisions were removed by the Labor Government on 1 July 2012. They should now be reinstated.

Consideration should also be given to applying these provisions to the points-tested visas as such applicants are clearly 'job ready'.

Submission 4 – Skilled Chefs & Cooks should be allowed to be sponsored by Fast Food or Take Away establishments

Until 1 July 2013 skilled Chefs and Cooks working for fast food or take away establishments could be sponsored by their employers for 457 visas.

For example Cooks preparing Indian cuisine or Thai cuisine, which requires a high degree of cooking skill were granted 457 visas even if they were working fast food or take away establishments (including food courts).

Therefore prior to 1 Jul 2013 the focus was on the skill level required to prepare the cuisine not on the business.

From 1 July 2013 fast food and take away establishments (including food courts) can no longer sponsor Chefs and Cooks for 457 visas, even if the cuisine needs to be prepared by a Chef or Cook.

We submit that the ability for fast food and take away establishments to sponsor Chefs and Cooks for 457 visas should be reintroduced.

Australians enjoy eating Indian and Thai food etc at food courts.

However it is very difficult for these types of Asian food businesses to find Australian Cooks to work for them.

These businesses will continue to struggle unless they are permitted to sponsor 457 visa workers.

Information request 9.1 - How widespread and valid are the concerns raised by ISLPR Language Services regarding the current acceptable English tests for immigrants to Australia?
What are the likely benefits and costs of introducing ISLPR® or other validated English-language tests as an accepted test for assessing the English-language proficiency of those seeking a temporary visa?

Submission 1: The ISLPR English Test should be available to primary applicants for both temporary and permanent visas

Under regulation 5.17(f) of the Migration Regulations 1994 an ISLPR Functional English test result is prescribed evidence of an applicant's Functional English language proficiency.

See:

"Reg 5.17 Prescribed evidence of English language proficiency (Act, s5(2)(b))

5.17 For the purposes of paragraph 5(2)(b) of the Act (dealing with whether a person has functional English), the evidence referred to in each of the following paragraphs is prescribed evidence of the English language proficiency of a person:

……

(f) evidence that the person has been assessed as having functional English by the provider of a course that is an approved English course for the purposes of section 4 of the *Immigration (Education) Act 1971;*"

Section 4 of the Immigration (Education) Act 1971 states:

"English courses

The Minister may provide, or arrange the provision of, English courses to:

(a) eligible persons, while they are eligible; or

(b) persons who are outside Australia and have applied for a permanent visa"

Section 3 'Interpretation' of the Immigration (Education) Act 1971 states:

"functional English" : a person has ***functional English*** if the provider of an approved English course determines, in accordance with any procedures or standards specified by the Minister under subsection (2), that the person has functional English."
…..

"Functional English

(2) The Minister may, by legislative instrument, specify procedures or standards for the purposes of the definition of ***functional English*** in subsection (1)…."

In Legislative Instrument IMMI 10/057 dated 8 December 2011 the Minister specifies:

"I, *CHRIS BOWEN*, Minister for Immigration and Citizenship, acting under subsection 3(2) of the *Immigration (Education) Act 1971* ('the Act'), SPECIFY, for the purposes of the definition of Functional English in subsection 3(1) of the Act that Functional English is basic social proficiency in English assessed at International Standard [sic] Language Proficiency Rating 2 across all four macro skills (reading, writing, listening and speaking)."

Note: In the Legislative Instrument the Minister incorrectly refers to the ISLPR test as the International Second Language Proficiency Ratings test and not the correct 'International Standard Language Proficiency Ratings' test.

As a result of the above somewhat meandering legislation DIBP itself was previously unaware that an ISLPR test result was prescribed evidence of Functional English under Reg 5.17 and therefore could be used by a primary visa applicant.

In early 2009 the writer contacted the NSW Government Adult Migrant English Service ('AMES') to check the availability of the ISLPR test for our ENS visa primary applicants who were seeking an 'exceptional circumstances' waiver of the Vocational English language test but wished to sit the lower Functional English test (which generally resulted in DIBP not requesting the second visa application charge in lieu of evidence of Functional English).

On 15 June 2009 Ms Loy Chee Tan, Business Development Manager, NSW AMES confirmed by email that her office had received written confirmation from DIBP that the ISLPR Functional English test conducted by NSW AMES was acceptable to DIBP.

The following is included on the current NSW AMES website:

"***Trusted test results***

The NSW AMES assessment unit is highly specialised in the field of English language testing. It conducts over 2,300 tests annually and employs a team of highly trained assessors.

Assessments are available for individuals and corporations."

See: http://ames.edu.au/language-testing

Submission 2: The IELTS English test is unreliable and was not created to test migrant language skills

We have read Dr David E Ingram's submission to the Productivity Commission and agree that the IELTS test is being inappropriately used to assess migrant English language skills.

As Dr Ingram explains, the IELTS test was not created as a vocational i.e. employment English language test but as a test for entry to academic and training programmes.

Over the years we have had many clients who have sat the IELTS test multiple times and each time scoring a different result, such is the unreliability of the test.

Several years ago an Indian woman, who spoke very good English came to our office with a considerable number of IELTS test reports.

She was trying to achieve an IELTS 'Competent' test score of 6.0 in each of the 4 components. Although she was close to the mark her goal always seemed to be just out of reach.

We counted 47 (forty-seven) 'failed' IELTS test reports to which she added that she had thrown away an additional five IELTS test reports i.e. she had sat the IELTS test a total of 52 times.

This, she admitted had taken a considerable toll on her health and on her marriage.

Our other client sat the IELTS test 25 points and failed to score Competent English in anyone of the tests. We have kept scanned copies of the client's 25 IELTS test reports.

We note that at page 9, paragraph 3 of Dr Ingram's submission he also makes reference to encountering '*…many candidates who have taken IELTS anywhere from ten to fifty times.*'

A number of our clients who, following a request for a remark of an IELTS test result have a band score increased by 1.0 e.g. 4.50 becomes 5.50, another indicator that the test is unreliable.

Many clients also report that each time they sit the IELTS test they receive a different result in one or more of the four components of the test e.g. during one test they would score say 6.0 in Writing and 5.5 in Reading and the next time they would score 6.0 in Reading and 5.5 in Writing and the 'vicious' cycle would repeat itself, sometimes endlessly.

Clients who were subjected to this vicious cycle of 'failed' IELTS test results made such comments as '*the test is designed to take our money and force us to re-sit the test again*'.

Our clients' experiences with sitting the IELTS test are therefore similar to Dr Ingram's Appendix One Case Studies.

For example, to enable our Chef client to meet the subclass 189 Skilled Independent visa pass mark he had to score 7.0 in each of the four components of the IELTS test to be awarded 10 points for Proficient English.

From our interactions with the client it was clear that he spoke English fluently.

The client sat the IELTS test 3 times and each time missed out on achieving the required Proficient English score as his test results kept changing.

The client then sat the Pearson PTE Academic English test in May 2015 and achieved a 'Superior' English score, equivalent to at least IELTS 8.0 in each of the four components for which he was awarded 20 points, resulting in a successful subclass 189 visa application.

The client is now working in his nominated occupation of Chef at a 5-star hotel in Sydney i.e. he is a productive member of the Australian community and helping to alleviate the recognised shortages of Chefs in Australia (the occupation of Chef has been listed on the Australian Government Department of Employment national and NSW skill shortage list for many years).

This would not have been possible if the Pearson PTE Academic English test had not been introduced as an alternative English test in November 2014.

The writer had previously attempted to find out from DIBP how they had evaluated IELTS to be a suitable English language test for migrants.

It appears that DIBP had never sought expert independent advice about the suitability of the IELTS test.

DIBP seemed to be simply making things up as they went along.

Submission 3: The English-language level for trade occupations for points-tested visas should be reduced to Vocational English

In Dr Ingram's submission, Appendix One: Case Studies page 16, paragraph 4 he gives the example of a Chef who was unable to achieve a Competent English IELTS score.

Dr Ingram assessed the applicant's English language levels and concluded that his English skills were sufficient to perform his job.

It is clear that Chefs and Cooks do not need to have Competent English to cook food and give and receive instructions at the work place.

Also it is somewhat illogical that DIBP requires a Chef or Cook applying for a 457 visa to have a lower level of English than if applying for a points-tested visa, where they must have at least Competent English.

Submission 4: The use of the IELTS English test for skilled migrants should be phased out

Dr Ingram clearly states in his submission that the IELTS test was never designed to test migrant English language skills and is therefore being inappropriately used within Australia's skilled migration programme.

We therefore submit that the use of the IELTS test for Vocational English and above should be phased out over a period of 6 -12 months.

Whilst the IELTS test is being phased out applicants should be allowed to combine two successive IELTS test results, which is currently permitted with the ISLPR Functional test, but not IELTS.

We suggest that IELTS should still be acceptable evidence of Functional English.

Submission 5: We request that the Productivity Commission refers the misuse of the IELTS test to the Australian Competition & Consumer Commission for investigation

According to the IDP Education website the owners of the International English Language Testing System are IDP: IELTS Australia, the British Council and Cambridge English Language Assessment

The IDP Education website also claims:

'*The IELTS test is designed to assess the language ability of people who want to study or* ***work*** *where English is the language of communication*'. [Emphasis]

www.idp.com/global/aboutus/ielts

We request that the Productivity Commission refers the misuse of the IELTS test to the Australian Competition & Consumer Commission for investigation for the following reasons:

1. Dr Ingram, an internationally-recognised English language testing expert and one of the developers of the IELTS test has repeatedly stated that the IELTS is being inappropriately used to test migrant employment English language skill levels;
2. As Dr Ingram explains that because of this misuse many migrant test takers are set up for failure;
3. There is a vicious cycle of repeated IELTS test failures with no consistency between the failed component score results;
4. There is a perception amongst IELTS test takers that they are being repeatedly failed in order to force them to pay another fee to sit the test again;
5. The continued inappropriate use of the IELTS test affects Australia's productivity as skilled migrants with acceptable employment level language skills are failing the IELTS test and those migrants who receive IELTS test coaching and pass the test do not have employment-level English skills (as reported in Dr Ingram's report).

Submission 6: Expert Panel to assess English Language levels

There is much brouhaha made by DIBP about the importance of English language for positive settlement outcomes.

It is unclear where this evidence comes from.

For example one would assume that a talented Cook from Italy with limited English language skills would go further in Australia than an average Italian Cook with excellent English. Self-promotion will only get one so far.

The same could be said of South Korean Wall & Floor Tilers who are much in demand because of their specialised tile laying skills and not for their eloquent English skills.

The DIBP requirement for native English speakers to sit an English test before they can be awarded 20 points for 'Superior English' is bizarre to say the least.

Equally bizarre is exempting 457 visa workers from the English test if they are paid at least $96,400pa.

What is the correlation between English levels, high salaries, working safely and a reduced risk of exploitation by the sponsor?

We therefore submit that an Expert Panel should be convened to consider at least the following:

1. The English language levels required to perform the various occupations listed on the SOL/CSOL e.g. Currently Cooks need the same level of English as Corporate General Managers to qualify for a points-tested visa (Dr Ingram refers to this in his submission as a '*needs analysis*');
2. Whether the current classification of English test results into 'Functional', 'Vocational', 'Competent', 'Proficient' and 'Superior' needs to be changed i.e. a Beekeeper who speaks limited English can still perform his/her job competently in Australia according to Dr Ingram;
3. What are benefits and disadvantages of having the English language requirement as a component of Australia's skilled migration programme e.g. previously a skilled ENS visa migrant could pay a second visa application charge for post-arrival English tuition in lieu of providing evidence of Functional English if 'exceptional circumstances' existed – should this become a standard option for all skilled migrants without the needs to show 'exceptional circumstances'?
4. Are migrants with limited English skills e.g. Beekeepers working within Australia's beekeeping industry more at risk of exploitation than a Cook with good English skills say, from the Indian subcontinent working for a restaurant owner of his/her same ethnic background? Is the risk of exploitation ethnic specific?
5. Review all current and any alternative relevant English language test providers for suitability within Australia's migration programme.

To avoid any accusations of bias none of the experts should be from any of the current or previous owners of IELTS or their associated entities

Information request 13.1 - The Commission seeks participants' views on the potential impacts of the following alternative visa charging models in conjunction with retaining the qualitative criteria under the current system:

- **Option 2: A fiscally-reflective charge by visa subclass**

Submission 1: The current 457 visa fees are excessive

The former Labor Government's 457 visa programme fee increases of 1 July and 1 September 2013 were clearly excessive.

For example our 457 visa client is the CEO of a large multinational company's Sydney office.

On 23 July 2013 (i.e. before the second round of DIBP fee increases on 01.09.13) his family of five applied for their second 457 visa.

The family's DIBP 457 visa fees totalled $6,650: $900 adult visa fees x 3, $225 child visa fees x 2, $700 Subsequent Temporary Application Charge (STAC) fees x 5.

This is a 1361.54% increase of the DIBP 457 visa fee of $455 that they paid before the 1 July 2013 fee increases.

The DIBP 457 visas fees for the Austrian Software Engineer referred to above were $1,035 for himself and $1,035 for his de facto partner i.e. $2,070 for a 457 visa of only 7 months duration.

The basis for these excessive fee increases cannot be cost recovery as the 457 visa Standard Business Sponsorship (SBS) application fee, payable by the Australian employer remains at the pre-1 July 2013 level of $420, and has been unchanged for several years.

The time taken by DIBP Case Officers to assess a Standard Business Sponsorship (SBS) application would clearly exceed that of the time needed to process a 457 visa application as a SBS application is a much more complex applicant than a 457 visa application.

However DIBP only recovers $420 from the Australian sponsor for the SBS application.

For several years DIBP has been concerned about the exploitation of 457 visa workers by their sponsoring employers.

In response to these concerns Regulation 2.87 now prohibits an approved sponsor from seeking to recover from a 457 visa worker the costs associated with a sponsorship or nomination approval.

The DIBP report "*Sponsorship Obligation Amendments: Strengthening the Effectiveness of the Worker Protection Reforms (OBPR id: 2012/14171) Regulation Impact Statement*" dated January 2013 at page 17 includes:

"*Discussion*

The Regulations at 2.86 and 2.87, designed to protect overseas workers (in accordance with the recommendations of the Deegan review), are known not to be fully effective. Cases of unintended behaviour have been identified since the introduction of the Worker Protection reform."

And at page 16 of the report, concern is expressed that sponsor may be able to avoid their obligations under Reg 2.87 as the word 'recover' by definition does not include costs paid 'upfront' for sponsorship or nomination applications:

"*The Department has received several recent queries (three emails over the past six months and questions at migration agent briefings) from migration agents seeking to clarify the issue. Typically the magnitude of the costs a sponsor may seek to recover is in the vicinity of* ***$10,000***." [Emphasis added]

Taking the example of our client family of five above, if they applied for their second 457 visas now the DIBP 457 visa application fees would total **$7,210**: $1,060 adult visa fees x 3, $265 child visa fees x 2, $700 STAC x 5.

Although our client was fortunate that his employer, a multinational company paid for his 457 visa costs it is conceivable that an equivalent family working for a modest business will have to pay the $7,210 themselves.

The $7,210 in DIBP fees that is payable by a family of five (including one adult child) applying for their second 457 visa onshore is getting to close to the $10,000 mentioned in the Deegan review.

Put another way, if given a choice the 457 visa applicant would prefer to pay the DIBP Standard Business Sponsor fee of $420 and the Nomination fee of $330 i.e. a total $750 if DIBP required the Australian sponsor to pay the 457 visa DIBP fees.

The current DIBP 'worker protection' system appears to be back to front.

Are 457 visa applicants, who are non-voters being 'fleeced'?

If DIBP is genuinely concerned about temporary worker protection it should require the Australian sponsor to pay the DIBP 457 visa fees as well as the SBS and Nomination application fees.

The current level of 457 visa fees is at best an embarrassment and at worst a form of exploitation.

The Australian Government fully appreciates the backlash it would face from Australian business owners if they were required to pay the 457 visa fees.

The excessive 457 visa fees should be substantially reduced to a more rational level.

After all the primary 457 visa applicant, if not the dependent 457 visa holders will be paying taxes in Australia and contributing to the Australian economy.

Information request 5.2 - The Commission is interested in information on policies that are likely to be more effective in attracting highly skilled immigrants to live and work in Australia.

Submission 1: The current separation of points-tested skilled migration into 'independent' SOL migrants and 'sponsored' CSOL migrants should be abolished

The current separation of points-tested skilled migration into 'independent' SOL occupation migrants and 'sponsored' CSOL migrants needs to be reviewed as it restricts Australia's ability to attract highly skilled migrants.

Prime Minister Malcolm Turnbull is an enthusiastic advocate of making Australia a more innovative country.

The U.S. Department of Commerce, Economics and Statistics Administration (ESA) Issues Brief #03-11 July 2011 '*STEM: Good Jobs Now and for the Future*' Executive Summary explains the importance 'STEM' occupations to innovation as follows:

"Science, technology, engineering and mathematics (STEM) workers drive our nation's innovation and competitiveness by generating new ideas, new companies and new industries. However, U.S. businesses frequently voice concerns over the supply and availability of STEM workers. Over the past 10 years, growth in STEM jobs was three times as fast as growth in non-STEM jobs. STEM workers are also less likely to experience joblessness than their non - STEM counterparts. Science, technology, engineering and mathematics workers play a key role in the sustained growth and stability of the U.S. economy, and are a critical component to helping the U.S. win the future."

See: http://www.esa.doc.gov/sites/default/files/stemfinalyjuly14_1.pdf

The ESA Issues Brief includes a STEM list of 50 occupations under four categories: *Computer and math occupations, Engineering and surveying occupations, Physical and life occupations and STEM managerial occupations.*

Many of the 50 listed 'innovative' occupations are languishing on DIBP's CSOL, including 'Mathematician' and 'Statistician' as there are currently no States or Territories sponsoring these innovative occupations.

DIBP's Skill Select report for the current programme year shows just 52 visas have been granted to 'Actuaries, Mathematicians, Statisticians' from an occupation ceiling of 1000 (we assume that most of the 52 visas were granted to Actuaries, which is a SOL occupation)

As the SOL – CSOL divide is inhibiting Australia's ability to attract intelligent, innovative migrants it should be removed.

Innovative occupations such as Mathematician, Statisticians and Life Scientists should also be awarded bonus points to help them qualify for skilled migration to Australia.

During the last 10 years the Australian Government has adopted many of the features of New Zealand's immigration programme including increased English languages levels, the expression of interest system, the work to residence scheme, restricting 'independent' skilled migration options and the investor visa categories.

Previously one of the strengths of the Australian skilled migration system over the New Zealand system was that if a skilled migrant, say a Pastrycook from France obtained a positive skills assessment in their trade then they could qualify for skilled migration to Australia, without the need to have a sponsor.

Following the introduction of the SOL – CSOL divide many CSOL applicants will not qualify for skilled migration unless they are fortunate enough to be from a country that is eligible for a Working Holiday visa or Work and Holiday visa, come to Australia and find an Australian employer willing to sponsor them.

This focus on a job offer has been directly lifted from the New Zealand immigration system.

However Australia is a much larger country than New Zealand has a more diverse population and economy.

Australia should not be following the New Zealand system in this regard

Unlike Australia, New Zealand does not have a skills assessment system for immigration purposes.

New Zealand only assesses a migrant's qualifications, not his/her skills.

The sole New Zealand qualification assessing authority is the New Zealand Qualifications Assessing Authority (NZQA): http://www.nzqa.govt.nz/qualifications-standards/international-qualifications/apply-for-a-pre-assessment-result/

Australia's assessing authorities assesses a migrant's suitability to work in Australia.

New Zealand does not have such a comprehensive and sophisticated *employability* assessing system in place.

Australia should make full use of its comprehensive employability assessment system, which New Zealand lacks.

Submission 2: The Distinguished Talent visa provisions are unrealistically high

The subclass 124 Distinguished Talent visa allows persons to migrate to Australia who have an internationally recognised record of exceptional and outstanding achievement in a profession, the arts, sport or academia or research.

Changes to the Distinguished Talent visa requirements have resulted in Australia missing out on exceptionally talented migrants, particularly sportspeople.

For example under the previous Distinguished Talent visa requirements a sports player who previously had an international sporting career but was now playing at the national level could qualify for the visa.

However the Distinguished Talent visa now requires applicants to be at the peak of their sporting careers and playing at the international level.

This is unrealistic as many sportspeople are representing their countries at the international level and are unable to migrate.

For example our client was a former member of his country's Cricket World Cup team and was playing at the national level and within the Indian subcontinent. He was a household name in his home country.

Cricket Australia wished to support his Distinguished Talent visa application on the basis that he had much to offer Australian cricket.

The client did not qualify for a Distinguished Talent visa as he was no longer at the peak of his playing career.

Why is the Australian Government making it so difficult for these exceptionally talented people to migrate to Australia?

At the same time that our highly talented client were struggling to qualify for migration to Australia the Australian Government was showering bonus points on the thousands of faux Cooks and Hairdressers being churned out by a horde of sham vocational collages with heightened Anglo-Saxon sounding names owned and operated by nationals from the bottom of Transparency International's list of most corrupt countries.

Why is Australia so hostile to exceptionally talented migrants? Is this a case of 'tall poppy syndrome'?

It is doubtful that even someone of David Bowie's stature could have qualified for the current Distinguished Talent visa as he had not had a top-10 hit for many years i.e. he was not at the peak of his international career.

Contrast this with the ease that the current crop of international students can apply for skilled migration as Accountants, many of whom have no intention to work as Accountants in Australia.

Submission 3: The skilled migration age limit of 49 years is too restrictive and should be increased to 55 years of age

Currently points-tested skilled migrants must be less than 50 years of age at time of visa lodgement.

This age limit is too restrictive and should be increased to less than 56 years of age at time of visa lodgement, which is the current New Zealand skilled migration age limit.

Prior to the 1 July 2012 changes, ENS visa applicants had to be less than 45 years of age at time of lodgement, unless 'exceptional circumstances' existed, for example severe skill shortages.

From 1 July 2012 ENS visa applicants must be under 49 years of age at time of application unless exempt.

The current ENS visa age exemptions are extremely restrictive and do not reflect the real world.

See: https://www.border.gov.au/Trav/Work/Work/Age-Skill-and-English-Language-Exemptions-Permanent-Employer-Sponsored-Programme

The current ENS visa age limit of 49 years of age at time of visa lodgement should be increased to less than 55 years at time of visa lodgement.

The ENS visa 'exceptional circumstances' provisions should also be reintroduced for ENS visa applicants who are aged 56 years and older.

Senior Managers at multinational corporations are entering their prime when they reach 50.

Skilled and talented Managers aged 50 years or older are currently unable to qualify for a points-tested visa.

The ENS visa age exemptions are cumbersome as they require the applicant to have been working for his/her ENS Nominator for at least 4 years whilst being paid a salary at least equivalent to the Fair Work Australia High Income Threshold, currently $136,700pa.

A senior Manager working at say a multinational's Sydney office would not be prepared to wait 4 years before applying for an ENS visa.

Skilled migrants aged 50 years of age and older are still highly productive and have a lot to offer Australia's younger workforce in the way of training and mentoring.

For example the owner of an Australian air-conditioning and refrigeration business, with five branches throughout Australia, visited our office with his 50-year old 457 visa employee, who was working for the business as an Airconditioning & Refrigeration Mechanic.

The business owner said he desperately needed the Mechanic as there was a shortage of his skills in Australia and the employee was training his younger Australian work colleagues.

It is currently impossible for these skilled and experienced tradespersons to qualify for Australian permanent residence.

The current age limitation, particularly the ENS visa age restriction is clearly unnecessarily hindering the productivity of Australian businesses.

Managing permanent immigration programs

The Significant Investor Visa and Premium Investor Visa streams should be removed

We agree with the Productivity Commission's Draft Recommendation 10.3 that the Significant Investor visa and Premium Investor visa streams should be abolished.

The Significant and Premium Investor visas are pure 'bling'.

There is little wonder that the Significant and Premium Investor visas are marketed to Mainland Chinese as 'golden visas', who receive the vast bulk of these visas.

We note that Transparency International ranks China 27th out 28 countries in its Bribe Payers Index (its neighbour, Russia is 28th)

We also note that several years ago the New Zealand Immigration Service stopped Investor Category visa applications by Mainland Chinese in their tracks by insisting that the Investor funds be remitted from China to New Zealand via the trading bank system (which seems a reasonable request), rather than the illicit means that were being used to circumvent China's foreign exchange laws.

Apart from the visa applicants themselves, the only Australians benefitting from these two visa streams are their fawning advisors.

General Comments

As a protective mechanism humans have a highly developed 'aggressive' evolutionary response to 'intruders'. People are either with the 'tribe' or not.

With this evolutionary reflex in mind discussions about immigration are often irrational and emotional.

For example when the Abbott Government announced in June 2014 that Chefs, Bricklayers and Wall and Floor Tilers would be added to the SOL and therefore could apply as independent points-tested migrants 'The Australian' newspaper ran an article entitled '*Coalition opens way for foreign chefs, brickies*' which included:

'THOUSANDS of foreign chefs, bricklayers and tilers will no longer have to be sponsored by employers to obtain permanent visas….."

'Unions attacked the changes as unjustified….

'Dave Noonan, the national secretary of the CFMEU's construction division, said the policy change "again demonstrates that the Abbott government does not have the interests of working Australia at heart'

http://www.theaustralian.com.au/national-affairs/industrial-relations/coalition-opens-way-for-foreign-chefs-brickies/story-fn59noo3-1226946439974

DIBP Skill Select data for the current programme year shows that out of a visa ceiling of 2475 for Chefs 89 visas have been granted, 41 Bricklayers and Stonemasons have been granted visas from a ceiling of 1,656 visas and just 4 Wall and Floor Tilers have been granted visas from a ceiling of 1,284.

A total of just 134 points-test skilled visas have been granted to these tradepersons so far this programme year.

How did the Australian Government and its critics get it so wrong by expecting thousands of subclass 189 visa applicants for these three trades when only 134 visas have been granted this year?

The same evolutionary reflex is probably at play when a sort of ‘glazed over’ exhortation is made about English language and migrants. The reality and nuances are lost (contra Dr Ingram’s admirable assessment of the Beekeepers).

Australia’s current immigration system is a bit like Commander Caractacus Pott’s Chitty Chitty Bang Bang car, coddled together and endlessly tinkered with.

Dick van Dyke who played the character in the film, said that "the car was a little difficult to maneuver, with the turning radius of a battleship".

Yours faithfully,

Mark Tarrant
Principal Lawyer