

What we are asking for

As a minimum, the Government must retain and not water down the key, core protections currently in place under the 457 visa program: These include:

- Labour market testing
- English language standards
- The obligation to pay market rates
- The minimum Temporary Skilled Migration Income Threshold (and commit to indexing it annually – for the first time since it was introduced in 2009, the Government failed to index the TMSIT from 1 July this year).
- An eligible occupation list confined to skilled positions, not lower skilled ones.

In addition, the Government should introduce a package of measures to improve the integrity and fairness of the program for Australian and overseas workers, including:

- Strengthening labour market testing, including:
 - More rigorous evidentiary requirements for job advertising and other recruitment efforts by employers to ensure the intent of the legislation is achieved and Australian employment opportunities are protected
 - Ensuring coverage of labour market testing is as broad as possible. As a matter of principle, labour market testing should apply to all occupations under the program
 - A commitment by the Australian Government to not enter into any free trade agreements that trade away the right of the Australian Government and Australian community to require that labour market testing occur
 - Making meaningful information on the operation of the labour market testing provisions publicly available, as a way of ensuring transparency and community confidence in the program
- Introducing stronger training obligations on 457 visa sponsors to train in the same occupations where they are currently using 457 visa workers and ensure information on the domestic training effort of sponsoring employers is collected and publicly available
- Improving the information made available to 457 visa workers on their rights and obligations, with a new sponsorship obligation to ensure this occurs
- Amending the Fair Entitlements Guarantee Act 2012 to ensure 457 visa workers have equal access to their entitlements in cases where employers become insolvent
- Priority access for 457 visa holders to independent, permanent migration channels as a way of removing the scope for exploitation that exists when temporary overseas workers are dependent on their sponsoring workers
- Guaranteeing an ongoing role for the Ministerial Advisory Council for Skilled Migration in providing effective oversight and scrutiny of the 457 visa program
- A public register of 457 visa sponsors and improved information-sharing arrangements between government agencies to boost compliance.

Draft terms of reference

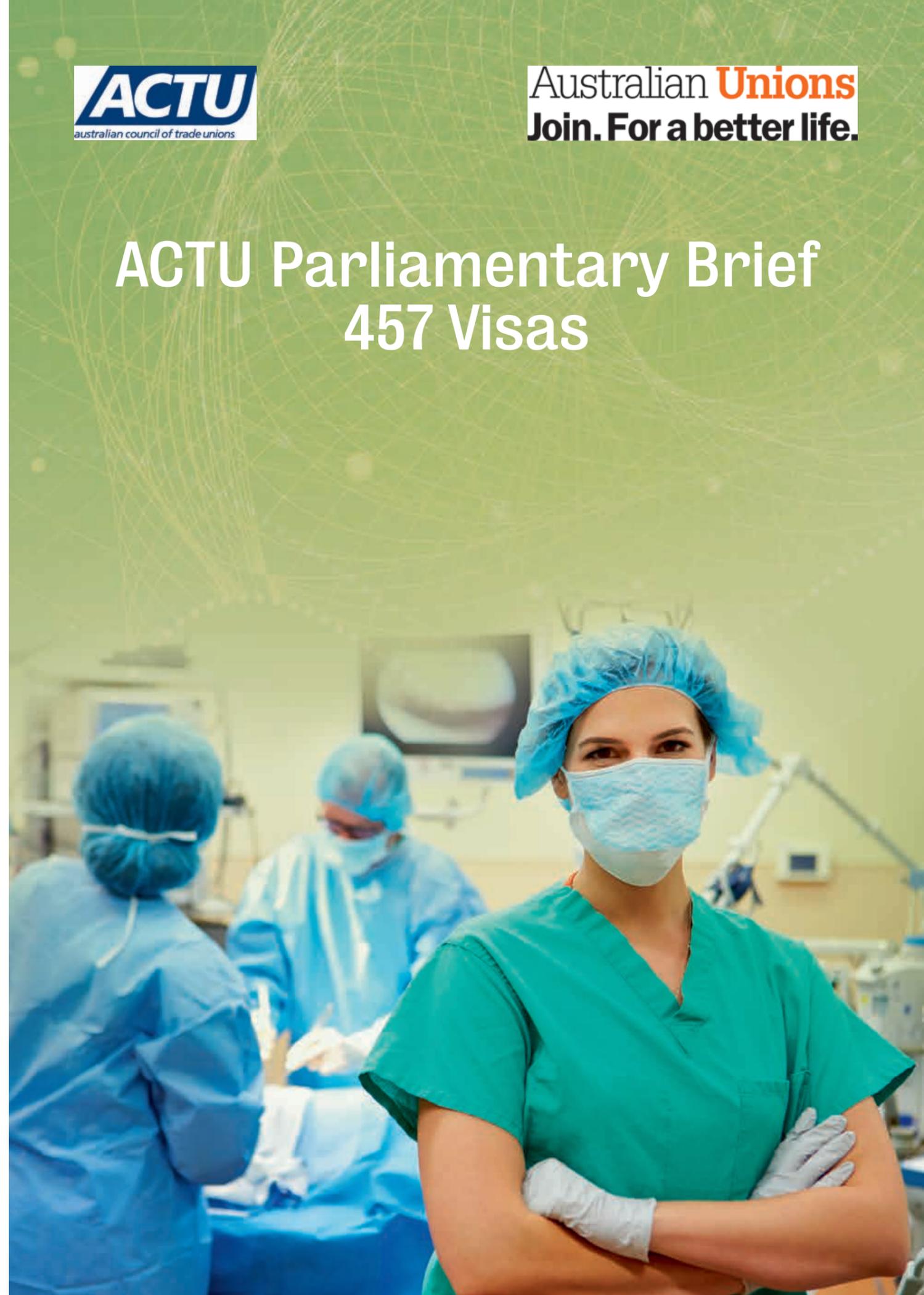
The Senate refers the following matters to the Legal and Constitutional Affairs References Committee for inquiry and report by xx xx xxxx:

- (i) the operation and effectiveness of the current labour market testing provisions in the Migration Act 1958 in protecting employment opportunities for Australian citizens and permanent residents
- (ii) The extent and adequacy of information that is being made publicly available about the operation of the labour market testing provisions
- (iii) The nature of current exemptions from labour market testing provisions and the impact these exemptions have on the reach and coverage of the laws
- (iv) Ways in which existing labour market testing provisions could be strengthened to improve their effectiveness in protecting employment opportunities for Australian citizens and permanent residents, particularly at a time of rising unemployment.
- (v) The adequacy of current obligations on 457 visa sponsoring employers to be providing training opportunities for Australian citizens and permanent residents, including apprenticeships and traineeships, and ways those obligations could be strengthened and improved
- (vi) The extent to which problems of exploitation and mistreatment of 457 visa holders are/continue to be a problem under the subclass 457 visa program
- (vii) The transparency and rigour of the 457 visa program, with reference to recent reported cases of 457 visa fraud and the impact this has on the integrity of the program
- (viii) The adequacy of information that is provided to 457 visa holders on their rights and obligations in their workplace and community and ways that could be improved
- (ix) Instances where 457 visa holders are denied access to the same benefits and entitlements available to Australian citizens and permanent residents and whether these differences are justified
- (x) The impact of the new guidelines for designated area migration agreements on the integrity of the 457 visa program and the protection of employment opportunities for Australians and permanent residents.
- (xi) The relationship between the temporary 457 visa and other temporary visa types with work rights attached to them
- (xii) The role that English language requirements play in ensuring the integrity of the 457 visa program
- (xiii) Any related matters



Australian **Unions**
Join. For a better life.

ACTU Parliamentary Brief 457 Visas

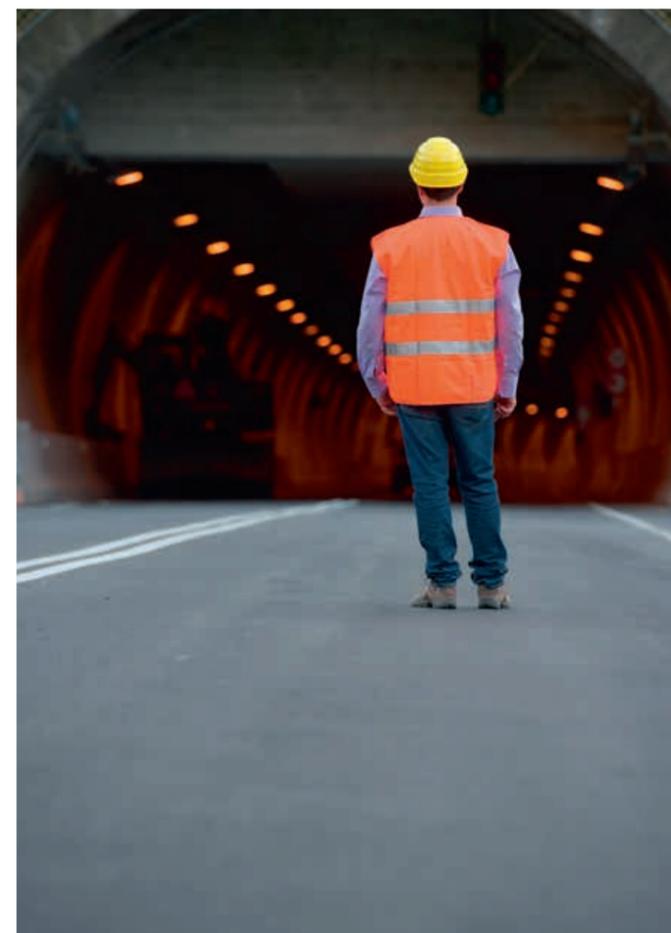


Key themes and arguments

- Unions strongly support skilled migration
- Our clear preference is for permanent migration where workers come to Australia independently.
- Unions recognise there may be a role for some level of temporary skilled migration to fill genuine shortages but it must be subject to rigorous safeguards and protections, both for Australian workers and for overseas workers.
- The issues at stake here are about support for Australian jobs, support for Australian training opportunities, and support for fair treatment and decent wages and conditions for all workers – regardless of who you are and where you come from
- The first obligation of any government in this area must be to support Australian jobs.
- Whether it is young Australians looking for their first job or older Australians looking to get back into the workforce or change careers, they deserve an assurance that they will have priority access to Australian jobs before employers can use temporary overseas workers.
- This is why the labour market testing requirements currently in place under the 457 visa program are so important to ensure that employers have a legal obligation to employ Australians first.
- This is more important than ever at a time when unemployment and youth unemployment are at their highest levels in a decade, and rising, there have been a series of major job losses across the country in the past 12 months, and the Department of Employment has found skill shortages are at a 'historic low'.
- The Government should reject the chorus of calls by self-serving employer groups to remove labour market testing, and the arguments on which they are based.
- The current labour market testing laws could hardly be described as onerous. There is no evidence from individual employers to suggest there is any great burden in having to show evidence of their recruitment efforts. If an employer was genuine about finding Australian workers first, it would be reasonable to assume those recruitment efforts were already happening as a matter of course.
- It's naïve to accept the argument that all employers will always look to employ Australians first, because of the cost of employing workers from overseas. The reality is that the costs are negligible, given that half of all 457 visas are granted to workers already in the country and often already working for the employer.
- The argument that the 457 visa program simply reflects the state of the labour market is just as weak. As the evidence in our submission shows, 457 visa numbers skyrocketed in recent years at the same time the labour market softened and jobs were being lost.



- If, as it says, the Government supports the principle that Australians - citizens and permanent residents – should have the first right to Australian jobs for which they are qualified, then there needs to be a mechanism to ensure this actually occurs. Labour market testing is that mechanism.
- Aside from labour market testing, we are concerned that a whole range of other essential protections are under threat from this review process. These include the obligation to pay market rates, which ensures employers are not undercutting Australian wages and conditions; and English language standards that are there to ensure a safe workplace and guard against exploitation of vulnerable overseas workers.
- If the Government is serious about improving the integrity of the program, we also believe there is considerable scope for improving the current regulatory framework. For example, in relation to labour market testing, the 2013 legislation made a good first step but it needs to be tightened up and its scope widened to cover more skilled occupations.
- At present, the majority of 457 visa occupations are not even covered by the labour market testing obligation, as a result of various exemptions in place. For those that are covered, under the Government's own guidelines released in November 2013, an employer wanting to use a 457 visa worker could potentially meet their obligation



- by placing a single job ad on facebook or a company website as far back as 12 months ago. It is not even mandatory under the legislation for there to be a job ad.
- The current training obligations on 457 visa employers also need a major overhaul. For example, at present, there is no obligation on sponsoring employers to be training Australian workers in the occupations where they are using 457 visa workers. There is not even any information available on what 457 visa sponsors are doing to train Australian workers.
- The Government should be focused laser-like on how it can best ensure the integrity of the 457 visa program, not on finding ways to deregulate it.
- Good, effective regulation, supported by rigorous enforcement, is essential to protect and support the welfare of both Australian workers and temporary overseas workers. This is particularly the case in light of the history of the 457 visa program and the many cases of roting and exploitation of vulnerable workers that continue to occur, as evidenced in our submission.
- For a government that has made a number of public statements pledging support for the principle of Australian workers having priority, now is the time to deliver on that pledge. Otherwise, those statements are meaningless platitudes.

Some key 457 visa program figures

- As at 30 June 2014, there were 108 870 primary 457 visa holders in Australia. This is 0.8% higher than the same period 12 months ago despite the downturn in the labour market over that period.
- There were 51,940 visas granted in 2013-14. This is 24.2% lower than the previous program year, which was 68,480.
- Over half (26 430) of these visas were granted onshore to workers already in Australia on some other visa type.
- Cooks were the largest occupation for 457 visas granted in 2013-14.
- On the limited information available, indications are that labour market testing is having a positive impact here it applies. For example, the rejection of 457 visa applications in job categories subject to labour market testing increased from 9.8% to 19.1%. By contrast, in occupations not subject to labour market testing, the rejection rate of 457 visa applications has remained the same.
- In the two years prior to labour market testing being introduced and there was no obligation on employers to look locally first, this is what happened:
 - In 2011-12, the number of 457 primary visa applications increased by 33.4 per cent from the previous year. The total number of 457 visa holders in Australia jumped 26.4 per cent from 72,050 to 91,050.
 - At the same time, total job advertisements (as measured by the ANZ job ads series) plummeted 9 per cent over the year, and ABS data show the number of people out of work increased by almost 40,000 as unemployment went from 4.9 per cent up to 5.2 per cent.
 - In 2012-13, visa applications increased by 13.5 per cent and the number of 457 visa holders increased 18.6 per cent from 91,050 to 107,970.
 - Meanwhile, jobs ads fell a further whopping 19 per cent over the year and as at June 2013 were close to 30 per cent below their most recent peak at the end of 2010. Unemployment increased again reaching 5.7 per cent by June 2013 with a further 77,000 people out of work compared to the same period 12 months before.
- Up to 350,000 Australians are searching for jobs or more work in the very occupational groups where employers use the most 457 visa workers. Eg
 - As at 30 June 2014, there were 33 940 technicians and trade workers in Australia on 457 visas. Yet, latest figures show there are currently 67,000 trades and technician workers unemployed and 77,400 unemployed
 - There are currently 47, 380 professionals working in Australia on 457 visas. At the same time, there are 83,7000 professionals unemployed and 120,800 professionals unemployed
- A 2013 survey by the Migration Council of Australia found that 15% of sponsoring employers did not find it difficult to find or employ Australian workers, yet they still employed workers under the 457 visa program.