



MIA Submission on Issues Paper No 2: English Language Requirement and Occupational Health and Safety (OH&S)

The Migration Institute of Australia (MIA) is the professional association of Registered Migration Agents in Australia. It represents close to 2000 registered migration agents who provide professional services to families, businesses and industries throughout Australia.

Many MIA members are heavily involved in the subclass 457 visa process and have a clear awareness of the potential, problems and shortcomings of the 457 visa program.

The MIA acknowledges the usefulness of the Subclass 457 visa program in addressing the continuing need for the entry of skilled temporary workers to supplement Australia's skills base. It also recognises that work needs to be done to ensure that the program is to the advantage of all concerned: sponsoring employers, sponsored employees and the wider Australian community.

The issue of English language requirements is a particularly complex one, and the MIA believes that this matter deserves more than a "quick fix". The levels of English required for particular occupations in particular workplace situations vary considerably. A "one size fits all" approach is an inadequate response to a multifaceted issue, and the key to finding a solution may lie in examining the development of procedures in addition to, or instead of, a simple English language requirement.

1. In what circumstances can the English language requirement contribute to the integrity of the Subclass 457 visa process?

An English language requirement may contribute to the integrity of the Subclass 457 visa program by giving stakeholders confidence that sponsored workers are not exploited by unscrupulous employers, and that their health and safety is not compromised.

However, an English language requirement is not a necessary and sufficient condition for the Subclass 457 visa program to have integrity. Its presence does not ensure that the program has integrity and its absence does not guarantee the loss of integrity.

Other factors and requirements which can contribute to the integrity of the program include minimum salary levels and employer education and employer obligations set by both DIAC and by governmental departments concerned with industrial and workplace matters.

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2. If the English language requirement does contribute to the integrity of the system, is it necessary or desirable for Subclass 457 visa holders at all skill or salary levels?

There are a huge number of differing occupations and workplace contexts for holders of Subclass 457 visas. To have standard requirements which are applicable to all occupations and workplaces is to make 457 visa sponsorships impossible or impractical for many sponsoring employers.

The MIA knows that for many employers, the essential requirement for their sponsored employees is their skill level, and the level of English is less important. Where a lower or negligible level of English is all that is required by an employer, mechanisms need to be developed to ensure that the welfare of the sponsored worker is not compromised. [see Item 10 below]

It is a widely-held and probably valid belief that many native born Australian English speaking tradespeople might not satisfy the IELTS requirements that 457 applicants are currently required to meet.

3. What impact do the current English language requirement exemptions have on the integrity of the Subclass 457 visa process?

The current English language requirement exemptions may have a negative impact on the integrity of the Subclass 457 visa program in that there are inconsistent aspects to them and they do not necessarily consistently address the issues of occupational health and safety and employee welfare.

It is the MIA's view that:

- (i) blanket exemptions for certain ASCO Groups of Occupations and not others, raises questions about the rationale for these exemptions. For example, why is a Chef exempt, and a Cook not? Might not a Chef be more likely to need a higher level of English skills for discussions with clients than a Cook, who would have little or no contact with a restaurant's clientele? What implications does this have for occupational health and safety?
- (ii) an English language exemption based on a high salary does not necessarily address occupational health and safety issues.

The MIA believes that a clear rationale for exemptions would improve the integrity of the system by promoting greater public confidence in it.

4. Should existing Subclass 457 visa holders who were not subject to the English language requirement by way of having applied for the visa prior to 1 July 2007 be required to meet the English language requirement if they apply for visa renewal?

Retrospective imposition of requirements is always fraught. In this case, employers and visa holders have entered into arrangements based on reasonable expectations and could be expected to have made suitable arrangements to cope with the situation in the workplace.

For this reason, the MIA generally believes that existing Subclass 457 visa holders who were not subject to the English language requirement by way of having applied for the visa prior to 1 July 2007 should not be required to meet the English language requirement if they apply for visa renewal or a permanent visa, provided that the sponsoring employer can give verifiable assurances to DIAC that the applicant is able to perform their work duties, to understand and comply with Occupational Health and Safety requirements, and to understand their rights and responsibilities in the workplace. [Methods of ensuring this provision can be met and monitored are suggested below in Item 10.]

Many current sponsoring employers would not have been able to maintain the viability of their businesses without their current sponsored employees, many of whom have limited English and would not satisfy the current English requirements. In many, and probably most, cases, these sponsored employees are working well and safely, and are not subject to exploitation.

While it is obviously desirable for people living and working in Australia to have an ability to communicate effectively in English, it is not absolutely necessary.

5. Should variations in IELTS test band skill levels, between say writing and reading levels, be made more flexible?

There should be greater flexibility in allowing variations in IELTS band levels, according to the type of occupation, and the workplace context. Many occupations require little or no reading or writing ability. In some cases, the actual work duties require few, if any, English skills.

A framework could be developed for variations in [or exemptions to] IELTS test band levels across a range of occupations and industries and workplace contexts. [see Item 10 below]

An inflexible approach would prevent many Australian employers from overcoming skills shortages.

6. If the English language requirement does contribute to the integrity of the system should it continue to be based on IELTS test bands?

- **If so, what level should it be set at?**
- **If not, what alternative testing mechanisms should be used?**

If English language requirements are to have some part in the Subclass 457 program, the IELTS test should not be the only one available.

Current IELTS test level requirements for 457 visa applicants do not allow for the varying needs of various occupations and workplaces. [see above, Item 5] For some occupations (eg trades, or chef), if an IELTS level is mandatory, a lower average result (say 3.5) would be generally be more appropriate.

Current IELTS testing results is not necessarily the best method of testing an applicant's ability to communicate in English in general or in particular contexts. On the one hand, intensive coaching for IELTS test purpose can inflate an applicant's real English ability, and inexplicable discrepancies in the results an applicant may obtain over several tests are not uncommon.

In regard to such discrepancies, the MIA believes that consideration should be given to accepting the higher results in bands from two or more IELTS tests. To rely on only one test is to ignore the very real possibility of applicants having a "bad day", or, as has been known to happen, technical issues arising with such things as listening tests.

The MIA notes with approval DIAC's seeking to expand the number of English language tests that are accepted as evidence of English language proficiency. Apart from the delays in obtaining English language tests when a huge numbers of applications are made to a testing organisation that has a virtual monopoly of English tests, there is room for testing systems which may be more occupation and workplace specific.

7. Should the English language requirement apply at the time of visa application?

As most applicants and their sponsors would like, and expect, 457 applications to be processed as quickly as possible, there would generally be little point in having an English language requirement that might be imposed being other than a time-of-application requirement.

However, in cases of emergency or urgency, having the capacity to allow an English language requirement as a post-arrival requirement would allow greater flexibility for sponsors and applicants, and could be controlled by a specified time limit for the provision of English language test results.

8. Should employers be required to provide English language training to primary visa holders and their families if needed?

Requiring employers to provide appropriate and acceptable English language training to primary visa holders is sensible in that it would help employees to adapt to both their work place and to the wider Australian community more easily. Such a requirement could be an option for employers who need a particular skilled sponsored employee whose English language ability is lower than a particular set level.

The provision of English language training for employee's family members would be an unreasonable burden on sponsoring employers. Many partners are able to avail themselves of free community-based English language classes which are available in many parts of Australia, and the provision of English language training for employee's children is generally unnecessary as they would in most cases be attending school.

9. If the English language requirement is considered unnecessary, what measures could be put in place to achieve its original objectives (e.g. ensuring overseas workers raise welfare concerns with appropriate authorities, meeting OH&S requirements, benefiting Australia by sharing skills with other workers)?

The ability of an employee to raise welfare concerns with appropriate authorities, to meet OH&S requirements and to benefit Australia by sharing skills with other workers, is not necessarily dependent on a particular IELTS test result or English language requirement. This can depend on personality, cultural background, or fear of recriminations, as much as English ability.

While Non English Speaking Background migrant workers can face occupational health and safety risks, these are often minimised or eliminated by responsible employers who scrupulously provide appropriate induction and training in relevant languages, and translated signage, work manuals and labelling. There are numerous examples of this already being done in Australia, and a DIAC examination of these successful, trouble-free examples would provide useful material for the development of an appropriate, verifiable framework of employer obligations to address this issue.

Already many government authorities require employers to ensure that their employees understand and comply with occupational health and safety requirements. For example, *"The NSW Occupational Health and Safety Act 2000 requires employers to provide information, instruction, training and supervision to employees, so as to ensure their health, safety and welfare at work. This means that employers must communicate effectively with the entire workforce, including those workers with poor English language skills. They need to be aware of the language and cultural barriers that can hinder communication at work and seek to address them"*. [Workcover NSW, *What Managers Can Do – Occupational health and safety and the multilingual workplace, 1998*]

10. Suggested further strategies

The MIA believes that DIAC should:

1. study current best practice examples of employers who are able to safeguard the welfare of their sponsored workers who have little or limited levels of English.
2. develop, from that study, welfare guidelines (or obligations) for sponsoring employers to ensure the welfare of the sponsored employees
3. develop, in conjunction with settlement services, workplace relations departments, peak industry groups, and unions, a strategy for assisting employers to:
 - understand and meet welfare and occupational health and safety guidelines and obligations
 - gain training in cultural awareness and understanding.

Such a strategy should involve consultation and training as much as monitoring.

4. develop, in conjunction with settlement services, government workplace relations departments and peak industry groups, a strategy for providing low cost or free English training for sponsored workers where it is required.

The matter of occupational health and safety in particular, and employee welfare in general, is not confined to 457 visa holders. It is relevant to all workers in Australia.

Similarly, the matter of the English language ability (and literacy generally) of workers is not only of relevance to 457 visa holders. It, too, covers a whole range of Australian workers.

The working conditions of 457 visa holders should not just be a matter for DAIC to regulate. Such regulation might better be done by other more appropriate government departments, in consultation with DIAC.

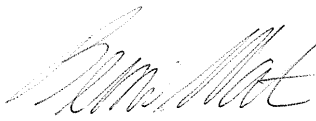
Such strategies as these would be of benefit not only to 457 visa holders and their employers, but also to holders of other permanent and temporary visa holders with work rights whose welfare has the potential to be compromised. In the long term, such strategies would be of immense benefit to Australia's standards of occupational health and safety, workplace relations and conditions, and the adaption to Australian life by temporary and permanent workers and migrants. There would probably be long-term cost-benefit advantages to such an approach.

Conclusion

While there is a place for English language requirements in the Subclass 457 visa program, that place is not paramount in all circumstances.

A standard, inflexible, English language requirement policy would prevent many responsible employers from overcoming Australia's severe skills shortage.

It should be possible, even if challenging, to devise a system allowing for a flexible scale of English language requirements (from negligible/none to substantial) according to such matters as occupation and workplace context, in conjunction with a program of support and education for employers and employees. Such a system would ensure employers can overcome skills shortages, without compromising occupational health and safety standards and employee welfare.



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