



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

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# Australian Human Rights Commission Submission to the Visa Subclass 457 Integrity Review Issues Paper 3: Integrity and Exploitation

13 October 2008

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## **1 Introduction**

1. The Australian Human Rights Commission (the Commission) makes this submission to the Visa Subclass 457 Integrity Review Issues Paper 3 on Integrity and Exploitation, conducted by Ms Barbara Deegan (Integrity Review).
2. The Commission understands that the Integrity Review has sought comments on the Subclass 457 Visa system through a series of three Issues Papers. This submission is in response to Issues Paper 3: Integrity and Exploitation. It focuses exclusively on issues relating to the protection of Subclass 457 Visa Holders (457 Visa Holders) from exploitation, specifically discrimination and human rights breaches.
3. This submission is based primarily on a previous submission made by the Commission to the Joint Standing Committee on Migration 'Inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas' in January 2007 (available at <http://www.humanrights.gov.au/legal/submissions/2007/migration457.html>).

## **2 Summary**

4. Many people on 457 Visas are vulnerable to workplace exploitation, including discrimination, due to a limited knowledge and understanding of Australian workplace rights, limited English language, and the ongoing reliance on a sponsor for their visa status.
5. As a result, it is important that both 457 Visa Holders and their employers are aware of their rights and responsibilities under workplace and anti-discrimination laws.
6. Further, 457 Visa Holders need to be aware of existing complaints mechanisms should their work rights be violated. These mechanisms must be free, confidential and accessible to 457 Visa Holders.
7. The Commission also supports rigorous monitoring of workplaces which employ 457 Visa Holders to ensure protection against worker exploitation.

## **3 Information for 457 Visa Holders**

8. The Commission has received complaints from 457 Visa Holders alleging discrimination in the workplace. The types of issues raised by people making complaints include:
  - not being paid overtime
  - working longer hours or days than non-visa employees
  - limited access to sick leave and dismissal if the Visa Holder takes sick leave
  - dismissal because the Visa Holder is pregnant

- dismissal for taking leave to care for a sick spouse or child
  - overcharges on rent or other expenses organised by the employer
  - sexual harassment.
9. Many 457 Visa Holders will be unaware of their workplace rights under Australian law. As new arrivals, they may be unfamiliar with mechanisms for protecting the rights of workers. This may be compounded by English language difficulties.
10. As pointed out in the Issues Paper 3, 457 Visa Holders are also vulnerable to exploitation because they rely on their employers, as sponsors, for their visa status. For example, the Commission is aware of a case where an employer allegedly asked a 457 Visa Holder for sexual favours, threatening the 457 Visa Holder with a loss of visa status if they did not comply.
11. Because of this vulnerability, it is important for 457 Visa Holders to know that they are protected by Commonwealth and State and Territory anti-discrimination and workplace laws, similar to any other worker in Australia.
12. The Commission welcomes DIAC's development, since late 2007, of information for 457 Visa Holders on the DIAC website. This includes factsheets, available in seven languages, on
- sponsors, contracts, unions and workplace conditions
  - accommodation, family and health care
  - pay, tax, superannuation and recovering earnings.
13. The Commission notes that the factsheets include contact details for the Commission, as well as the Workplace Ombudsman and DIAC.
14. The Commission recommends that information for 457 Visa Holders should also include information about anti-discrimination laws:
- (a) The *Racial Discrimination Act 1975* (Cth), which protects all people working in Australia from discrimination on the grounds of their race, colour, descent, immigrant status, or national or ethnic origin.<sup>1</sup>
- (b) The *Sex Discrimination Act 1985* (Cth), which protects people working in Australia from discrimination on the grounds of their sex, marital status, pregnancy, potential pregnancy and family responsibilities. The Act also prohibits sexual harassment.<sup>2</sup>

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<sup>1</sup> See further: [http://www.humanrights.gov.au/complaints\\_information/guides/info\\_sheet\\_rda.html](http://www.humanrights.gov.au/complaints_information/guides/info_sheet_rda.html)

<sup>2</sup> See further: [http://www.humanrights.gov.au/complaints\\_information/guides/info\\_sheet\\_sda.html](http://www.humanrights.gov.au/complaints_information/guides/info_sheet_sda.html)

- (c) The *Disability Discrimination Act 1992* (Cth), which protects people working in Australia from discrimination on the grounds of their disability or a disability of the person's associate.<sup>3</sup>
- (d) The *Age Discrimination Act 2004* (Cth), which protects people working in Australia from discrimination on the grounds of their age.<sup>4</sup>
- (e) Under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) people working in Australia can ask the Commission to investigate and conciliate complaints regarding discrimination in employment on the following grounds:
- religion
  - political opinion
  - sexual preference
  - social origin
  - trade union activity
  - criminal record
  - medical record.<sup>5</sup>
15. Each State and Territory in Australia also has laws prohibiting discrimination in employment on a range of grounds similar to those covered in the Commonwealth laws listed above.
16. Australia also has Commonwealth and State workplace relations laws which make it unlawful to dismiss an employee on a range of grounds, similar to those covered in the Commonwealth anti-discrimination laws. Information given to 457 Visa Holders should emphasise that they are protected by workplace relations laws.
17. The Commission recommends that DIAC should provide all 457 Visa Holders with this information when they receive their visa. The information should also be distributed to other organisations, including migrant services and migration agents, who may come into contact with 457 Visa Holders.
18. Consideration should also be given to distributing this information to 457 Visa Holders prior to arrival in Australia.
19. The information sheet should also be available in the 457 Visa Holder's first language and facilities should be available for people with print disabilities.

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<sup>3</sup> See further: [http://www.humanrights.gov.au/complaints\\_information/guides/info\\_sheet\\_dda.html](http://www.humanrights.gov.au/complaints_information/guides/info_sheet_dda.html)

<sup>4</sup> See further: [http://www.humanrights.gov.au/complaints\\_information/guides/info\\_sheet\\_age.html](http://www.humanrights.gov.au/complaints_information/guides/info_sheet_age.html).

<sup>5</sup> See further:

[http://www.humanrights.gov.au/complaints\\_information/guides/info\\_sheet\\_employment\\_discrimination.html](http://www.humanrights.gov.au/complaints_information/guides/info_sheet_employment_discrimination.html).

20. In addition to providing information sheets to 457 Visa Holders, DIAC should ensure that staff working on its information hotline (131 881) are properly educated in these rights.
21. Staff working on the DIAC information hotline should also have clear referral instructions. For example, the hotline staff should be aware that questions regarding the issues set out in paragraph 14(a)-(e) above can be referred to the Commission's Inquiry line (1300 656 419).
22. **Recommendation 1: 457 Visa Holders should be properly informed of their rights under workplace and anti-discrimination laws**

#### **4 Information for sponsoring employers**

23. It is equally important for employers to understand that they have responsibilities towards 457 Visa Holders under workplace and anti-discrimination laws, as towards any other employee.
24. The Commission is aware that there may be uncertainty among employers about the intersection of visa conditions and workplace rights and responsibilities. For example, employers may have difficulty understanding the relationship between their obligations under the visa requirements and their obligations under other work-related legislation, such as discrimination law.
25. The Commission recommends that information provided to sponsoring employers includes:
  - information on employer responsibilities not to discriminate on grounds protected under anti-discrimination laws
  - information on the range of minimum workplace entitlements
  - clarification of the intersection between visa conditions and workplace rights and responsibilities.
26. **Recommendation 2: DIAC should inform sponsoring employers of their obligations towards 457 Visa Holders under workplace and anti-discrimination laws.**

#### **5 Access to effective complaints mechanisms for 457 Visa Holders**

27. DIAC should ensure that 457 Visa Holders are able to access effective complaints mechanisms should they wish to complain that their work rights have been violated.
28. Any person with concerns about the way they are being treated by their employer should have free, simple and confidential access to a DIAC complaints line for temporary worker visa holders.
29. The DIAC complaints line should be linked to TIS.

30. Staff on the DIAC complaints line should be properly trained as to the alternative complaint options available to 457 Visa Holders.
31. Statistical information on the number of complaints received by DIAC from 457 Visa Holders should be made publically available.
32. However, as noted in the Issues Paper 3, some 457 Visa Holders may be concerned to ask DIAC questions about their pay or conditions or visa status in case their employer threatens to cancel their sponsorship.
33. Hence, while DIAC is an important mechanism of complaint for 457 Visa Holders, it is important that 457 Visa Holders are aware that they can access other agencies for assistance on specific issues to do with work rights.
34. The Commission notes that the DIAC factsheets for 457 Visa Holders include the contact details for DIAC, the Workplace Ombudsman, the Australian Human Rights Commission and WorkCover/WorkSafe agencies.
35. The Commission recommends that contact information for the following complaint agencies is also included in information provided to 457 Visa Holders and is prominently displayed in all workplaces where 457 Visa Holders are employed:
  - DIAC
  - Workplace Ombudsman
  - Australian Human Rights Commission
  - State and Territory anti-discrimination and equal opportunity agencies
  - legal aid services in the relevant state or territory
  - relevant unions.
36. **Recommendation 3: DIAC should ensure that 457 Visa Holders are able to access effective complaints mechanisms.**

## **6 Monitoring of workplaces**

37. The Commission supports the Minister's intention to improve monitoring of workplaces where 457 Visa Holders are employed, including increasing investigative powers for inspectors.<sup>6</sup>
38. The Commission submits that DIAC and the Office of Workplace Services (OWS) should ensure regular and rigorous monitoring of the workplaces hiring 457 Visa Holders.
39. Workplace inspections should be both announced and unannounced.

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<sup>6</sup> Integrity Review, Issues Paper No 3: Integrity and Exploitation, p28.

40. Workplace inspectors should have the power to conduct:
  - interviews with 457 Visa Holders
  - interviews with employer staff
  - spot inspections of payment and leave records.
41. If the workplace inspections identify any problems, DIAC and OWS should work with 457 Visa Holders and employers to promptly address the concerns. DIAC should also ensure ongoing close monitoring of workplaces in which problems have arisen in the past.
42. **Recommendation 4: DIAC should ensure rigorous monitoring of 457 Visa Holders workplaces.**