

**AGENDA ITEMS FOR MEETING
RESTAURATEURS ON FRIDAY, 15TH JUNE AT 10AM**

(1) RELEVANT SKILLED OCCUPATIONS REQUIRED FOR RESTAURANTS:

- Chefs
- Restaurant Managers
- Sommeliers
- Maître d's
- Food and Beverage Attendants
- Bar Attendants
- Fishmongers
- Combined 457/ENS Skilled Occupation List to be introduced on July 2012
- Template Labour Agreement for the Tourism and Hospitality industry

(2) ENGLISH LEVEL REQUIREMENTS FOR CHEFS AND COOKS:

- Specialist culinary skills v. requirements to pass English language test
- IELTS 5 on all 4 components
- No Exceptional Circumstances from 1st July 2012 for language, age and skill
- Offshore ENS IELTS 6

(3) SECURING A LOCAL LABOUR FORCE:

- Australian Apprentices
- International Apprenticeship Programme
- Training at TAFE/Colleges
- Working Holiday Makers

(4) SALARIES AND WAGES:

- TSMIT and market rates
- Award Rates plus benefits

**BRIEFING NOTES TO ACCOMPANY AGENDA ITEMS
FOR MEETING
RESTAURATEURS ON FRIDAY, 15TH JUNE AT 10AM**

Restaurateurs

[Document redacted by resolution of the Committee 16 September 2013]

The total combined workforce of these restaurants is over 1200 employees plus 500 apprentice chefs and hospitality trainees provided through HTN.

The number of OH & S accidents which can be attributed to a person's lack of English language skills at these establishments is zero.

(1) RELEVANT SKILLED OCCUPATIONS REQUIRED FOR RESTAURANTS:

- Chefs/Cooks
- Restaurant Managers
- Sommeliers

Agenda and Briefing Notes for Meeting.

[Document redacted by resolution of the Committee 16 September 2013]

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- Bar Attendants
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Relevant Skilled Occupations for Sponsorships:

The current sponsorship requirements do not recognise the discrete needs of the restaurant and hospitality industries in securing long term temporary and permanent staff.

We understand that the positions of Restaurant Manager and Customer Service Managers will be included on the combined 457/ENS Skilled Occupation list to be introduced on 1st July 2012. However, this cannot be confirmed until the list is released.

There is still a need to recognise that restaurants require people to work in jobs which are not considered to be highly skilled occupations in Australia, e.g. Sommeliers, Maître D's, Food & Beverage Attendants and Bar Attendants. However, these positions are considered to be highly skilled occupations overseas as many of these workers embark upon formal studies/qualifications from High School and continue on with post secondary studies in this area. Of particular importance is the on-the-job training component that these workers receive from their employers. In some countries, training may only be provided through rigorous on-the-job training programmes.

Overseas trained workers would be able to provide important on-going training to Australian workers with another dimension and fill in the areas where training that e.g. TAFE/Colleges cannot provide.

With the growth of restaurants serving seafood both cooked and raw in Australia, there is also a growing demand for qualified fishmongers to be employed by these establishments.

There is a need to recognise that ethno specific restaurants have specific needs in co-ordinating a successful restaurant. For example, it's important that Restaurant Managers and Sommeliers have experience in the relevant culture and cuisine.

The costs and time involved in training a local restaurant manager needs to be recognised, particularly where English is not the operating language of the establishment. For example, hiring an Australian born Restaurant Manager requires support staff in the field of communications between the kitchen staff (both written and oral) and an understanding of specific cuisines, food and culture. It would take a number of years before a local Manager could work independently in an ethno-specific restaurant.

There is also a high rate of attrition in the hospitality industry as people work for employers whom they hope will give them the best experience and training but often move on shortly

Agenda and Briefing Notes for Meeting.

[Document redacted by resolution of the Committee 16 September 2013]

after their training expires so that they can seek employment with other establishments which will further their careers. This is a very common phenomenon.

Combined 457/ENS Skilled Occupation List to be introduced on July 2012

As previously stated, we understand that the Department proposes to include ANZSCO 1-3 occupations in the combined 457/ENS Skilled Occupation List from 1st July 2012. This, however, will still exclude the inclusion of occupations such as fishmongers and we would urge that this be given serious consideration.

Template Labour Agreement for the Tourism and Hospitality industry

The needs of the restaurant and hospitality industries should be recognised as being discrete. However, the proposed template labour agreement could still be a double edged sword for those restaurants who have, e.g. ethno specific requirements for which neither the template nor the current 457 requirements can currently provide.

(2) ENGLISH LEVEL REQUIREMENTS FOR CHEFS AND COOKS:

The need for specialist culinary skills v. requirements to pass English language

In a recent video called *Language on the Move* which was based on research carried out by Ms Kimie Takahashi, Doctor of Language at Macquarie University, <http://www.languageonthemove.com/kimitaka-azuma>

Kimitaka Azuma¹ is quoted as saying:

“If chefs could speak English, they wouldn’t be chefs and that’s why we have trouble attracting good chefs to Australia”.

There is an urgent need to recognise that a chef’s culinary skills should be considered to be the focus of why restaurants want to sponsor overseas workers to work at their establishment and NOT for their English language skills.

It is extremely difficult for tradespeople such as chefs to obtain an IELTS of 5 on all 4 components when they have undertaken their post- secondary studies in a foreign language. It is particularly more difficult for those applicants whose language is not alphabet based but based on kungi characters, e.g. Japanese and Chinese as these people need to learn a whole new set of language skills.

Experience and knowledge are the fundamental requirements that should be taken into consideration when hiring a chef and application of the strict English language requirements

¹ Owner and Executive Chef of the Azuma Group of Restaurants

is problematic as a good command of the English language does not necessarily travel hand in hand with specialist culinary skills.

Whilst we appreciate the rationale behind why people should be able to communicate in English in Australia, the reasons which are often raised why chefs/cooks need to have an IELTS of 5 overall cannot be sustained.

There is no evidence, from the group of restaurateurs assembled today, that any OH&S issues have occurred because of a person's lack of English language skills.

There is also no evidence that overseas workers are being used and abused because of the lack of their English language skills.

IELTS 5 on all 4 Components

Some restaurants currently face a 25%-30% skill shortage which impacts upon their capacity to keep their establishments fully operational. This skills shortage is often the result of the restaurants not being able to secure the services of workers who can meet the English language requirements so that they are able to sponsor them for either a 457 or ENS visa.

The requirement for chefs to obtain 5 on each of the 4 components of IELTS is onerous. We have provided examples of case studies from [Document redacted by resolution of the Committee 16 September 2013], where skilled chefs have not been able to apply for 457 sponsorships as they could not achieve the required IELTS. In the past two years a total of 10 skilled employees (7 chefs and 3 managers) have resigned as they were unable to be sponsored for 457/ENS visas.

Case Study 1: Chef (Japanese) arrived in Sydney in 2010. This chef had 20 years' experience as a chef in the restaurant industry including three years as a head chef. His highest score was 4.5 on the writing section on IELTS. He also studied IELTS English in Cebu Island for 12 months. He has now decided to work in Malaysia.

Case Study 2: Chef (Japanese) had 20 years' experience as a skilled chef and Head Chef in the restaurant industry. He studied general English and undertook the IELTS course for a period of 16 months, however, could not attain 5.0 on the reading and writing sections.

Case Study 3: Chef (Japanese) has lived in the U.S. for 10 years and is an experienced Head chef. He is currently studying IELTS on Student visa.

Case Study 4: Chef (Japanese) studied in Sydney for 6 years (since 17y.o.) including a 2 year Commercial Cookery course which he completed in 2009. He then worked in Japan from 2010 to 2012 to further his experience and training. He obtained 4.5 for writing in Feb 2012.

Case Study 5: Chef (French) has worked for a 2 Michelin star restaurants as well as one of the top patisserie and chocolate shops in the world. He cannot apply for a 457 until he obtains IELTS 5.

Case Study 6: Italian Chef with 15 years experience obtained an overall band of 5 but only obtained 4.5 in writing.

Agenda and Briefing Notes for Meeting.

[Document redacted by resolution of the Committee 16 September 2013]

The damage done to restaurants that are denied the opportunity of sponsoring qualified chefs from overseas is immeasurable. For example, bookings cannot be taken because of the shortage of skilled employees (both chefs and front of house) as well as parts of the restaurant e.g. private dining rooms and entire areas may need to be closed, e.g. sushi bars.

Currently, one restaurateur is considering closing one of their restaurants so that they can transfer their chefs to their larger restaurant as they cannot secure enough ethno-specific qualified chefs. This scenario can be directly attributed to the inability of the cooks/chefs to obtain IELTS 5 on all four components.

The IELTS score needs to be re-examined. Anecdotal evidence shows that IELTS candidates obtain scores ranging between 3.5-5 but these scores will fluctuate over the four components and over a number of IELTS test. Consideration should be given to accepting a range of IELTS results over a period of time which demonstrates that the person can achieve an acceptable level of English which is relevant to the occupation. Every IELTS examination undertaken by applicants is a valid IELTS examination and the individual results should be accepted accordingly.

There should also be a range of other acceptable modes of evidencing how a person would be able to exist in Australia if they do not have an IELTS of 5. For example, the applicant could demonstrate that they have been undertaking English language tuition whilst overseas or in Australia; or the employer could provide opportunities for English language training for their workers or the mere fact that people have managed to survive living in Australia for at least two years, without falling foul of the law, etc. should be prima facie evidence that a person's English language skills is adequate for their continued residence in Australia.

No Exceptional Circumstances from 1st July 2012 for Language, Age and Skill

We understand that the proposed changes to ENS on 1st July 2012 will not allow an employer to claim exceptional circumstances for a nominated occupation on the basis of age, skill or language unless they are an exempt occupation. Exempt occupations include: Ministers of Religion and researchers and scientists employed by the CSIRO or ANSTO or have worked with their current employer for 4 years and have been paid \$118,000.

Allowing exemptions for the limited number of nuclear scientists or Ministers of Religion will not address the critical skills shortage for tradespeople in Australia.

We would strongly urge widening the exempt occupation categories as, if this is not done, then it will only compound what is currently a very serious situation.

Exempt occupations need to include those occupations which are relevant to the restaurant and hospitality industries.

Agenda and Briefing Notes for Meeting.

[Document redacted by resolution of the Committee 16 September 2013]

Offshore ENS IELTS 6

This requirement will prove to make it almost impossible for employers to sponsor workers in the restaurant and hospitality industries from non-English speaking countries as it is unlikely that these workers will be able to achieve an IELTS 6 on all 4 components.

We understand that the rationale behind the IELTS 6 for overseas applicants is because these people would not have been tested in the local market by working on a 457 visa. However, this seems to defeat the spirit of the ENS programme when considering that not all skilled workers apply directly through the 457 programme yet they may have outstanding skills which they have acquired whilst working overseas.

If employers are currently finding it difficult to sponsor overseas applicants because they are unable to achieve 5 on all 4 components, then raising the IELTS level to 6 on all 4 components will simply make the situation impossible.

Language is being used as a barrier to employers being able to sponsor their much needed workers.

(3) SECURING A LOCAL LABOUR FORCE:

- Apprentices
- Training at TAFE/Colleges

All the participating restaurateurs have been involved in extensive recruitment processes locally, nationally and internationally.

Apprentices:

There is an industry wide problem in securing and maintaining apprentices. Many young people want to become Chefs after watching programmes such as Masterchef and My Kitchen Rules, however, the reality is that standing for many hours on cold concrete floors, peeling onions or having one's hands immersed in water cleaning fish all day, is anything but glamorous but is all part of the basic training that chefs undergo.

Some apprentices simply do not want to travel too far to go to work as it is time consuming and expensive and their motivation is very low to continue their apprenticeship throughout the entire programme.

This is evidenced by the fact that Group Training Organisation HTN (Hospitality Training Network) has 100-150 vacancies for Commercial Cookery Apprentices all year round.

International Apprenticeship Programme:

Agenda and Briefing Notes for Meeting.

[Document redacted by resolution of the Committee 16 September 2013]

This programme would require minor changes to the current Occupational Training Visa to extend the visa validity period from 2-3 years to cover a 3 year apprenticeship. This programme could create an effective solution for an area of long term skills shortage that does not have cost implications for either the State or Commonwealth Governments.

An International Apprenticeship programme could assist in addressing the current skills shortages problem and encompass the recruitment of International participants to undertake the equivalent of an Australian Apprenticeship (at present, only Australian Citizens and Permanent Residents are eligible to undertake an Australian Apprenticeship).

Currently, an Apprenticeship programme comprises one (1) day per week at TAFE (known as “off the job” training) and four (4) days per week “on the job” over a period of up to three (3) years. Pay scales for apprentices are as per the relevant Modern Award or Enterprise Agreement.

The Commonwealth heavily invests in Australian Apprenticeships via Employer and Apprentice Incentives. However, under the proposed International Apprenticeship programme, no Incentives would be required to be paid by the Commonwealth as a “user pays” approach is recommended for the International Apprentice.

For example; where Australian Apprentices pay an enrolment fee of \$436 annually to attend their “TAFE training” which is heavily subsidised by the various States, it is proposed that the International Apprentice would pay the full training cost (Approx \$10,000 over the three years). This would be a significant commercial benefit to the TAFE system and would not require any subsidisation from each state.

Further, as employers of Australian Apprentices receive up to \$4,000 in Commonwealth Incentives over the life of the Australian Apprenticeship, it is proposed that an equivalent payment be made by the International Apprentice to employers – therefore creating an Incentive for employers to “take them on” but not burdening the Commonwealth Government in the process. This money would only be paid whilst the International Apprentice continues training with the employer.

Industrial Relations instruments would also need to recognise International Apprenticeships in order that the pay scale is equal to that of an Australian Apprentice.

The Department could ensure that this programme is properly operational and not open to abuses through its monitoring programme.

Training at TAFE/Colleges

There is a disparity between the standard of training of overseas chefs and those trained by Australian institutions. For example, cookery graduates from TAFE are only equivalent to a

Agenda and Briefing Notes for Meeting.

[Document redacted by resolution of the Committee 16 September 2013]

Level 2 Apprentice Chef in Japan in Japanese cuisine. Often TAFE/College graduates need to be retrained in very basic skills which are ethno specific to the cuisine. For example, the use of different knives for sushi, seafood, meat, vegetables, including sharpening and cleaning of knives; the different ingredients; different serving plates, the history of the ethno specific cuisine and the cultural aspects guiding the cuisine.

It is also a common problem that even after recent local graduates have been trained in specialised ethnic specific cuisine, they often leave to explore other employment opportunities.

TAFE NSW currently does not hold courses which cover all ethno specific cuisines, e.g. Japanese or Vietnamese cuisines. It holds short cooking courses for French, Italian and Indians cuisines for 12-15 year olds.

Effectively, the trade courses offered by the TAFES are inadequate to meet the skills required by employers to run a successful establishment.

Working Holiday Makers (WHM)

It would be worthwhile considering if WHMs could work on their WHM visa for the same employer for a longer period of time similar to those who are currently able to work for 12 months in rural Australia, while they are on their 2nd WHM.

(4) SALARIES AND WAGES:

- Temporary Skilled Migration Income Threshold (TSMIT)
- Market rates
- Award Rates plus benefits

We understand that TSMIT will rise again on 1st July 2012 which will result in it making it very difficult, if not **impossible for employers to sponsor under the 457/ENS programmes as the TSMIT will outstrip the market salary**. It is Departmental policy that nominations will not normally be approved in relation to 457 applicants if the market salary rate for the position is below TSMIT.

The current TSMIT for people working in the restaurant and hospitality industries results in e.g., chefs and restaurant managers being paid the same level of remuneration as lawyers and dentists. This is because the 457/ENS does not recognise the difference of skill level but simply sets a figure for a wage for a person to live in Australia.

The current TSMIT threshold is \$49330 for a 38 hour week. This means that restaurants must pay the equivalent of a Sous Chef salary for people employed as Chefs, Chef de Parties or Commis Chef.

Restaurants often employ highly skilled chefs from overseas who are in Australia on Working Holiday Visas for 6 months and who in turn, the restaurant would like to sponsor for a further 457 visa, however, the TSMIT makes it unfeasible to do so.

Market Rates:

The process on how market rates are determined by the Department (statistical information) does not reflect the real situation of how salaries are determined in the restaurant and hospitality industries (supply and demand).

Departmental policy that the salary paid to 457 visa applicants must be no less favourable than the terms and conditions provided, or would be provided, to Australians to perform equivalent work in the workplace at the same location results in people working in the restaurant and hospitality industry having their salaries increased so that the employer can meet the 457 requirements. Not all workers are paid a base salary of \$49,330 but this is the effect of this policy provision.

This is damaging to businesses insofar as them being able to sustain a strong and growing workforce because of the need to pay their employees wages which are above what the Modern Award provides.

Award Rates Plus Benefits:

The current Modern Award for a Full time (Grade 1), F&B/ Bar Attendant - Hourly Pay Rate (Monday-Friday) is \$15.96. Based on a 38hr (Monday to Friday) working week the Salary would equate to no more than \$31,600.00. Based on the award, employees that work weekends and/or public holidays will also receive penalty rates over and above this base rate of pay, for any hours worked. It also needs to be acknowledged that although gratuities are not "guaranteed earnings", Front of House employees receive gratuities as part of their overall remuneration. Staff meals and uniforms are also provided.

The ideal situation would be that employers are required to pay the Modern Award Rate or perhaps, a negotiated industry premium, for sponsorship purposes.