

CFMEU submission to JSCOT re KAFTA

Introduction

The Construction, Forestry, Mining and Energy Union (CFMEU) is Australia's main trade union in construction, forestry and furnishing products, mining and energy production. We welcome the chance to submit our views to this inquiry.

Fair trade rules can support the creation of more and better jobs in Australia. Yet the Korea-Australia Free Trade Agreement (KAFTA) risks undermining a "fair go" for Australian workers and manufacturers in a range of ways.

This submission focusses on a key concern in this regard: the 'Movement of Natural Persons' commitments in KAFTA.

The CFMEU additionally supports the submission lodged by the Australian Fair Trade and Investment Network (AFTINET) of which we are a member. The AFTINET submission provides a detailed critique of the labour and environmental chapters of the agreement, the CIE 'national interest test' modelling of the agreement as well as the Investor State Dispute Settlement (ISDS) provision contained in the agreement.

The CFMEU also shares the concerns outlined in the submission from the Australian Manufacturing Workers Union (AMWU) about the adverse impact of this agreement and Australian Government policy on Australian manufacturing. We are particularly concerned with how this agreement will encourage unfair trade practices, such as dumping, unfair subsidies and facilitate the entry of sub-standard imported products.

The 'Movement of Natural Persons' commitments in KAFTA

Introduction

Australia implements its international trade obligations re the 'Movement of Natural Persons' through the 457 visa program.

The KAFTA as released by the Australian government on 17 February 2014 appears to expand the areas in the 457 visa program where employers can be granted access to 457 visas for Korean nationals without Labour Market Testing (LMT), ie the need to look for qualified Australian workers first and show that none are available to do the work.

The LMT provision in the *Migration Amendment (Temporary Sponsored Visas) Act 2013* came into force on 23 November 2013. LMT is defined in the Act as follows:

labour market testing, in relation to a nominated position, means testing of the Australian labour market to demonstrate whether a suitably qualified and experienced Australian citizen or Australian permanent resident is readily available to fill the position. s140GBA(7), definitions.

The extent to which the KAFTA removes the LMT requirement is not clear, because the Coalition government has not spelt out exactly what this FTA means for the 457 visa program. In fact, the 457 visa program is not even mentioned in the KAFTA or in any of the official 'Fact sheets' or releases that DFAT or the government has put out on the KAFTA.

What is clear from the KAFTA text released is that Australia is granting LMT-exempt status in the 457 visa program to *all* categories of Korean nationals covered by the agreement, and that this status will be a binding obligation which can never be reversed. The Korean government on the other hand is retaining the right to apply LMT, numerical quotas and other restrictions to Australian citizens and permanent residents under its temporary visa program.

The KAFTA text does not explicitly say that Australia is removing the LMT requirement from Korean nationals covered by the agreement – in fact the Australian side does not even mention LMT in the agreement. The closest to an outright admission from Australia that it is removing the LMT requirement comes in a mere footnote which does not even mention LMT!

3. Neither Party shall impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party under this Chapter, unless otherwise specified in Annex 10-A.

The footnote to this para reads

For greater certainty, for Australia the term 'limitations' includes numerical quotas or the requirement of an *economic needs test*. (emphasis added)

Source: KAFTA, Article 10.3: Grant Of Temporary Entry, para 3.

LMT is excluded because it is a form of 'economic needs test'. This misleading and deceptive formulation unfortunately is typical of the lack of transparency in international trade agreements.

The CFMEU believes there are a number of serious questions the Committee should ask and satisfy itself about in order to reach a position on whether KAFTA's temporary foreign worker provisions are in Australia's national interest. These are set out below.

CFMEU position on FTAs and the 457 visa program

The CFMEU's position is that no 457 visa concessions including the removal of LMT for any categories of labour should be made in bilateral Free Trade Agreement (FTAs) or multilateral agreements such as WTO GATS.

Australia's temporary visa programs should not even be on the negotiating table in trade deals – these are properly domestic policy matters for the Australian Parliament.

The government should also commit to bring any proposed FTA before Parliament *before* it is signed and becomes binding, so it can be scrutinised first by the Australian Parliament and not presented as a 'done deal'.

By contrast, the Coalition government's approach has long been to offer up the complete removal of LMT from the 457 visa program in international trade negotiations. In 2005, the Coalition made a non-

binding offer in the Doha Round of WTO GATS that Australia would remove LMT from the 457 visa program, and remove for all time the Australian government's ability to impose LMT in that program.¹

While those GATS negotiations were never formally concluded, the current Coalition government has not publicly changed its position on this 2005 Doha offer.

The current government has also shown its antipathy to LMT in the 457 visa program in several ways.

In Opposition, the Coalition opposed the inclusion of LMT provisions in the June 2013 Bill on 457 visa reforms, which became the *Migration Amendment (Temporary Sponsored Visas) Act 2013* (Amending Act).

In government, the Coalition has further shown its hostility to 457 LMT as a means of ensuring that employers can only access 457 visas when no 'suitably qualified and experienced' Australian workers are readily available. It has done this:

- By defining much more broadly (than previously suggested) the areas of the 457 visa program it declared were LMT-exempt due to Australia's 'international trade obligations' (See Attachment 1).
- By implementing the 457 LMT in a way that minimises the number of occupations and 457 visa nominations to which the 457 LMT requirement actually applies², and implementing the LMT requirement in a way best described as 'setting it up to fail'.³
- By failing to direct the DIBP to collect basic information on how the 457 LMT provisions are actually operating, including how many Australian workers had applied for the jobs that 457 visas were approved for, how many Australian applicants employers found not 'suitable' and reasons for that assessment.⁴
- By announcing a premature 'independent' review of the 457 LMT provisions in February 2014 when the provisions had only been operating for only 3 months, no information at all had been publicly released on the operation of the provisions and none has since been voluntarily disclosed.⁵

¹ DFAT website at, www.dfat.gov.au/trade/negotiations/services/downloads/wto_revised_offer.doc

² DIBP estimated only around 35% of all 457 visa nominations will be subject to the LMT requirement on occupational grounds (Skill level 3, engineering and nursing occupations) under the regime introduced from 23 November 2013. DIBP Answer to Question On Notice SE13/0310, provided 29 January 2014.

³ See for example, 'CFMEU slams new 457 Visa 'Facebook test' as cheating young Australians out of jobs', media release 20 November 2014, <http://www.cfmeu.asn.au/news/cfmeu-slams-new-457-visa-%E2%80%98facebook-test%E2%80%99-as-cheating-young-australians-out-of-jobs>

⁴ DIBP email to CFMEU, 03 June 2014.

⁵ Senator Michaelia Cash, Assistant Minister for Immigration and Border Protection, 'Independent review of 457 visa programme', media release, 25 February 2014
<http://www.minister.immi.gov.au/media/mc/2014/mc212075.htm>

On the other hand, the Leader of the Federal Labor Opposition has committed to ‘opposing the removal of LMT in bilateral and multilateral trade agreements’.⁶

Background – KAFTA foreign worker provisions

The temporary foreign worker provisions in KAFTA are dealt with mainly in chapter 10 on the “Movement of Natural Persons”.⁷

However, other provisions in the KAFTA may also be relevant to determining exactly what concessions the Australian government has made for employers engaging Korean nationals under the 457 visa program. For example, the DIBP stated in Senate Estimates that the relevant texts in the FTAs that give rise to a 457 LMT exemption where ‘the worker you {the sponsoring employer} nominate is a citizen of Chile or Thailand’ were as follows:

- Chile-Australia Free Trade Agreement: Articles 9.2.1(d), 9.5(a)(i), 9.5(a)(iv), 13.1(c), 13.1(e), 13.1(i), 13.2, 13.4; Annex 13-A Section 2
- Thailand-Australia Free Trade Agreement: Articles 809.1, 809.2(a), 809.2(d), 1001(a), 1002(b), 1002(c), 1002(e), 1002(f), 1002(h), 1003(1), 1005; Annex 8 Horizontal Commitments on Temporary Entry.⁸

The DFAT ‘Fact Sheet: Movement Of Natural Persons’ is no help in understanding what the provisions mean for the 457 visa program. This merely states that:

The Korea-Australia Free Trade Agreement (KAFTA) commitments on movement of natural persons **build upon** those made by Korea and Australia in the World Trade Organization. These commitments guarantee access for Australian and Korean skilled service suppliers, investors and business visitors to enter and stay in the other Party.....

Under KAFTA, Australia will provide access for the following categories of person:

- intra-corporate transferees for up to two years for specialists and up to four years for an executive or a senior manager;
- independent executives for up to two years;
- **contractual service suppliers for up to one year**; and
- business visitors for up to 90 days.⁹ (emphasis added)

By ‘build on’ DFAT usually means ‘goes beyond’ the commitments in the 1995 WTO GATS which simply exempted from LMT intra-company transfers.

⁶ Mr Bill Shorten, letter dated 23 September 2013 to Michael O’Connor, National Secretary CFMEU, p4.
<http://www.cfmeu.net.au/news/alp-leadership-questionnaire>

⁷ See <http://www.dfat.gov.au/fta/kafta/downloads/KAFTA-chapter-10.pdf>

⁸ DIBP Answer to QON SE/0312 dated 29 January 2014.

⁹ DFAT Korea-Australia Free Trade Agreement ‘Fact Sheet: Movement Of Natural Persons’,
<http://www.dfat.gov.au/fta/kafta/downloads/fact-sheet-movement-of-natural-persons.pdf>

The Fact Sheet does not bother to define any of the categories listed above, especially ‘contractual service suppliers’.

‘Contractual service suppliers of Korea’ will be LMT-exempt in the 457 visa program

This is the area of most concern to the CFMEU – not least because the Coalition government has declared that in the FTAs with Thailand and Chile, ‘contractual service suppliers’ in those FTAs mean that **ALL** Thai and Chilean nationals are exempted from the LMT requirement in the 457 visa program.

One issue is that the definition of ‘contractual service suppliers’ in KAFTA means vastly different things depending on whether the ‘contractual service suppliers’ (CSS) are from Korea or Australia – see table, following.

As the following table shows:

- CSS from Korea are not subject to LMT (or numerical limits) but CSS from Australia may be subject to both.
- CSS from Korea include persons with ‘trade, technical or professional skills and experience’ while CSS from Australia are only persons ‘in a profession as set out in Appendix 10-A-1’, which lists only 6 limited and defined professional services areas.
- CSS from Korea may be ‘engaged by’ any ‘enterprise lawfully and actively operating in Australia’ (11(b)) but CSS from Australia must not be engaged by a Korean enterprise and must ‘receive no remuneration from an enterprise located in Korea’ (9(e)).

This last point on the concessions made by Australia in KAFTA is the issue that the Committee must clarify as the highest priority.

The inclusion of Koreans with trade skills in the LMT-exempt categories of CSS in the 457 visa program is especially concerning. DIBP data (Quarterly Pivot Tables 31 March 2014) shows that trades workers are already over-represented among Koreans in Australia on 457 visas.

The data shows that at 31 March 2014, there were 2,435 Korean nationals in Australia on 457 primary visas, up from 1,750 one year earlier or growth of 39%, much higher than the total 457 visa program (6%).

Of the 2,435 Koreans on 457 visas, 36% were classified as ‘Technicians and tradespersons’ – again, a higher proportion than in the 457 program overall (29%).

Contractual Service Suppliers of Korea	Contractual Service Suppliers of Australia
<p>10. Entry and temporary stay shall be granted to contractual service suppliers of Korea for a period of up to one year, with the possibility of further stay.</p> <p>11. A contractual service supplier of Korea means a natural person of Korea who has trade, technical or professional skills and experience and who is assessed as having the necessary qualifications, skills and work experience accepted as meeting Australia’s standards for their nominated occupation and is:</p> <p>(a) an employee of an enterprise of Korea that has concluded a contract for the supply of a service within Australia and which does not have a commercial presence within Australia; or</p> <p>(b) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.</p> <p><i>Article 10.3: Grant Of Temporary Entry</i> Neither Party shall impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party under this Chapter, unless otherwise specified in Annex 10-A.<i>Footnote 1</i></p> <p><i>Footnote 1</i> For greater certainty, for Australia the term ‘limitations’ includes numerical quotas or the requirement of an economic needs test.(a)</p>	<p>8. Entry and temporary stay shall be granted for a period up to one year or the period of the contract, whichever is less, to a natural person of Australia who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 10-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.</p> <p>9. A contractual service supplier, means a natural person of Australia who:</p> <p>(a) is employed or engaged in a specialised occupation that requires theoretical and practical application of specialised knowledge;</p> <p>(b) possesses the necessary academic and professional qualifications and professionally-qualified competency-based experience to perform an activity in the sector relevant to the service to be provided in accordance with the laws, regulations or requirements of Korea;</p> <p>(c) is engaged in the supply of a contracted service as an employee of an enterprise that has no commercial presence in Korea, where the enterprise obtains a service contract, for a period not exceeding one year, from an enterprise of Korea, who is final consumer of the services supplied. The contract shall comply with the laws and regulations of Korea;</p> <p>(d) has been an employee of the enterprise for a period of not less than one year immediately preceding the date of application for admission; and</p> <p>(e) is required to receive no remuneration from an enterprise located in Korea.</p> <p>10. Labour market testing may be required as a condition for temporary entry of, or numerical restriction may be imposed relating to, temporary entry for professionals.</p>

Source: KAFTA, Chapter 10 “Movement of Natural Persons”, Article 10.3: Grant Of Temporary Entry; Annex 10-A Specific Commitments On The Movement Of Natural Persons.

(a) Labour market Testing is a form of 'economic needs test'. (Emphasis added)

Questions for the Committee: 457 LMT exemptions and KAFTA

The CFMEU suggest the Committee seek answers to the following questions.

1. In plain English, what specific concessions on the Movement of Natural Persons has Australia made in KAFTA that are over and above the concessions by Australia in the 1995 WTO GATS? In particular, which categories are not subject to LMT in KAFTA but were under WTO GATS?
2. The KAFTA provides that Australia will not impose Labour Market Testing (or any 'economic needs test') on several categories of Korean nationals including 'Contractual Service Suppliers of Korea'.
 - a) Explain what this provision will mean for the treatment of Korean nationals in relation to the 457 visa program, in particular whether employers (who are Standard Business Sponsors) will be exempt from the LMT requirement in the 457 visa program where the worker nominated is a Korean national in an occupation currently subject to the LMT requirement (ie Skill level 3, engineering and nursing).
 - b) Does KAFTA grant LMT-exempt status to all Korean nationals in all occupations in the 457 visa program under a Standard Business Sponsorship as is currently declared to be the case for nationals of Thailand and Chile and NZ by virtue of their FTAs, according to the DIBP website?
 - c) The definition of Contractual Service Suppliers of Korea in 11(b) refers to persons 'engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia'; and this group is not subject to LMT in the 457 visa program.
 - i) Does this definition mean that all Korean nationals seeking to supply a service that is merely their labour to all lawful employers in Australia are Contractual Service Suppliers of Korea, for the purpose of KAFTA?
 - ii) If yes, explain the difference between a Korean national seeking employment in Australia and a Contractual Service Supplier of Korea. If no, explain in detail exactly what is meant by 'Contractual Service Suppliers of Korea'.
 - iii) Explain the basis for the answers to a) to c) above.
 - iv) Has DFAT advised the Department of Immigration and Border Protection of DFAT's interpretation of this provision in the KAFTA? If yes, provide a copy of that advice.
 - d) Contractual Service Suppliers of Korea are to be granted LMT-exempt entry for Australia 'for up to one year'. Does this mean these persons will have to leave Australia after the one year period, or can they extend their stay on a 457 visa beyond one year?
 - e) The fact that Australia is giving up the right to impose LMT on Korean nationals while Korea is reserving that right in relation to Australian nationals raises serious questions. Has Australia's concessions in the 457 visa program been made in return for extracting concessions for greater

market access to Korea by Australian businesses and industries such as agriculture and the financial services sectors?

- f) Chapter 10, Article 10.8: Definitions says 'temporary entry means entry by a natural person covered by this Chapter, without the intent to establish permanent residence.' Explain how Australia will determine that Korean nationals covered by KAFTA do not have 'the intent to establish permanent residence', given that some 50% of all 457 visa holders obtain permanent residence visas.
 - g) Are Korean nationals in Australia on other temporary visas (eg Working Holiday, Overseas students) covered by KAFTA? DIBP data shows there are some 51,200 Koreans onshore at 31 March 2014.
3. Is the Government offering to include the same or similar provisions as in KAFTA, in the FTAs it is currently negotiating with China, and Indonesia; or any other country or group of countries such as via the TPPA?
4. In relation to the FTAs with Chile and Thailand - The DIBP website states that the exemption from LMT in the 457 visa program applies to all citizens of Chile and Thailand. That is a very significant and far-reaching exemption. It effectively confers on all Thai and Chilean nationals the same status as Australian citizens and permanent residents, for the purpose of the 457 visa program. In practical terms, it means that LMT is currently not required by sponsoring employers (who are Standard Business Sponsors) nominating Thai or Chilean citizens to jobs in all Skill Level 3 occupations, nursing and engineering. If more occupations are added to the list requiring LMT, presumably the LMT-exemption applies to these as well.
- a) When did DFAT advise the Department of Immigration of its view that the Chile and Thailand FTAs provided a 457 LMT exemption to all Thai and Chilean citizens? Was that advice provided by DFAT or another Commonwealth govt agency such as the Attorney-General's Department? Please provide a copy of that advice.
 - b) In plain English, explain precisely how these provisions create a total exemption from 457 LMT for all citizens of Chile and Thailand respectively.
 - c) Has this total exemption from 457 LMT for all citizens of Chile and Thailand previously been advised to the Australian Parliament? If yes, provide details of when this advice was explicitly provided, including Hansard references.
 - d) The view that the Chile FTA provides a 457 LMT exemption to all citizens of Chile appears in conflict with evidence given by a senior DFAT officer to the 2008 Joint Standing Committee on Treaties (JSCOT) inquiry into the Australia-Chile FTA.

...contractual service suppliers, who are people with high-level technical and professional qualifications, skills and experience *who are already employed by a contractual service supplier of the other country. So it is not a question of forming an employment relationship directly. Somebody has pointed out that this chapter does not apply to measures affecting nationals*

seeking access to the employment market. So many of the concerns of the CFMEU representative are not really germane to what this agreement does.¹⁰ (emphasis added)

This statement appears to limit the definition of 'contractual service suppliers' to persons who are already employed by an entity outside Australia, and exclude persons who are not so employed but are seeking employment with an Australian based employer. Explain how this 2008 DFAT evidence is consistent with the current view that the Chile and Thailand FTAs provide a 457 LMT exemption to all citizens of Thailand and Chile.

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¹⁰ Ms Trudy Witbreuk, Assistant Secretary of Trade Negotiations, DFAT, Evidence to JSCOT Inquiry into Australia-Chile FTA, *Transcript of Evidence*, 13 October 2008, pp33-34.

ATTACHMENT 1

457 LMT exemptions due to Australia's international trade obligations, November 2013

The *Migration Amendment (Temporary Sponsored Visas) Act 2013* (Amending Act) provides in s140GBA(2) that:

- (2) For the purposes of paragraph (1)(c), the Minister may, by legislative instrument, determine (as an international trade obligation of Australia) an obligation of Australia under international law that relates to international trade, including such an obligation that arises under any agreement between Australia and another country, or other countries. (Schedule 2—Labour market testing, 140GBA Labour market testing—condition)

On 18 November 2013, the Assistant Minister for Immigration and Border Protection issued the legislative instrument under this provision.

1. Legislative instrument, dated 18 November 2013

This is reproduced in full in the following pages.

This sets out the determination by the Assistant Minister for Immigration and Border Protection of “the obligations arising under international trade agreements under which the imposition of labour market testing would be inconsistent with those obligations”.

IMMI 13/138 - Determination of International Trade Obligations relating to Labour Market Testing
<http://www.comlaw.gov.au/Details/F2013L01954>

The categories listed in this instrument are described in ‘international trade-speak’ and have presumably been determined by the Assistant Minister for Immigration, on the advice of DFAT and other Commonwealth agencies eg Attorney-General’s Department.

2. ‘Translation’ of the legislative instrument IMMI 13/138 into specific administrative categories in the 457 visa program, ie ‘plain English’

The DIBP website and other DIBP documentation ‘translates’ the trade language in the instrument into specific categories of foreign nationals deemed to be LMT-exempt in the 457 visa program.

Again this translation or interpretation will presumably be based on DFAT advice to DIBP.

The following pages also set out the full text on the DIBP website setting out the specific categories of foreign nationals said to be LMT-exempt in the 457 visa program due to the international trade ‘obligations’ in legislative instrument IMMI 13/138.

In June 2014, the DIBP advised the CFMEU that ‘the department cannot provide data on the number of nominations in a specific timeframe where the LMT condition did not apply due to an international trade obligation because recording systems do not capture this level of detail.’¹

¹ DIBP email to CFMEU dated 03 June 2014

**DETERMINATION OF INTERNATIONAL TRADE OBLIGATIONS RELATING TO LABOUR MARKET TESTING -
- IMMI 13/138**

(Section 140GBA(2))

I, MICHAELIA CASH, Assistant Minister for Immigration and Border Protection, acting under section 140GBA of the Migration Act 1958 ('the Act') hereby:

DETERMINE for the purposes of subsection 140GBA(2) of the Act the following obligations arising under international trade agreements under which the imposition of labour market testing would be inconsistent with those obligations:

(a) the Protocol on Trade in Services to the Australia-New Zealand Closer Economic Relations Trade Agreement:

- (i) Executives and Senior Managers as Intra-Corporate Transferees;
- (ii) Specialists as Intra-Corporate Transferees;
- (iii) Independent Executives;
- (iv) Contractual Service Suppliers.

(b) the General Agreement on Trade in Services at Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization:

- (i) Executives and Senior Managers as Intra-Corporate Transferees;
- (ii) Independent Executives;
- (iii) Specialists who have been nominated following two years full-time employment in Australia with the same nominating employer.

(c) the Singapore-Australia Free Trade Agreement:

- (i) Executives and Senior Managers as Intra-Corporate Transferees;
- (ii) Specialists as Intra-Corporate Transferees;
- (iii) Independent Executives;
- (iv) Specialists who have been nominated following two years full-time employment in Australia with the same nominating employer.

(d) the Thailand-Australia Free Trade Agreement

- (i) Executives and Senior Managers as Intra-Corporate Transferees;
- (ii) Specialists as Intra-Corporate Transferees;
- (iii) Independent Executives;
- (iv) Contractual Service Suppliers.

(e) the Australia-United States Free Trade Agreement:

- (i) Executives and Senior Managers as Intra-Corporate Transferees;
 - (ii) Independent Executives;
 - (iii) Specialists who have been nominated following two years full-time employment in Australia with the same nominating employer.
- (f) the Australia-Chile Free Trade Agreement:
- (i) Executives and Senior Managers as Intra-Corporate Transferees;
 - (ii) Specialists as Intra-Corporate Transferees;
 - (iii) Independent Executives;
 - (iv) Contractual Service Suppliers.
- (g) the ASEAN-Australia-New Zealand Free Trade Agreement:
- (i) Executives and Senior Managers as Intra-Corporate Transferees;
 - (ii) Specialists as Intra-Corporate Transferees;
 - (iii) Independent Executives;
 - (iv) Specialists who have been nominated following two years full-time employment in Australia with the same nominating employer.
- (h) the Malaysia-Australia Free Trade Agreement:
- (i) Executives and Senior Managers as Intra-Corporate Transferees;
 - (ii) Specialists as Intra-Corporate Transferees;
 - (iii) Independent Executives;
 - (iv) Specialists who have been nominated following two years full-time employment in Australia with the same nominating employer.

This Instrument, IMMI 13/138, commences on 23 November 2013 immediately after the commencement of the *Migration Amendment (Temporary Sponsored visas) Act 2013*.

Dated 18.11.13

Michaelia Cash

Assistant Minister for Immigration and Border Protection

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Link: <http://www.comlaw.gov.au/Details/F2013L01954>

DIBP website list of LMT-exempt categories due to 'Australia's international trade obligations'

The DIBP website lists 5 categories as LMT-exempt (in Skill level 3, nursing and engineering positions):

"International trade obligations"

LMT will not need to occur where it would conflict with Australia's international trade obligations, in any of the following circumstances:

- The worker you nominate is a citizen of Chile or Thailand, or is a Citizen/Permanent Resident of New Zealand.
- The worker you nominate is a current employee of a business that is an associated entity of your business that is located in an Association of South-East Asian Nations (ASEAN) country (Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam), Chile or New Zealand.
- The worker you nominate is a current employee of an associated entity of your business who operates in a country that is a member of the World Trade Organisation, where the nominated occupation is listed below² as an "Executive or Senior Manager" and the nominee will be responsible for the entire or a substantial part of your company's operations in Australia.
- Your business currently operates in a World Trade Organisation member country and is seeking to establish a business in Australia, where the nominated occupation is listed below as an "Executive or Senior Manager".
- The worker you nominate is a citizen of a World Trade Organisation member country and has worked for you in Australia on a full-time basis for the last two years."

Link: <http://www.immi.gov.au/Visas/Pages/457.aspx> (Under 'Nominate' tab)

² See next page.

Executive or senior manager occupations

For the purposes of international trade obligations, the following occupations are considered to be Executives or Senior Managers:

Occupation	ANZSCO Code
Chief Executive or Managing Director	111111
Corporate General Manager	111211
Sales and Marketing Manager	131112
Advertising Manager	131113
Public Relations Manager	131114
Corporate Services Manager	132111
Finance Manager	132211
Human Resource Manager	132311
Policy and Planning Manager	132411
Research and Development Manager	132511
Construction Project Manager	133111
Project Builder	133112
Engineering Manager	133211
Production Manager (Forestry)	133511
Production Manager (Manufacturing)	133512
Production Manager (Mining)	133513
Supply and Distribution Manager	133611
Primary Health Organisation Manager	134213
Regional Education Manager	134412
Education Managers nec	134499
Chief Information Officer	135111
ICT Project Manager	135112
ICT Managers nec	135199
Environmental Manager	139912
Laboratory Manager	139913
Quality Assurance Manager	139914
Specialist Managers nec	139999
Corporate Treasurer	221212

Note that 'Engineering Manager' ANZSCO 133211 is included in the above list of LMT-exempt occupations in situations of 'international trade obligations' set out above. This is despite the fact that the 457 legislation passed in June 2013 requires LMT for all engineering occupations.

This inclusion suggests a DFAT/AGD view that Australia's 'international trade obligations' regarding 457 LMT as per international treaties over-ride any domestic Australian legislation when the two are in conflict.

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