



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

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Dear Sir/Madam

Migration Amendment (Temporary Sponsored Visas) Bill 2013

Until now, successive Australian governments have adopted a holistic and largely bipartisan approach regarding skilled migration policies and programs. Government and business have seen that we can achieve a balanced policy setting in which skilled migration, as part of a broader approach to developing the Australian workforce, is an integral component of and a driver of productivity gains in the workplace. The Australian government should continue to carefully and sensitively manage our national migration program, for its economic and social contribution to the nation, whilst continuing to ensure that employers can still access the skills and labour they need to maintain productive output.

The May 2013 ACCI Pre-Election Survey shows that *recruiting employees with appropriate skills* is a significant concern to business (82% of respondees) despite an overall softening in business confidence and expectations of worsening unemployment. ACCI and other stakeholders are working with Government on an overall workforce development strategy to ensure this matching of labour and skills with jobs available works.

In its current form, the 457 visa program allows businesses to access overseas labour when domestic workers are not readily available. The Department of Immigration and Citizen ship, through its March monthly report on 457 visa usage showed that 457 visas are working to fill labour needs as intended and had responded well to economic needs. Numbers of businesses seeking overseas workers has decreased as unemployment in Australia has increased. The increase in available domestic labour has reduced the need for imported skills.

In a media release dated February 2013¹, The Department of Immigration and Citizenship stated that:

Temporary work visa applications have been heading downwards since June 2012 and have now declined for the last three consecutive months. Reinforcing this trend has been a drop in actual 457 visa grants since August. This movement demonstrates the 457 visa program's responsiveness to the changing needs of the Australian economy.

ACCI accepts that there may be aspects of the scheme that may be worthwhile for consultative review, but to undertake legislative change in an environment of inappropriate and unsubstantiated claims of rorting and system-wide problems is not an effective avenue for review. Further, to introduce change without subjecting the legislation to a Regulatory Impact Statement (RIS) only exacerbates concerns that the Bill introduces costly and inefficient processes on businesses that will do little to improve the effectiveness of the scheme.

ACCI has made a number of relevant submissions in relation to this issue, most recent being the Submission to the Senate Constitutional and Legal Affairs References Committee, dated May 2013. In making further comments on the Bill before Parliament, we wish to highlight two areas, being labour market testing and sponsorship inspector powers. These comments should be read in combination with earlier comments on other aspects of the Bill.

Labour market testing

ACCI believes that while there may be a need to strengthen the current attestation provisions, detailed labour market testing will add to cost, time and the overall red-tape burden incurred by businesses seeking to secure skilled labour. Of most significant concern to ACCI is the lack of a Regulatory Impact Statement examining the impact of the proposed Bill on businesses seeking to secure skilled labour.

The introduction of stringent labour market testing requirements could cause significant time delays that may see regional areas not having access to health professionals due to the time impost of conducting detailed labour market analysis. The Legislation acknowledges that labour market testing creates time delays. Section 140GBB of the bill includes an exemption to the Labour Market Testing requirement in the event of a natural disaster in order to assist disaster relief or recovery. In his second reading of the Bill, the Minister stated that:

This exemption will give the government flexibility to respond to situations of national or state emergency and would facilitate the speedy entry of overseas skilled workers without the delay caused by requiring a sponsor to undertake labour market testing.

¹ <http://www.newsroom.immi.gov.au/releases/457-visa-program-responds-well-to-economic-needs-3>

This admission in the Bill that Labour Market Testing adds delays contradicts the 'timely access' policy rationale of the 457 visa program.

Further obligations placed on employer sponsors in conducting labour market testing would only slow down their access to skilled overseas workers under what is supposed to be a fast, flexible visa solution to skilled labour shortages. Additionally, the 2008 Deegan Review pointed out that labour market testing may breach terms in many existing international trade agreements and complicate or hinder future agreements.

ACCI is particularly concerned with the ambiguity around the specific requirements for labour market testing in the Bill. Subsection 140GBA(3)(a) of the bill states that the Minister may, by legislative instrument, determine a period within which labour market testing is required in relation to a nominated occupation. This provides the Minister with an express power to determine the time period in which an employer would need to conduct labour market testing and may lead to differing time periods being in place for different occupations. The imposition of a specified time period over which a position must be advertised fails to take into account the varying needs of business in securing workers, often in very short time frames. Having a set period over which a position must be advertised, combined with the time delays in advertising overseas and the Departmental processing time for sponsorship can add a significant time delay, potentially of many months, in filling positions that can be critical to the effective operation of a business. Having differing time periods in place for different occupations may lead to confusion amongst employers sponsors, especially businesses that are seeking employees in a number of different occupations.

In short, regulation assumes that there is only one approach for employers to enter to the labour market, whereas in reality, a suitable approach for one employer is totally inappropriate for another employer and their circumstance.

The labour market testing exemptions for Bachelor Degree and higher level occupations recognise the need for high level skills in the economy. However, trade level, and Advanced Diploma and Diploma occupations, generally at ANZSCO Skill level 3, for which labour market testing will be required are just as critical to the economy and in many cases are critical to the operations of our health services, major resource projects and research and development and innovation in Australia. ANZSCO Skills Level 3 occupations include not only the traditional trade occupations such as electricians, carpenters and automotive mechanics, but also medical technicians, environmental technicians, engineering draughtspersons and architectural draughtspersons.

ACCI acknowledges the ability for the Minister to specify occupations in these categories for exemptions, dependant on qualification level and experience. However, ACCI is concerned that the Minister can, by legislative instrument, add and remove exempt occupations, regardless of skills level or experience, without the requirement for consultation with industry. ACCI believes that this would create uncertainty and confusion amongst employers

as the list for exempt occupations could become a fluid listing, prone to frequent change and not adequately communicated to employers. This clause would also allow the Minister to include or exclude occupations based on pressures from single focus advocates, trade unions and broader community pressures without feedback from employers.

Subclass 457 visas are widely used across the economy, in both rural and metropolitan regions, in a broad range of occupations and by a wide variety of employers and across a wide variety of skills levels. State and territory governments remain one of the largest users of 457 visas to help fill serious skills shortages of health workers in the community. The skills levels of these health workers generally spans across ANZSCO Skills Levels 2, with occupations such as General Practitioners, medical specialists and nurses; and ANZSCO Skills Level 3, with occupations such as Anaesthetic Technicians, Cardiac Technicians and Medical Laboratory Technicians. Additionally, the construction and resources sector remain significant users of the scheme, especially in attracting skilled tradespeople at ANZSCO Skills level 3, in major construction, resources and infrastructure development projects.

Rather than a one-size fits all regulatory approach to labour market testing, the most effective barrier to prevent employers using a 457 visa program instead of accessing Australian skilled workers is the relative cost and regulatory burden of doing so. Although it is acknowledged that there may be some employers who are, for a range of reasons, using the 457 option ahead of attempting to employ Australians, ACCI sees no evidence that the numbers of businesses using the scheme inappropriately in this way are substantial.

Sponsorship inspector powers

ACCI is generally supportive of increased monitoring of the overall program and has, in previous submissions and hearings stated that many of the issues the Government is seeking to address through tighter legislation could easily have been addressed through a more efficient, effective and better resourced compliance regime. However, with the backdrop of increased red-tape burden, unfounded claims of widespread rorting and political rhetoric that indicates a systemic aversion to skilled migration, requiring Fair Work Inspectors to conduct inspections and exercise compliance powers has the outward appearance of a heavy handed regulatory approach that has the potential to cause unnecessary alarm amongst sponsoring businesses.

ACCI believes that the Department of Immigration and Citizenship, as the responsible entity for overseeing the scheme and the expert body on temporary skilled migration compliance matters, should be appropriately resourced to maintain an effective compliance and monitoring regime. ACCI is comfortable with Fair Work Inspectors supporting DIAC inspectors as appropriate in monitoring and compliance against the existing framework. However, in light of the political context surrounding the current reform process and the increased regulatory requirement, enlisting Fair Work Inspectors to enforce the proposed would be seen as inappropriate and a “big stick” approach by government. ACCI also believes that Fair

Work Inspectors operating in isolation from DIAC inspectors may lead to discrepancies in the compliance regimes as Fair Work Inspectors have not previously had exposure to migration compliance.

ACCI believes that DIAC should establish and maintain an ongoing education program for business sponsors to ensure that sponsors are fully aware of their obligations and that any changes to the subclass 457 visa are communicated to all sponsor businesses. A broad engagement program would also give sponsors businesses a direct feedback conduit to advise DIAC of issues and operational concerns as they arise.

Conclusion

Temporary skilled migration pathways through subclass 457 visas provide a dynamic approach to short term human capital needs for Australian employers who face difficulties in attracting local labour sources. A responsive temporary skilled migration system provides a balance point in the supply of skilled labour between domestic and overseas workers, based on the capability of the existing workforce and the skills needs of industry.

The recently experienced falling trend in accessing the scheme as economic conditions deteriorate and the labour market is softening, is evidence that the vast majority of enterprises, including Governments and a number of unions, only access the scheme when there are shortages that need to be met. ACCI believes that the Government needs to reduce the toxic rhetoric around skilled migration in order to facilitate a sensible discussion that can lead to changes that are more modest, not overly burdensome on sponsoring employers and reflective of shared concerns between industry, unions, government and the broader community.

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