Migration Institute of Australia

26 April 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

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Dear Committee Secretary,

Thank you for the opportunity to provide a submission to the Senate Inquiry into Framework and operation of Subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements. Please find attached a submission from the Migration Institute of Australia.

The MIA is the peak body for migration advice professionals, representing more than 2000 Registered Migration Agents as well as qualified Education Agents across Australia and overseas. The MIA holds interests in all areas of migration policy development and would appreciate the opportunity to contribute to future consultations regarding this Inquiry.

Yours sincerely,

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Migration Institute of Australia

The Migration Institute of Australia (MIA) welcomes the opportunity of making a submission to the Senate Legal and Constitutional Committee on its Inquiry into the Framework and operation of Subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements.

Serious consideration should be given as to whether there should be any changes made to the current Subclass 457 regulatory regime so close to an election. As it currently stands, it would appear that the changes mooted by the Government has had a negative effect on the perception of businesses to have confidence in a system which may be changed at any time by political parties or special interest groups.
All parties with an interest in this area must be very careful not to pitch overseas workers against Australian workers. It is very concerning that the Construction, Forestry, Mining and Energy Union (CFMEU) felt that it had to carry out a poll that indicated that 62 percent of Central Queenslanders oppose the Subclass 457 visa and related schemes and that 90 percent reject suggestions that opposing such schemes makes you "racist". In fact, 69 percent of respondents in that poll wanted the scheme scrapped altogether and for Australians to be trained instead, but this disregarded any reference to the benefits skilled migration provides in building up the economy so that jobs can be created for Australians, particularly in Central Queensland.
It is also a matter of great concern that the current politically charged environment and often inconsistent statements will harm whatever good intentions Australia has proclaimed about the Asian Century.

The MIA has written this submission after considering the views of its Members, who are the core of immigration advisor profession and have hands on experience working with employers on Subclass 457, Enterprise Migration Agreement (EMA) and Regional Migration Agreement (RMA) visas.

Most issues outlined by the Senate Legal and Constitutional Affairs Committee are addressed below:

(a) their effectiveness in filling areas of identified skill shortages and the extent to which they may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements;

It should be noted that there is currently no RMAs announced by the Government. This is stifling the potential for future growth in what is a very important part of the Australian community. The Government should immediately continue its negotiations with the State and Territories to achieve credible RMAs for Australia's regional, rural and remote areas.

It is to Australia's national shame that young school leavers are either not automatically able to secure an apprenticeship or traineeships as soon as they leave school. All Australians should have the right to an education and have access to work opportunities immediately after leaving school so that they can develop a skill set and not fall through the cracks and become unemployable because of lack of education and / or

training opportunities. Apprenticeships and traineeships should also be offered to older workers who fall within the purview of those who need to re-skill as mature aged workers.

The current apprenticeship / traineeship system appears to have systemic problems, however, meaning that workers are not attracted to undertaking apprenticeships with employers for the full course of time. These problems have been identified in "A Shared Responsibility Apprenticeships for the 21st Century Final Report of the Expert Panel 31 January 2011",[1] and it is not this submission's intention to duplicate what this report has recommended. However, by way of example, apprenticeship commencements in commercial cookery are down by 12.45 percent in New South Wales compared to the same period in the last financial year (as at March 2013).

The MIA recognises the importance of the implementation of the Gonski Report. It is, however, at a loss as to how this will improve the skills bases of the Australian workforce if technical and university education are not supported to provide skills based teaching programmes. Continued investment by the Government in the post-secondary sectors must be maintained to ensure a credible skills base for the future.

Service Skills Australia has published a report on labour and skills forecasts for 2010–2015 that advocated that Australia will be very short of willing workers in the tourism and hospitality industries over the next few years.[2] There has not been proper research carried out, however, as to what strategies could be explored to address the current and future shortages. The Government should undertake urgent research in this area to determine Australia's future skills shortage so that proper planning on training Australians and the securing overseas workers can be assessed.

Whilst there is a skills shortage in Australia, which is not backed up by the training of Australians, then there will always be a need for employers to access overseas workers whether it is via the current Subclass 457 visa scheme or any other scheme.

Employers who currently sponsor Subclass 457 visa holders are, in the majority of cases, highly responsible corporate citizens as they are required to provide evidence that they provide training to their workforce before they are eligible to sponsor. The current training benchmarks are either one percent of payroll being paid by the employer for structured training programmes provided to their staff or two percent of payroll being paid into an industry training fund.

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[1] *Apprenticeships for the 21st Century Expert Panel Paper, January 2011*, Commonwealth of Australia, 2011.
[2] *Forecasts Of Labour And Skills Requirements In The Service Industries, 2010-15, Report Prepared For Services Skills Australia* By Chandra Shah And Michael Long

In general, Australian companies are not required to provide training, by way of a mandatory percentage contributed from their payroll, towards the training of Australians unless they want to sponsor overseas workers. Employers who wish to sponsor Subclass 457 visa workers must demonstrate that they have spent either one or two percent their payrolls on training.

One could ask the question as to: who is the ideal corporate citizen in these cases? The answer would be those corporations who are committed to paying a portion of their payrolls towards the training of Australians.

The Government should consider reintroducing a training levy, such as the Keating Government introduced, perhaps with a lower levy (< 1.5 percent) and a higher payroll threshold (> $200,000) for all Australian companies and not just for those who sponsor Subclass 457 visa holder workers. Such a training levy would not only assist Australia in training its own workers but would remove the responsibility of the Department of Immigration and Citizenship (DIAC) having to assess whether Training Benchmarks have been met. For example, an EMA may involve the main company having sub-sub-subcontractors, however, under the current DIAC Policy, the company would be required to meet the training Benchmarks for all these people which in the chain of employment is unrealistic.

(b) their accessibility and the criteria against which applications are assessed, including whether stringent labour market testing can or should be applied to the application process;

Labour market testing was abolished by DIAC when changes were introduced in 2009. Prior to this, labour market testing required employers to:

- list the vacancy with a job placement provider for national listing, for at least four (4) weeks in the eight (8) weeks before lodging the application; or
- obtain a waiver of this requirement from a job placement provider.

In addition the employer had to do one of the following:

- advertise the vacancy in a Saturday and a weekday edition of a metropolitan and a national daily newspaper – a total of four (4) separate advertisements;
- if the business or organisation is outside a major metropolitan area, advertise the vacancy in a Saturday edition and a weekday edition of a major local or regional newspaper and a national daily newspaper – a total of four (4) separate advertisements ; and
- advertise in professional or trade journals, local community language newspapers, or on the internet. Vacancies on the internet should be advertised on specialist employment placement and recruitment websites.

Advertisements for a vacancy had to:

- accurately reflect the duties, salary and any other benefits. The proposed salary must reflect current Australian market rates;
- be advertised to attract the best possible response; and
- describe the position in a way that does not discourage Australian citizens or Australian permanent residents from applying for the position.

Where labour market testing was required, the employer had to include the following with their sponsorship application:

- the original job advertisements; and
- details of all local applicants, including if they are Australian citizens or Australian permanent residents and the reason why they are not suitable.

Whilst this may appear prima facie to be a thorough way of testing the market it proved to be cumbersome and ineffective as the only people who appeared to benefit were the proprietors of the newspapers who increased their advertising revenue as more often than not, many advertisements were left unanswered or suitable applicants were simply not found.

In many cases, employers received applications from people who required sponsorship to remain in Australia, which again defeated the purpose of carrying out labour market testing to attract local Australians.

(c) the process of listing occupations on the Consolidated Sponsored Occupations List, and the monitoring of such processes and the adequacy or otherwise of departmental oversight and enforcement of agreements and undertakings entered into by sponsors;

This is a multifaceted point.

(i) <u>Consolidated Sponsored Occupations List (CSOL)</u>

Many would argue that the Consolidated Sponsored Occupations List (CSOL) is not broad enough and does not include those occupations that assist employers to address their skill shortages. For example, restaurateurs are often seeking ways in which they can sponsor experienced sommeliers or maître d'hotel for their fronts of houses. Similarly, with the abundance of seafood restaurants, including those which serve sushi in Australia, there is also a need for the skills of experienced fishmongers to be employed. This is also apparent in the mining and rural sectors in which employers are not able to sponsor people in specific occupations.

Employers and employer organisations should be consulted as to what occupations are required for specific industries as many occupations are industry specific and the CSOL should reflect this need.

The CSOL is not representative of critical business needs and skill shortages in the regional and remote areas of Australia. There should be an expanded list for rural and remote areas of Australia, for example in the horticultural and nursery sectors where specialist workers are required for the cultivation of the nation's food.

(ii) Monitoring of sponsors

DIAC has always had the power to monitor sponsors and has exercised its powers of inspection on numerous occasions with or without notice. When an employer is monitored by DIAC, it is required to provide full records of payroll and other employee records. Although not required by law, employers often allow DIAC to speak to other employees for fear of further penalties. DIAC has the power to inspect the premises of the employer without hindrance.

In summary, the sponsor has an obligation to:

- cooperate with inspectors;
- ensure equivalent terms and conditions of employment;
- pay travel costs to enable sponsored persons to leave Australia;
- pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen;
- keep records;
- provide records and information to the Minister;
- provide information to Immigration when certain events occur;
- ensure skilled workers do not work in occupations other than their approved occupations; and
- not to recover certain costs from a skilled worker or secondary sponsored person.

There does not appear to be a comparable situation where a company is required to comply with immigration laws plus all other Australian laws and be monitored by DIAC (ie, immigration laws should be discrete for immigration purposes and should not encroach upon those areas of law which fall under the jurisdiction of another Government department). DIAC neither has the skill base nor resources to be an all encompassing Government department responsible for policing or implementing numerous other aspects of Australian law.

(iii) Enforcement of agreements and sponsorship undertakings

The powers that DIAC has to enforce sponsorship obligations are capable of causing great stress to a company being monitored as the consequences of a negative finding by DIAC can be punitive for the sponsor.

If an employer is found to be in breach of its sponsorship obligations, it could face sanctions. Amongst them, the sponsor could:

- be barred from sponsoring more people until a specified date;
- be barred for a specified period from applying to be a sponsor until a specified date;
- have one or more of its existing approvals cancelled;
- be ordered by a court to pay a fine for each failure of up to $33,000 if a body corporate and $6600 if an individual; and
- be issued an infringement notice for each failure of up to $6600 if a body corporate and $1320 if an individual.

In addition, employers could also have sanctions imposed if they:

- provided false or misleading information to the department or the Migration Review Tribunal (MRT);
- no longer satisfy the criteria for approval as a standard business sponsor or for variation of that approval;
- have been found by a court or competent authority to have contravened a Commonwealth, State or Territory law; or
- have sponsored persons who are found to have contravened a law relating to the licensing, registration or membership required in order to work in the nominated occupation.

DIAC does not need to have any more powers conferred as it already has extensive powers in every possible aspect of compliance of a sponsoring employer.

Considering the number of convictions of employers for breaching their sponsorship undertaking, it would appear to give DIAC more powers of monitoring or enforcement in addition to the above named powers would be an exaggeration of the current system. It would not achieve anything more than to frustrate the employers and the operation of businesses, which is not what the Subclass 457 visa program was established to do.

If DIAC and the Government are so convinced that there is an extensive abuse of the Subclass 457 visa system, then they should take the brave step of establishing a naming and shaming register of those companies who have breached their sponsorship obligations. This could be established in a similar way as the NSW Food Authority's Name and Shame Register of Penalty Notices for restaurants and other food outlets.

(d) the process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes;

DIAC decision making processes are rigorous. There is a greater need for transparency of decision making, however, as there have been many occasions when an application of equal and similar merit may be approved / refused by a DIAC officer. There should be a higher level of guidance as to how applications should be considered and not left to the individual interpretation or whim of a DIAC officer. For example, the MRT and

the Refugee Review Tribunal (RRT) rely upon Federal Court precedents to provide guidance in similar fact cases. Similarly, the DIAC should put together a database of its decisions, which set precedents for similar fact cases that may provide guidance to the DIAC officer to make an informed decision and result in consistency in decision making.

The current perceptions of Registered Migration Agents, sponsors and visa applicants is that the processing and negotiations required for Labour Agreements or EMAs are far too cumbersome. MIA Member Agents are aware of instances in which companies involved in the resources sector will hold off from making applications until there is more certainty in the process. This does not mean more certainty of implementing more stringent policies. The introduction of Labour Agreements, EMAs and RMAs was done on the basis that it would make it easier for Australian companies to secure the necessary workforce to establish and develop their company projects and plans.

The MIA is receiving reports from Members that there appears to be a "go slow" policy for processing applications and those that are being processed are being given a very heavy handed touch. For example, after a sponsorship and nomination have been approved by DIAC, case officers are refusing some visa applications because they have decided that it is not a genuine position. Assessment by a DIAC officer of the nominated position is outside their mandate when assessing a visa application. The requirements that a position meets a "genuine need" is not current policy but has been mooted by the Government to be changed, however, until such time that new legislation and policy has been announced, then DIAC officers should implement current Immigration policy and not take it upon themselves to interpret what they believe will be the new policy.

Many large and highly competent migration advice businesses are now receiving refusals that they would never have had in the past. The legislation and published policy has not changed but in reality some officers have implemented a changed policy which makes it is impossible to advise clients.

This also has the unfortunate consequence of an unnecessary increased workload for the MRT as these adverse decisions are appealed.

(e) the adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities;

The question that should be asked here is: how many tests an employer should be reasonably expected to apply before they make an assessment that there is a skills shortage? For example, if an industry organisation confirms that there is a skills shortage in the area and there are numerous Government reports that demonstrate that there is a general skills shortage in specific areas, what more should an employer be expected to do to demonstrate that there is an overall skills shortage in the area?

The general complaint that employers have when trying to employ some Australians is that they lack the basic skills sets in literacy and numeracy. This is problematic of the education and training system provided to Australians over the past 20 years during which time greater emphasis has been placed on other areas of education rather than the basic skills.

(f) the economic benefits of such agreements and the economic and social impact of such agreements;

As stated above, there are no RMA negotiated by DIAC with the State and Territory governments at this stage in existence.

There is also no EMA that has been signed off by DIAC at this point in time.

It should be noted that there are presently no EMA Submission Guidelines in place on DIAC's website as they are understood to be currently being rewritten.

The Roy Hill EMA involved approximately a $10 billion investment from its construction phrase over a period of three years. The Roy Hill EMA was announced in May 2012 by the former Minister of Immigration and Citizenship, the Hon Chris Bowen MP, as approved. A Deed of Agreement still has not been signed, however. This EMA would have resulted in approximately 1500 workers being sponsored from overseas but would have created approximately 8500 jobs for Australians. It is a project that should have been supported by Government in every possible way.

It is understood that there are three other EMAs that were lodged by Bechtel and there may be others. However, it is well known in the migration industry that companies are holding off lodging EMS and Labour Agreements until after September because of the uncertainty of the outcome (eg, Roy Hill was approved by the Minister for DIAC but was howled down by some members of the current Government and other special interest groups).

This does not put Australia in good stead internationally as a competitive economic force insofar as being a country that large companies feel confident they can have security of investments.

(g) whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on such visas;

As stated in **(a)** above, Service Skills Australia published a report on labour and skills forecasts for 2010–2015 that advocated that Australia will be very short of willing workers in the tourism and hospitality industries over

the next few years. There has not been proper research carried out, however, as to what strategies could be explored to address the current and future shortages. Government should undertake urgent research in this area to determine Australia's future skills shortage so that proper planning on training Australians and the securing overseas workers can be assessed.

Whatever the forecasts, it should not be to the detriment of scaling back training of Australians as it is during the downturn in the economy when more people should be trained so that there is the pool of skilled workers to take up the employment opportunities when conditions improve.

(h) the capacity of the system to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights;

As DIAC readily takes up the mantle for other Government departments, it should also provide sponsored workers with multilingual information on their rights whilst working in Australia. Such information could include but not limited to:

- National Employment Standards;
- Fair Work information;
- Fair Work Ombudsman; and
- Workers' Compensation.

DIAC could provide this information preferably via information technology, such as a downloadable application or file. This would not result in additional printing costs.

(j) the impact of the recent changes announced by the Government on the above points;

The new measures announced by the Government on 23 February 2013 included:

- *Introducing a requirement for the nominated position to be a genuine vacancy within the business. Discretion will be introduced to allow the department to consider further information if there are concerns the position may have been created specifically to secure a 457 visa without consideration of whether there is an appropriately skilled Australian available.*

Please refer to submission on **(b)** above on this matter.

It would appear that the Government intends to reintroduce Labour Market Testing for employers to demonstrate that there is a genuine need for them to employ an overseas worker. This is despite the fact that there may be industry information and government reports available which could clearly demonstrate that a skills shortage exists in a particular occupation or region.

- *introducing a provision to allow the department to take action against sponsors who engage in discriminatory recruitment practices.*

Again, this is an area that encroaches onto another area of Government, namely, the Human Rights and Equal Opportunity Commission (HREOC) federally and its State equivalent of Anti-Discrimination Boards.

DIAC does not have the resources to duplicate the services and responsibilities of other Government departments.

DIAC does not have the expertise to determine whether sponsors have engaged in discriminatory recruitment practices and any concerns would need to be handled by a specialist body such as HREOC or the equivalent of the State Anti-Discrimination Boards.

- *strengthening the market salary rate requirements to provide discretion to consider comparative salary data for the local labour market when deciding whether a nominated position provides equitable remuneration arrangements. Additionally, the market salary exemption threshold will be increased from $180,000 to $250,000 to ensure that higher paid salary workers are not able to be undercut through the employment of overseas labour at a cheaper rate.*

The mantra of some groups is that Subclass 457 visas have driven down the salary levels of Australian workers. Nothing could be further from the truth.

The current Temporary Skilled Migration Immigration Threshold (TSMIT) is $51,400 which is higher than many workers would normally be paid in their specific occupations that are included on the CSOL. Sponsors are also required to ensure that the terms and conditions of the overseas worker are at least as favourable as the terms and conditions that apply to the Australian employees. This is interpreted to mean that local workers who are employed in the same position need to have their salaries increased so that they are paid a comparable salary to the overseas sponsored worker (ie, their salaries are in no way degraded).

When the TSMIT was originally introduced it was done so on the basis that people were concerned that overseas workers were not being paid enough to survive in Australia. However, the TSMIT is automatically indexed to be increased on 1 July annually at CPI. This has led to the now high minimum level of $51,400 being required for the TSMIT, which often outstrips market rates that is an additional criterion that sponsors have to satisfy when determining the salary level of the overseas worker. The TSMIT will increase again on 1 July 2013 in accordance with CPI. It is questionable how many Australian workers have been granted an automatic pay increase every financial year, yet, overseas workers receive this increase.

As previously stated, there are currently no negotiated RMAs between DIAC and any State or Territory government. This leaves employers in these regions vulnerable, exposed and unsupported by government programmes to assist them with expanding their businesses and in turn, the growth of the national economy. Rural industries and trades are desperately in need of support in regional and remote areas and find it very difficult to fit within the very narrow Subclass 457 criteria at present.

The TSMIT is way out of kilter with the salaries paid to workers in rural and regional Australia, which makes it very difficult for employers to sponsor workers where there are often acute shortages.

When the Regional Subclass 457 visas were abolished by DIAC, employers were required to apply for workers under the Regional Sponsored Migration Scheme (RSMS) because the regional salaries for many of the occupations were at least 10 percent below TSMIT. There needs to be a 10 percent adjustment to TSMIT for regional and rural employers.

The TSMIT should also be occupation/industry specific as the one amount fits all occupations and industries is not realistic. One would expect tradespeople to be paid less than doctors, dentists, managing directors, etc, as a basis for consideration of market rates.

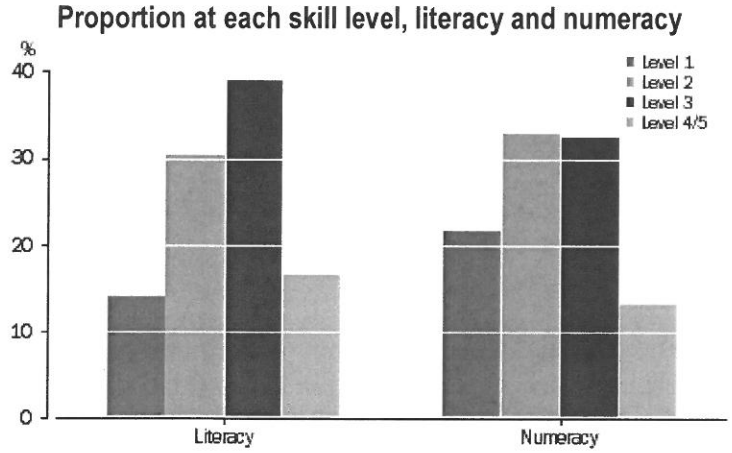
Many people have asked the question: If the award rate is good enough for Australian workers, then why isn't it good enough for overseas workers? All sponsored workers need to provide evidence that they have private health insurance, which is the most important safeguard for any worker should they fall ill and cannot work. The resentment from Australians towards Subclass 457 workers is that they believe that they have some type of advantage over local workers, which is the consequence of those who have influence over policy.

- *strengthening the English language requirements by removing exemptions for applicants from non-English speaking backgrounds who are nominated with a salary less than $92,000 and requiring applicants who were exempt from the English language requirement when granted a visa to continue to be exempt from, or to meet the English language requirement when changing employers. Additionally, the definition of English language will be better aligned with the permanent Employer Sponsored.*

A recent Programme for the International Assessment of Adult Competencies (PIAAC) survey carried out by the Australia Bureau of Statistics (ABS) assessed people's literacy and numeracy skills and their abilities to solve problems in technology rich environments.

The survey measured participants on a scale of one to five, one being the lowest and five being the highest. It found that 44 percent of Australians aged 15 to 74 (a total of 7.3 million people) had literacy skills at levels one or two; a further 39 percent (6.4 million) were at level three; and 17 percent (2.7 million) were at levels four or five. For numeracy skills, 55 percent of Australians (8.9 million) were assessed at level one or two; 32 percent

(5.3 million) were at level three and 13 percent (2.1 million) were at levels four or five. This means that, in Australia today, more than 40 percent of adults have a literacy level below what is considered to be enough to get by in everyday life:[3]



The current requirement for Subclass 457 visa applicants to demonstrate that they have an International English Language Testing System (IELTS) score of "5" on all four components – reading, writing, speaking and listening – is too high for Australian born workers to obtain.

This is particularly a high barrier for visa applicants who come from non-English speaking countries where the Latin alphabet is not the basis for their native tongues. For example, a person born from China, Japan, Thailand, Vietnam, etc, uses Kangi or Sanskrit alphabets, which are is foreign to the Latin alphabet. This makes it extremely difficult for people to learn another language based on the Latin alphabet to the level required of vocational English (as defined as an IELTS score of 5).

This in turn affects the overall ability of sponsors to employ workers from non-English speaking countries in certain nominated occupations.

In a recent video called *Language on the Move,* which was based on research carried out by Kimie Takahashi, Doctor of Language at Macquarie University, Master Chef Kimitaka Azuma 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".[4] [5]

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[3] ABS Director of the National Centre for Education and Training Statistics, Andrew Webster, Media Release 15th February 2013 http://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/4228.0Media%20Release2002011-2012

[4] http://www.languageonthemove.com/kimitaka-azuma

[5] Owner and Executive Chef of the Azuma Group of Restaurants

There is an urgent need to recognise that a chefs' culinary rather than English language skills should be considered to be the focus of why restaurants want to sponsor overseas workers to work at their establishments.

Learning English as a second language is more difficult as a person gets older. In 2009, the most common age of chefs was between 25 and 34 years, cooks were generally older (42 percent were aged 45 years or older), and many would face an uphill battle to achieve an IELTS 5.[6]

The Subclass 457 visa is about providing employers a skill base that they cannot find in Australia. Employers would argue that they would prefer their workers to have expertise in their particular skill then to have the ability to read the sports section of the daily newspapers during their breaks.

In regional and remote areas, it is often difficult to locally recruit some trades because of the requirement of obtaining an IELTS 5. A score of "Functional English" (an IELTS 4.5) is adequate for their work and for their settlement. An IELTS 5 would be the upper end of the scale required for safety, employment requirements and settlement where many of the community members also have English as a second language.

Employers should be encouraged to provide workplace English language classes not only for overseas workers but for those workers who have a low level of numeracy and literacy.

Removing exemptions for applicants from non-English speaking backgrounds who are nominated with a salary less than $92,000 and requiring applicants who were exempt from the English language requirement when granted a visa to continue to be exempt from, or to meet the English language requirement when changing employers, would affect many workers and simply places another artificial barrier to those workers from non-English speaking backgrounds to be sponsored by employers in Australia.

This move could be seen to be discriminatory in its application by DIAC. It is the only English language exemption for those who will be already paid a high salary of $92,000 by the employer.

- *strengthening the requirement for sponsors to train Australians by introducing an ongoing and binding requirement to meet training requirements for the duration of their approved sponsorship.*

An employer is already required under legislation and policy to maintain their training requirements for overseas workers. How this requirement would be strengthened is unsure. Tightening up this regime would

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[6] *Forecasts Of Labour And Skills Requirements In The Service Industries, 2010-15 Report Prepared For Services Skills Australia* By Chandra Shah And Michael Long, page 6.

only make this programme more restrictive in its implementation, however, and would impose another hurdle for employers to jump over and a disincentive when sponsoring.

It should be remembered that sponsoring employers are the only employers who are required to demonstrate their commitment to training Australian workers as it is not a general requirement of all Australian companies.

- *clarifying that 457 workers may not be engaged in unintended employment relationships by requiring workers to be engaged on an employment contract (as opposed to a business contract for services) and not on-hired to an unrelated entity unless they are sponsored under a labour agreement, or in an exempt occupation.*

The use of labour hire firms is problematic as it is often difficult to delineate who is ultimately responsible to ensure that the terms and conditions of the sponsored worker are not breached.

Overseas workers should be employed on an employment contract and not a business contract for services as this would immediately place either the sponsor or the labour hire firm in breach of their sponsorship agreement.

- *strengthening the existing obligation regarding recovery of costs to ensure that sponsors are solely responsible for certain costs.*

It is difficult to understand how sponsors could be held more liable for "certain costs" when they already are bound by their sponsorship obligations to:

- pay travel costs to enable sponsored persons to leave Australia;
- pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen; and
- not to recover certain costs from a skilled worker or secondary sponsored person.

What other "certain costs" is the Government referring to? This would appear to be a catch-all phrase that needs to be clearly defined in its meaning and implementation.

(k) and any related matters.

- **Unregistered practice**

Regulation 3Cof the *Migration Agents Regulations 1998* (Part 2 – Immigration Assistance Given by Persons Not Registered – Division 2.1 Assistance Given By Employers And Their Employees) allows employers to assist employees in making visa applications. However, this is fraught with the possibility of employers either

making poor applications when submitting information and documents. Further, it is not unrealistic that an employee might never see the visa grant letter and may not be aware of his or her rights, correct salary, etc.

There are many instances in which people are retained by employers to do the immigration work for certain projects. This is particularly apparent in the entertainment industry where a person is subcontracted to work, for example, as Project Manager who is responsible for carrying out all the work required to hold a particular event including applying for the visas of performers. This only encourages unregistered practice of unqualified people who, in many instances, can provide advice which may be to the detriment of the visa applicant.

It is the recommendation of the MIA Regulation 3C should be repealed.