

27 October 2008

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam

RE: Inquiry into the implementation of the Migration Legislation Amendment (Worker Protection) Bill 2008

I make this submission with the purpose voicing the concerns which the amendment to the 457 Gazette Notice on 1 July 2008 (particularly in respect of the Heavy Truck Drivers) has caused.

Pursuant to the amendment to the Gazette Notice, the Minister for Immigration and Citizenship, Senator Hon. Chris Evans effectively removed Heavy Truck Drivers from the list of eligible occupations under the 457 (regional) scheme, with the exception of those truck drivers who were employed primarily in the mining or construction industry.

As a practicing Registered Migration Agent, working both in the UK and in Australia, I have experienced first hand the reaction from clients and members of the Trucking Industry, which I must admit, has not been positive.

The changes to the Gazette Notice meant that I had to withdraw a number of applications which had been submitted prior to the legislation changes and also, communicate the unfortunate news to a dozen other clients who were in the process of applying for visas under the regional 457 scheme.

Apart from the changes causing major disruption to the process, the effect of making our clients ineligible to apply with their prospective sponsors has also caused undesirable effects and we have lost their business as a result. In light of the current global credit crisis, this is not a healthy change to our company by any means.

For your reference, our company in the United Kingdom is one of the largest and most reputable in the market, with free advice on migration and other services provided in every major city in the UK on a monthly basis. The company deals only with Registered Migration Agents and has customer service and the client's best interest at the core of our operation. We deal with a large amount of UK nationals who wish to apply for visas in all different categories but the 457 is the most popular.

We handle a large amount of 457 applications from British citizens in all areas, including the trucking industry and it is with this particular group in mind that I voice my concerns over the unconscionable action to remove truck drivers from the eligibility list.

As you are probably aware, the UK provides the largest percentage of migrants to Australia on a yearly basis. A large number of these migrants arrive in Australia under the 457 scheme and progress to become settled and permanent residents within two to three years. A large proportion of these migrants come with their families to Australia for the purpose of starting a new life and settling permanently.

Many of our clients find that the skilled visa category is not an option so they invest a great deal of time and money trying to make themselves more eligible for migration under Australian standards.

Many of them upgrade their skills with further study but the majority – the ones who have vast amounts of experience and comparable qualifications- chose to look for a job in Australia and even fly out to meet with potential employers.

The clients are carefully assessed on various grounds including character and health prior to allowing them to engage our services so in this regard, we are dealing with people who are not only eligible for migration under the regulations, but also eligible for Australia as prospective Australian Citizens.

With respect to the Heavy Vehicle Truck Drivers, we understand that there is an critical shortage of qualified and experienced truck drivers in all regions and we understand that this demand is not being met locally.

The majority of truck drivers, as we understand it, are being encouraged by employers in the Mining Industry to relocate to these areas with the purpose of filling their demands. It is no secret that the mining/ trucking companies offer very attractive salary incentives to these drivers and that the drivers respond accordingly by relocating, leaving behind a great void in the non-mining, non-construction related industries.

The truck drivers applicants which our company services are all qualified and experienced and all are encouraged to undertake licensing tests in Australia with a view to increase their employability and their migration prospects. Many of them finance these expenses with a lot of effort and sacrifice because they believe in the invaluable opportunity that Australia offers and

they are prepared to do whatever it takes to become eligible to apply and make their dream come true.

The UK has a large truck driving industry and we find that the majority of applicants are highly qualified and experienced, given the strict rules and regulations that they have to follow. We also find them to be highly eligible in other areas such as Language Skills (English speaking) and educational background.

We believe that the restrictions which are placed amongst the employers in Australia are discriminatory in the sense that the mining and construction industries are given preference over other industries which incidentally support regional employment as well.

One other problem which the current regulations (by Gazette Notice) also pose for potential employers is the lack of clear definition of the term contained within the definition of **Mining or Construction Site Heavy Truck Driver:**

“activity primarily undertaken at mining or construction sites”.

The definition of what constitutes “mining” and “construction” industry is not covered in the Gazette notice and indeed causes major interpretative problems for employers who want to know if they qualify under the definitions. For example, can an offshore oil rig be classified as a “mine site” for the purpose of this regulation or is the mining industry restricted to minerals onshore?

Also, in relation to “construction industry”, does this definition encompass residential and commercial? And if so, then if then what are the exclusions?

We are of the opinion that truck driving companies of in all sectors affected are indeed going to continue to suffer great losses in productivity due to the legislative amendments and migration of truck drivers to industries which pay better.

My proposals and recommendations are for a review of the Gazette Notice and for a more flexible approach to the restrictions placed upon employers in non-construction, non-mining sectors.

Additionally, there should be some sort of remedial alternative to compensate those applicants who have been on 457 visas, working in regional areas and abiding by the conditions to be able to apply for extensions to their applications or be able to apply for employment with other employers, so as to be able to meet the requirements for permanent residency applications (eg RSMS) as currently there is no option for them to “transfer” their sponsorship or apply for extensions.

The demand on home turf continues to be critical and the supply of qualified and experienced applicants from overseas undiminished but unfortunately, the great gap is found within the very instrument which should facilitate the process.

I ask this Committee to consider the long and short term effects of these restrictions on employers across ALL industries in Australia, particularly those in the regional areas who continue to find it difficult to meet their local demands. And you will find that this extends beyond the trucking companies who will not be able to deliver goods other than mining products across Australia.

In summary, the Committee needs to reconsider the effect the current regulations have on the following stakeholders:

1. The truck driving businesses across Australia who are affected by the legislation and who have no other means of supplying their demand of heavy truck drivers
2. The prospective applicants who are eligible for migration on all other grounds, except that they cannot apply for jobs outside the mines or construction industry and
3. The migration agents whose business will also suffer as a consequence of not being able to assist clients with their visa applications

The Committee can make a recommendation for the revocation of the Legislative Instrument or for amendments which reflect fairness and equality for all employers across Australia.

Yours sincerely,

Heidi Ochoa
Registered Migration Agent 0533317
thinkingaustralia.com