ASSOCIATION OF CONSULTING ENGINEERS AUSTRALIA

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BUSINESS (LONG STAY) SUBCLASS 457 AND RELATED TEMPORARY VISA REFORMS

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ACEA SUBMISSION

Enquiries |

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The Association of Consulting Engineers Australia (ACEA) is an industry body representing the business interests of firms providing engineering, technology and management consultancy services.

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INTRODUCTION

ABOUT THE ACEA

The Association of Consulting Engineers Australia (ACEA) is an industry body representing the business interests of firms providing engineering, technology and management consultancy services.

There are over 260 firms, from large multidisciplinary corporations to small niche practices, across a range of engineering fields represented by ACEA with a total of some 41,000 employees.

ACEA presents a unified voice for the industry and supports the profession by upholding a professional code of ethics and enhancing the commercial environment in which firms operate through strong representation and influential lobbying activities. ACEA also supports members in all aspects of their business including risk management, contractual issues, professional indemnity insurance, occupational health and safety, procurement practices, workplace/industrial relations, client relations, marketing, education and business development.

ACEA'S SKILLED MIGRATION POLICY

ACEA's policy objectives on skilled migration are:

- Increase the consulting engineering resource in Australia to meet current and future demand.
- Improve access to engineering and technical skills from overseas.
- Improve the mobility of Australian engineers and their capacity to work internationally.
- Ensure the migration system remains responsive to labour force issues.
- Conduct a labour force mapping and forecasting exercise to inform future policy decisions.

- Ensure a flexible ceiling approach on the number of business migrants, with the capacity to accept above-planned numbers.
- Support an approach which concentrates on improving the commercial and economic opportunities in Australia, effective and efficient skills recognition processes, simplification/streamlining of visa application and ensuring the temporary movement of people with professional skills to Australia.

ENGINEERING SHORTAGES

As Governments across Australia announce record infrastructure spending, the engineering industry has warned that many of these planned projects will be delayed, over budget or completely shelved because there aren't enough skilled engineers to get the job done. Australia's ability to design and deliver an estimated $400 billion in infrastructure projects over the coming decade is under threat.

ACEA's 2008 Skills Survey (Attachment 1), which surveyed our member firms on skills shortages, found that on average, two-thirds of firms across Australia are delaying projects and some are even declining projects outright because they simply don't have the available staff. This is the third year in a row this has been reported.

According to the survey, 3 out of 5 firms are experiencing critical shortages causing around half of firms to restrict business growth in 2008. Civil and structural engineering firms are the worst affected because they are in highest demand with 50 per cent of firms indicating shortages.

Engineers Australia has estimated that in the next five years to the 2011 Census, "70,000 engineering professionals will have retired. At current rates, the expected 45,000 graduates will not even cover the losses over the same period. It is possible that current professional engineering skills shortages will double by 2011: the numbers are unnerving for Australia's future."[1]

Skilled migration will be a critical part of ensuring that in the short to medium term Australia has the ability to meet the skills gap and deliver record infrastructure works.

We attach again for the Department of Immigration and Citizenship (the Department) our two-tiered approach which we recognise the Department has contemplated previously. We are pleased to see that through our consultations with both the Department and the External Reference Group on Migration that Recommendation 4 was accepted and will be implemented. The establishment of a system of accreditation for employers who exhibit a set of low-risk characteristics will only be useful and effective in an environment which is flexible and adaptable to the needs of Australian business. An environment where excessive red-tape exists and increases costs to employers, will constrain Australia's economic potential and make our nation less internationally competitive.

There has been a significant increase in the uptake of 457 and General Skilled Migration (GSM) visas (both sponsored and unsponsored) for engineers in Australia.

Tables 1. and 1.1 show the number of 457 visa approvals for engineers over a five year period and the number of GSM visas for engineers over a 10 year period.

Table 1. illustrates that in 2001-2002 DIAC approved 1150 subclass 457 visas for Engineers, this has grown to 5580 subclass 457 visas approved for engineers in 2007-08.

[1] Engineers Australia weekly newsletter, 30 June 2008: http://www.quivamail.com/go/?474C47435F555F40455446574247584847

Table 1.

Subclass 457 Visa Grants to Primary Applicants[(1)] in Selected Nominated Occupations

Figures rounded to the nearest 10

ASCO Occupation	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08 to 31/05/08
212411 Civil Engineer	110	130	190	330	580	750	1060
212511 Electrical Engineer	90	120	110	130	320	400	410
212513 Electronics Engineer	110	90	100	170	210	310	210
212611 Mechanical Engineer	210	210	280	360	640	620	760
212613 Production or Plant Engineer	70	60	70	80	130	120	170
212711 Mining Engineer (Excluding Petroleum)	40	50	70	80	160	170	240
212713 Petroleum Engineer	60	80	70	110	130	190	170
212715 Materials Engineer	10	10	10	20	30	40	40
212811 Civil Engineering Technologist	< 5	0	10	10	20	30	40
212813 Mechanical Engineering Technologist	20	10	20	30	60	70	60
212815 Electrical or Electronics Engineering Technologist	30	10	10	30	50	60	90
212879 Engineering Technologists NEC	70	60	60	100	120	140	130
212911 Aeronautical Engineer	20	20	20	40	40	30	30
212913 Agricultural Engineer	0	0	< 5	< 5	< 5	< 5	10
212915 Biomedical Engineer	< 5	10	10	10	20	10	10
212917 Chemical Engineer	70	50	50	70	120	160	230
212919 Industrial Engineer	20	20	10	30	30	40	60
212921 Naval Architect	10	10	< 5	10	10	10	10
212979 Building and Engineering Professionals NEC	70	130	160	200	300	350	400
312211 Civil Engineering Associate	10	20	20	50	80	140	180
312213 Civil Engineering Technician	10	10	10	10	30	40	80
312311 Electrical Engineering Associate	10	10	20	30	50	110	160
312313 Electrical Engineering Technician	20	20	30	40	100	180	190
312411 Electronic Engineering Associate	10	10	10	60	50	220	50
312413 Electronic Engineering Technician	10	30	30	40	50	100	120
312511 Mechanical Engineering Associate	10	30	70	100	110	160	170
312513 Mechanical Engineering Technician	40	80	40	80	230	290	370
312979 Building and Engineering Associate Professionals NEC	10	20	40	40	120	160	130

[(1)] Excludes Independent Executives

Total 1150 5580

Table 1.1

Please see Attachment 2.

The figures in Table 1.1 represent an increase of 10000% in GSM for engineers over the last 10 years.

These figures are statistically significant in that they show that even with Australian consulting engineering firms having to pay exorbitant fees to attract the best engineers from overseas, pay their health insurance and travel costs as well as other benefits, the 457 visa uptake has increased.

It is clear from the data presented that the use of the 457 visa and GSM schemes for engineers is substantial and required for Australian consulting engineering firms to provide critical infrastructure and design solutions for the nation.

It is crucial that whilst Australia engages a long term strategy to increase the cohort of domestic engineers, we utilise skilled migration to its full effect in the intermediary period while the long term strategies and initiatives take effect.

ACEA'S SUMMARY POSITION ON PROPOSED CHANGES TO THE MIGRATION ACT 1958

By the Government's own affirmation the Subclass 457 visa program is intended to meet the emerging needs of a dynamic labour market though the provision of skilled overseas workers on a temporary basis. Sections of the proposed changes within the Department's Business Long Stay 457 Visa and Related Temporary Visa Reforms Discussion Paper (the Discussion Paper), namely the proposed changes ACEA have commented on in this submission, will make the temporary business visa scheme less attractive and even unattainable for businesses who are the intended users of the scheme.

It is proposed that the new framework will apply to all Subclass 457 sponsors, whether or not their sponsorship was approved prior to the date of effect of the legislation. Under this model, Subclass 457 sponsors would no longer be bound by the repealed undertakings, but instead the newly legislated obligations.

This retrospective approach would pose a huge and unbearable cost burden to business. It is unfeasible for the Government to impose such costs on employers, particularly when the Discussion Paper proposes payment of income protection insurance, incoming travel costs, migration agent and recruitment costs. Australian consulting engineering firms would simply be unable to meet these costs. One of our member firms for example has in excess of 260 subclass 457 visa holders which they sponsor.

ACEA believes that the 457 visa scheme encourages transfer of knowledge between the visa holder and the sponsoring company and this is advantageous to the applicant, the firm and the Australian consulting engineering industry. It also facilitates future business opportunities between the sponsoring firm and the visa holder's country of origin. Without an accessible skilled migration scheme there is no alleviation in sight to meet consulting engineering skill shortages in the short/medium term.

If only large firms are able to invest in the skilled migrant program due to the need to meet and pay for all proposed conditions, the labour divide will increase. Only larger companies will be able to make use of the scheme which engages highly skilled migrants to complete tasks that Australia does not have the capacity to complete with Australian employees alone. If the amendments to the Sponsorship Obligations Bill are implemented, small and medium enterprises (SME's) will become so constrained by compliance costs that they will be essentially unable to utilise the scheme at all. This is contrary to the Government policy of reducing the burden of red-tape on business.

Although the increased cost and time may deter some sponsors from exploiting the process, the majority of firms who are not abusing the system will be deterred from using the scheme at all to avoid the possibility of incurring penalties and being liable for costs they cannot absorb.

Workers on 457 visas are a benefit to Australia in that they contribute productively to our national prosperity by helping our businesses grow and expand. In the consulting engineering industry, engineers who enter Australia via the 457 visa stream provide an additional benefit to Australia's job market by creating jobs for Australian drafters. It is typically the case that the more engineers a firm has, that this increases the need for other staff such as drafts-people, technologists and administration staff.

Mitigating climate change effects is the task of the consulting engineering industry. Australia is currently seeking to reform our nation with the introduction of an emissions trading scheme as well as making attempts to foster energy efficient and renewable energy technologies. The 457 visa program will be essential in attracting engineers to Australia to help in this effort. In this sense the 457 visa program is supporting and building Australia, not just business.

Australian consulting engineering firms rely on human capital to grow their businesses. Without the ability to access human capital internationally, in times of plentiful domestic labour and in times of skills shortage they will cease to grow, or move their businesses overseas, which is now easier to do in an increasingly global market.

ACEA contends that if the proposed sponsorship obligations are enacted through legislation, the costs will be so significant that this will cause some current 457 visa holders employment to be terminated. This is further explored in section 1.2.2.

A 457 scheme which is conducive to the needs of business and is not financially constraining for employers will make Australia a more attractive country to conduct business in and ensure we are ready to tackle our upcoming infrastructure and climate change mitigation challenges.

RECOMMENDATIONS

The following is a summary of recommendations specific to the amendments sought to The Migration Act 1985 in the Department's Discussion Paper:

- When requesting information from an employer, the written request should stipulate clearly the penalties that will be incurred if the information is not provided and outline explicitly the timeframe within which the information must be provided.
- ACEA recommends that a reasonable time period for response from the employer is 21 days for routine/non-high risk information requests from the Department.
- A level of onus must remain with the individual. It is unfair to Australian employees and employers to treat 457 visa holders differently from Australian employees.
- The Migration Act 1958 should be amended to remove the obligation for sponsors of 457 visa holders to pay costs associated with locating, detaining, removing and processing protection visa applications of absconded 457 visa holders.
- The Migration Act 1958 should not be amended to include a sponsorship obligation that requires employers to pay income protection insurance for 457 visa holders.
- The Migration Act 1958 should not be amended to include an obligation which requires sponsoring employers to pay for travel costs to Australia for 457 primary and secondary visa holders.
- The Migration Act 1958 should be amended to remove the obligation which requires sponsoring employers to pay for travel costs from Australia for 457 primary and secondary visa holders.
- The Departments' proposed Bill should not include changes to the Migration Act 1958 which obligate sponsoring employers to pay for any recruitment fees and charges the 457 visa holder has accumulated themselves.
- The Departments' proposed Bill should not include changes to Migration Act 1958 which obligate sponsoring employers to pay for any migration agent fees and charges the 457 visa holder has accumulated.
- The Departments' proposed Bill should not include changes to Migration Act 1958 which obligate sponsoring employers to pay for professional body, accreditation and licence fees and charges.
- The Departments' proposed Bill should include changes to the Migration Act 1958 which remove the obligation of sponsoring employers to pay for any medical costs relating to the 457 visa holder.
- The Departments' proposed Bill should not include changes to the Migration Act 1958 which obligate sponsoring employers to pay for any education fees and charges relating to secondary 457 visa holders.
- It is ACEA's recommendation that 457 visa holders are not included in the proposed obligation which would see sponsors of 400 series visa holders pay for the costs of locating, detaining, removing and processing protection visa applications.

- ACEA views that the Department should not include the subclass 442 visa in the 400 series which may attract sponsor obligations. ACEA contends that subclass 485, 476 and 456 should remain excluded from the list of potential 400 series visas to be included for sponsorship obligations.

ACEA'S SUBMISSION TO THE DEPARTMENT ON THE PROPOSED BILL TO AMEND THE MIGRATION ACT 1958

At this time, ACEA has chosen to comment on the following proposed changes to the Migration Act 1958 as outlined in the Department of Immigration and Citizenship's Discussion Paper.

1.1 OBLIGATIONS – SUBCLASS 457 AND 400 SERIES VISAS

1.1.1 - To keep records

ACEA view that it is feasible to request employers keep records of their compliance with current sponsorship obligations. It is ACEA's position that these records should not expand substantially the records that employers are expected to keep under other Commonwealth, State and Territory Legislation for other employees.

The Department should consider that when requesting employers to provide information (as outlined in section 1.1.2) that the requests match those of records which the Department has explicitly advised should be kept or will, under the proposed legislation advise that employers should keep for 457 visa holders.

The Department should aim to periodically provide employers with clear guidance as to record keeping for 457 visa holders, particularly when the record keeping requirements differ from those of non-457 visa holders.

1.1.2 - To provide information

The type of information currently requested (which ACEA has no objection to) includes financial information and payment records to monitor compliance with minimum salary levels. In the past ACEA member firms have been asked to provide receipts that may have/ought to have been obtained by the 457 visa holder. ACEA wish to confirm on behalf of our member firms that receipts, i.e. medical receipts which have not been provided to the employer are not reasonable requests for information. Businesses cannot force an individual to provide/keep records if the individual chooses not to do so.

With better collaboration between Government departments, for example between the Department of Immigration and Citizenship (DIAC) and the Australian Tax Office (ATO) the Department can seek to clarify this information directly, without having to request this information from the employer.

The Discussion Paper outlines that a graduated timeframe for supplying information depending on the circumstances is being considered: from two days in circumstances where there is an imminent threat to health or safety to one month in routine circumstances.

ACEA views the obligation for employers to provide information when requested in writing to be feasible. ACEA believes that the Government's obligation in this instance should extend to explaining that penalties may apply if the information is not provided and that this should be noted clearly within the correspondence.

ACEA recommends that a reasonable time period for response from the employer is 21 days for routine/non-high risk information requests from the Department.

1.1.3 - To notify the Department of prescribed changes in circumstance

This would oblige sponsors to notify the Department of certain changes in circumstance within a prescribed period, such as change of business address, business registration, the appointment of administrators and the cessation of visa holders' employment or activities with the sponsor.

ACEA views this request as reasonable providing this obligation does not incur penalties for instances of unintentional non-disclosure/notification. ACEA member firms would most certainly update their website with new location details/contact numbers which are available for viewing via the internet. This would not pose a significant cost to the Department if they were required to locate a firm's new address and contact details to gain access to a 457 visa holder.

If the types of changes that the Department wishes to be notified of become more prescriptive, the Department will need to engage in a communication campaign to ensure employers are aware of any changes made to legislation. A cost benefit analysis, conducted by the Department should occur to identify if the cost of this proposed change (including information campaign) does not outweigh the potential benefits.

1.1.4 - To notify visa holder of certain information

This would oblige sponsors to provide visa holders with certain information, such as information about the rights associated with working in Australia. This is intended to complement and facilitate efforts the Department is making to communicate directly with visa holders. The Department has recently requested existing sponsors to distribute a Frequently Asked Questions information sheet to Subclass 457 visa holders.

ACEA view this obligation as reasonable and in the best interests of the visa holders and sponsoring firm. Through our website we have made the Frequently Asked Questions available to our member firms to convey to 457 visa holders.

ACEA utilises the services of our Industry Outreach Officer (IOO) who provides this information to our member firms on an ad-hoc basis through regular conversations and forums.

The Department should also disseminate information directly to 457 visa holders using the various channels available for direct contact such as email and post.

1.1.5 - To cooperate with inspectors

This would oblige sponsors to cooperate with inspectors in the exercise of their powers.

ACEA views this to be a feasible undertaking, as it exists in its current form. ACEA believes that the Department's monitoring to elicit information from sponsors in person is reasonable as long as this process does not interfere significantly with the sponsoring firms day to day business processes.

1.1.6 - To pay the costs of locating, detaining, removing and processing protection visa applications

This obligation would make sponsors liable to pay the costs of locating, detaining, removing or processing the protection visa applications of visa holders, up to a certain prescribed limit. The Commonwealth would bear any cost over and above that amount.

If a 457 visa holder absconds, Australian employers require support from the Department, rather than being penalised for circumstances out of their control.

ACEA sees a clear distinction between the roles that government and business play regarding obligations surrounding 457 visa holders. The employer's obligations extend to ensuring the 457 applicant/holder has

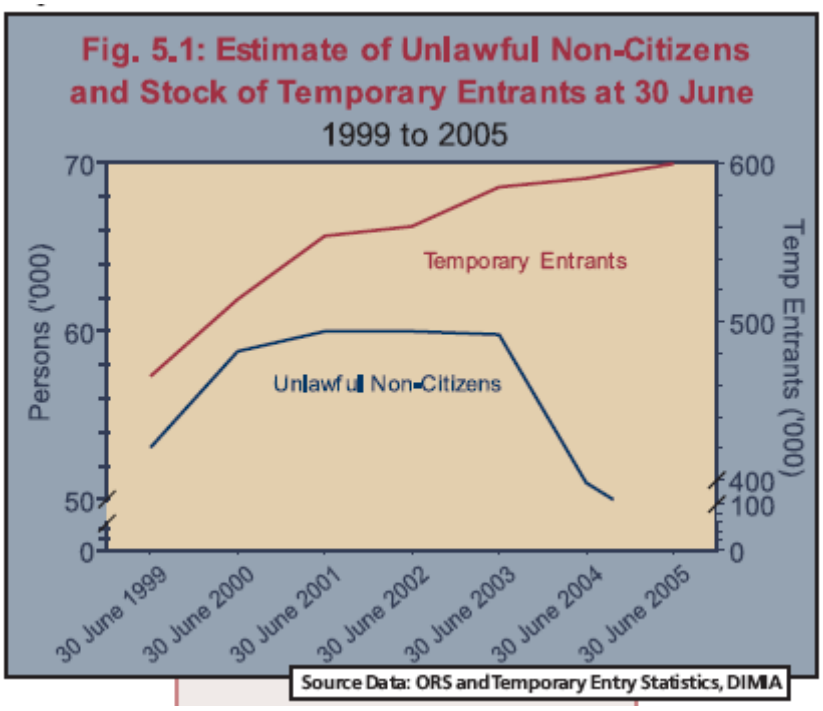
the appropriate skills to perform the role and is remunerated sufficiently. In ACEA's view it is the obligation of the government to perform the relevant checks prior to the visa holder being granted temporary visa status and if required, to detain and remove absconded temporary visa holders using the relevant bodies, like ASIO to do so. These costs cannot be absorbed by business, particularly small to medium enterprises that would simply be unable to afford to pay for the location, detention and removal of an absconded visa holder.

ACEA contends that a level of onus must apply to the 457 visa holder; Australian businesses cannot monitor or be accountable for 457 visa holders when they are not in the workplace and cannot afford to bear the burden of rogue employees once they are no longer employed by the sponsoring employer.

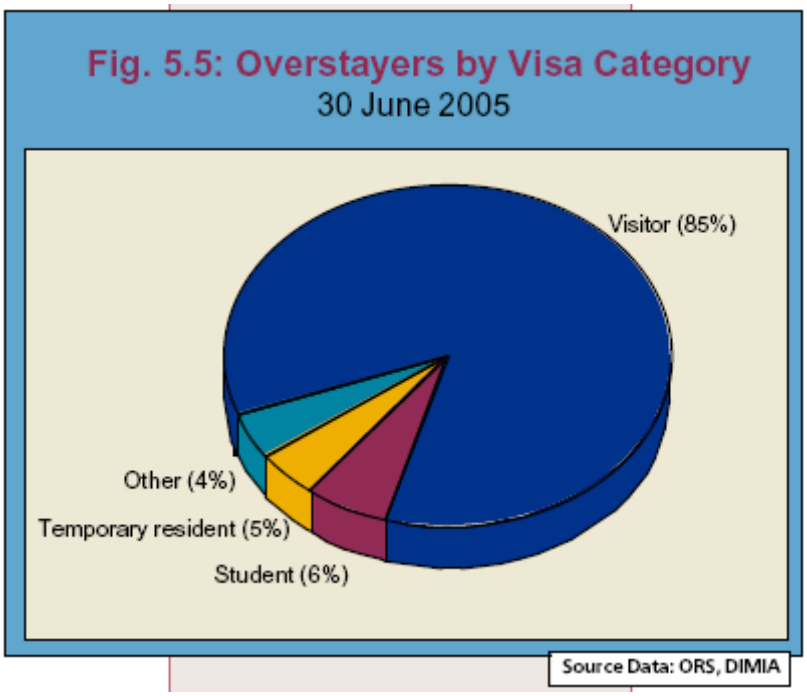
The current prescribed limit for location and detention costs of $10,000 that employers may be liable for places an unrealistic burden on the employer. This acts as a potential penalty for employers who have no control over such an instance occurring.

We contend that these instances are extremely rare in the case of highly skilled, highly paid 457 visa holders and that the employer has no way of speculating as to whether or not a 457 visa may abscond. The costs, if these instances occur, should not be the responsibility of employers.

Figures 5.1 and 5.5 are extracts from the Department's *Managing the Border: Immigration Compliance* report, 2004-2005 Edition[2] and highlight the rarity of absconding 457 visa holders.



[2] Managing the Border: Immigration Compliance 2004 - 2005 Edition. Chapter 5: Dealing with Overstayers. Department of Immigration and Citizenship. http://www.immi.gov.au/media/publications/compliance/managing-the-border/pdf/mtb-chapter5.pdf



Subclass 457 visa holders fall under the 'temporary resident' category, representing 5% of all overstayers. This is clearly such a small proportion that employers should not be disincentivised from using the scheme in fear that they may become liable for exorbitant costs should a 457 visa holder employed by them abscond.

The obligation in its current and proposed form is another disincentive for employers to utilise a visa that is intended to meet the needs of employers, allow Australia access to international expertise and help grow the Australian economy.

ACEA contend that the Migration Act 1958 should be amended to remove this existing requirement which places an unfair level of burden onto employers of 457 visa holders, given the infrequency of these situations.

1.2 OBLIGATIONS – SUBCLASS 457 SPECIFIC-SALARY RELATED

1.2.2 - To pay income protection insurance

This obligation would make sponsors liable for premiums on insurance policies which offer income protection insurance to a prescribed level to primary visa holders. This would provide a temporary safety net for Subclass 457 visa holders for a prescribed period should they become redundant or unemployed due to circumstances beyond their control.

The undertaking to pay a Subclass 457 visa holder at least the minimum salary level requires sponsors to continue to pay at least the minimum salary level for 28 days after the Department is notified of cessation of the Subclass 457 visa holder's employment. Considering this already existing undertaking, ACEA questions the validity of this additional 'safety net' for 457 visa holders. Once the visa holder has ceased employment for a period of 28 days (whilst still being remunerated) they no longer have the right to remain in Australia unless they obtain a bridging visa or equivalent.

From a retrospective perspective, having to pay income protection insurance to all existing 457 visa employers may be a costs some employers are unable to bear.

Furthermore, for parity purposes, employers would be obliged to pay income protection for all their employees if this obligation was to come into effect. For large employers this presents an enormous potential cost when considering paying income protection insurance to all employees in their firm.

ACEA obtained a quote from an online service provider[3] which compares insurance products from various insurance providers. The quote provided a cost range of $1,117.20 to $2,631.98 annually per engineer using a typical mid-level engineer's salary. For a large firm employing 2000 engineers and using a conservative figure of $1500 annually for income protection insurance per employee this presents a costs of $3 Million to the firm annually.

Considering that this would provide a potential for a significant increase of funds into the insurance industry, there exists the possibility that the insurance sector would seek to capitalise on this proposed legislation and increase these fees based on providing income protection to temporary residents.

The Department should also consider in drafting its Bill that the Department of Education, Employment and Workplace Relations released a Discussion Paper on Employment Standards[4] in early 2008. *Division 10 - Notice of termination and redundancy pay* within the Paper, includes provisions and protection for employees regarding termination and redundancy. Income protection insurance would therefore not be required as employees would be covered under the provision in Division 10 of the above mentioned proposed legislation.

ACEA views that the Migration Act 1958 should not be amended to include a sponsorship obligation that requires employers to pay income protection insurance for 457 visa holders.

1.2.3 - To pay the primary visa holder at least a particular amount

The Discussion Paper outlines that the proposed legislation would retain a similar market based price signal but may, subject to the outcome of Ms Deegan's review; use a different mechanism for setting the price signal into the future.

In the *Subclass 457 Visa Integrity Review Issues Paper #1*, it is explained that the Minimum Salary Level (MSL) is set at a level intended to balance two potentially conflicting requirements:

- the need for a clear 'price signal' to employers to always consider training and hiring Australians first; and
- the setting of a MSL that is not so high that it will limit access to overseas skills in areas where a legitimate need exists, including obtaining overseas skilled people who will assist in training more Australians.

ACEA believes that paying 457 visa holders, at least the minimum salary level is appropriate and we will be responding separately to the Issues Paper. Without knowing what Ms Deegan's review may recommend, at this time we have no comments to make as to the appropriateness of the minimum salary level as sufficient payment for 457 visa holders.

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[3] Quote obtained from *Insurance Watch* webpage: https://insurancewatch.com.au/home.shtm

[4] The National Employment Standards. Department of Education, Employment and Workplace Relations 2008. http://www.workplace.gov.au/NR/rdonlyres/1955FD28-3178-44CD-9654-56A3D5391989/0/NationalDiscussionPaper_web.pdf

1.3 OBLIGATIONS –SUBCLASS 457- NON SALARY-RELATED COSTS

1.3.1 - To pay travel costs to Australia

This proposed obligation would make sponsors liable for the travel costs of coming to Australia for the primary visa holder and any members of his or her family (secondary visa holders) from the visa holders' usual country of residence for economy class airfares as the quantum of costs payable.

ACEA views this matter as commercially negotiable between the sponsoring employer and employee. In all likeliness, due to the current skills shortages being experienced in our industry, employers will pay for the 457 visa holders travel costs to and from Australia however for small and medium size business these costs are difficult to absorb.

The Discussion Paper rightly outlines that one disadvantage is to make sponsor liable for these costs in all circumstances, including where the visa holder would ordinarily pay these costs in full completely independent of the sponsor.

The Government should not make the assumption that all businesses are affluent and have access to infinite financial resources. Similarly assumptions as to the wealth status of 457 visa holders should not rely on the premise that 457 visa holders are paid at the minimum salary level only and struggle to pay for costs that would otherwise be incurred if they were living and working in their country of origin.

These assumptions could lead to an unfair distribution of responsibilities. This proposed undertaking seems to be included to protect low skill-level employees, ACEA member firms employee highly skilled and highly paid employees who have the means, should the sponsor not elect to pay, to cover their own travel costs.

In many typical situations, workers from other countries apply of their own accord to work in Australia, willing to pay relocation and other costs themselves. A domestic employee would not expect their employer to pay relocation costs if they were to move to another employer. We urge the Department to consider that there must be some form of onus on the individual employee.

A scenario which outlines this proposed obligations' disadvantage to employers occurs when a 457 visa holder moves from one employer to another soon after arriving in Australia. The first employer is placed at a financial disadvantage by having paid for the visa holders' travel costs. The second employer does not have to bear this cost. These costs are significantly increased when considering that the discussion paper proposes also paying for the travel costs of secondary visa holders.

Businesses should retain the flexibility to take this risk if they choose to do so, independent of being obliged to under Australian legislation.

ACEA contends the Migration Act 1958 should not be amended to include an obligation which requires sponsoring employers to pay for travel costs to Australia for 457 primary and secondary visa holders.

1.3.2 - To pay travel costs from Australia

An obligation such as this would make sponsors liable for the travel costs of leaving Australia for the primary visa holder and any members of his or her family (secondary visa holders) to the visa holders' usual country of residence. To avoid confusion, the obligation would likely specify economy class airfares as the quantum of costs payable.

Covering the costs of 457 visa holders and their dependants to return to their country of origin imposes unnecessary costs on small to medium sized businesses. ACEA views this matter, just as paying incoming air fares, as commercially negotiable between the sponsor and employee.

This regulation will impose an unfair disadvantage on small businesses and prejudice their ability to recruit from overseas, as they will not be able absorb these costs. In addition, this obligation assumes that 457 visa holders will a) choose to return home and/or b) remain with the same employer for the duration of their work in Australia. Statistically both of these are not the case, Australian employers in the consulting engineering industry report that around 80% of 457 visa holders transfer to permanent residency. This obligation ignores these nuances of the system and would impose further regulatory burden that is largely unnecessary.

In all likeliness, due to the current skills shortage being experienced in our industry, employers will pay for the 457 visa holders travel costs to and from Australia, but some smaller firms may ask the visa holder to pay their own flights home. Some visa holders may choose to pay for their own costs in lieu of a higher salary. If the visa holder agrees (in writing), the system should provide the flexibility to accommodate such employer/employee negotiations.

ACEA contends the Migration Act 1958 should be amended to remove the obligation which requires sponsoring employers to pay for travel costs from Australia for 457 primary and secondary visa holders.

1.3.3 - To pay the costs associated with recruitment

The Discussion Paper states in this section that "costs would be limited to costs the employer incurred themselves or costs the employer was aware or ought to have been aware of being incurred by another party including the visa holder."

Employers should not be liable for recruitment costs which are associated with the primary visa holder that the employer has not elected to incur themselves.

It seems feasible to ACEA that the employer be liable for recruitment costs they have elected to incur themselves, i.e. posting job advertisements and the like, however being liable for costs which the 457 applicant has elected to incur in order to obtain work in Australia cannot fall to the employer.

The example used in this section of the discussion paper is particularly concerning: *"if an employer was aware that a Subclass 457 visa applicant paid $10,000 to an offshore agent to secure the opportunity to apply for the visa and the employer proceeded with the recruitment anyway, the employer would be required to pay the $10,000 or reimburse the visa applicant."* This seems a nonsensical approach to circumstances outside the employers' control.

In countries like China and the Philippines it is the standard practice of the host country to charge fees for citizens obtaining work offshore. For example in the Philippines, all work visa documents must be processed at Philippine Overseas Employment Administration (POEA). A visa merely allows entry into another country and does not specify the terms and conditions of work for a particular employer. Filipino workers who have found jobs on their own must have their documents processed at POEA.

The costs charged are "POEA Processing Fee US$100 or its peso equivalent, OWWA membership fee US$25 or its peso equivalent OWWA Medicare P900.00."[5] This is in addition to Migration Agent costs which are typically equivalent to one month's salary.

This raises the question of why Australian employers should be subject to other countries' Government policies. Surely the Australian Government would want to support its business sector, which drives Australia's economy and international prosperity, by not making business liable for fees that are out of their control.

[5] Department of Labor and Employment, Republic of the Philippines. Philippine Overseas Employment Administration: Frequently Asked Questions webpage: http://www.poea.gov.ph/html/FAQ.html

If this obligation were to come into effect, there would be nothing to stop rogue international migration agents charging exorbitant fees and the visa applicant paying them as they would be reimbursed once they arrived in Australia. In fact ACEA views that this would encourage recruitment agents who do not currently charge fees to applicants to begin charging these fees, on top of fees to employers, for their services to individuals with the knowledge that businesses would be required to reimburse the applicant.

ACEA notes that Australia and The People's Republic of China have a Memorandum of Understanding in place that establishes an ethical framework for Chinese recruitment agents to supply Australian employers with skilled overseas workers.[6] These recruitment agents must agree to the ethical framework and not charge the skilled worker any fee for their services. All recruitment fees must be contained within the costs charged to their employer. This is useful to businesses utilising recruitment agents, however this framework only extends to ten Chinese recruitment agents/agencies.

In cases where a potential 457 visa application voluntarily engages the services of a recruitment agent to obtain a position in Australia, the payment should not be met by the Australian sponsor firm. International and indeed domestic recruitment agents and agencies who charge questionably excessive fees are in no way the responsibility of Australian businesses.

The Departments' proposed Bill should not include changes to the Migration Act 1958 which obligate sponsoring employers to pay for any recruitment fees and charges the 457 visa holder has accumulated themselves.

1.3.4 - To pay the costs associated with migration agent services

An obligation such as this would make sponsors liable for the costs of migration agent services provided to visa holders. As outlined in section 1.3.3, these costs would be limited to costs the employer incurred themselves or costs the employer was aware or ought to have been aware of being incurred by another party including the visa holder.

Employers cannot be expected to pay costs for migration agents when they themselves have not elected to employ these services.

It is apparent that this obligation aims to counter exploitation of visa holders who are duped into paying an agent or some third party substantial sums to secure the opportunity to apply for an Australian visa. An employer cannot assume responsibility for what business tactics international migration agents choose to employ.

This proposed obligation does not consider employers who have not elected to use a migration agent. In cases where an employee, without commitment from the employer, has employed the services of a migration agent this responsibility and cost is completely out of the employers control.

In instances where an onshore migration agent is charging excessive fees and the Australian Government believes that the agent is acting unlawfully, the agent should be prosecuted in full accordance with the Australian judicial system.

Furthermore, it is ACEA's view that migration agents should be monitored by DIAC, or other relevant department's or agencies rather than allowing employers to bear the sometimes unfair or excessive fees these agents choose to charge.

The Departments' proposed Bill should not include changes to Migration Act 1958 which obligate sponsoring employers to pay for any migration agent fees and charges the 457 visa holder has accumulated.

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[6] Department of Immigration and Citizenship website: http://www.immi.gov.au/skilled/chinese-recruitment.htm

1.3.5 - To pay costs associated with licensing and registration or similar

An obligation such as this would make sponsors liable to pay the costs (up to a prescribed limit) associated with licensing, registration or professional membership of the primary visa holder, where the primary visa holder is required to be so licensed or registered to perform their role with the employer.

It is often the case that ACEA member firms pay licensing or registration fees which are voluntary or required for employment for all employees. However, some firms may choose not to do so and leave this responsibility to the employee.

ACEA contends that licensing, registration and membership fees are the sole responsibility of the individual employee, and again we ask the Department to consider that a level of onus and decision making powers remain at the discretion of the individual employee.

In the consulting engineering industry some forms of registration and membership fees are not a compulsory requirement and can be viewed as subjective i.e. not actually required for employment.

Due to parity reasons, this proposed obligation would force employers to pay the same costs for all their other employees. In the case where a firm employs 250 engineers (medium sized firm), there are a range of optional membership and status groups engineers may elect to be a part of. Some fees are charged annually such as the Engineers Australia membership fees and others like becoming a chartered practicing engineer (CPEng) attracts a number of costs associated with study and testing. If we just consider $440 for assessment of chartered status (just one of the fees charged for this process) and $533 as an annual membership fee for Engineers Australia this would equal $243,250.

The table below[7] shows some other societies and member groups that engineering employees may believe are necessary (although subjectively not required) to perform their roles as engineers within Australian consulting engineering firms.

[7] Engineers Australia webpage, list of Technical Societies: http://www.engineersaustralia.org.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=47CE76F3-AF49-829F-FD0B-B40B4C2E2CC0&siteName=ieaust

Technical Societies 2008 – 09 Fees

TECHNICAL SOCIETIES	CODE	GRADES MEMBERSHIP	FEES GST INCL	FEES GST EXCL
Australian Association for Engineering in Education (AAEE)	TS01	Others Aust/NZ Uni Staff & Post Grad Students	**Not Registered for GST**	$55.00 FREE
Mine Subsidence Technology Society (MSTS)	TS02	Member Engineers Australia Non-Engineers Australia Member Retired/Student/Unemployed	$44.00 $44.00 $11.00	$40.00 $40.00 $10.00
Australian Society of Defence Engineering (ASDE)	TS03	Member Student Corporate	**Not Registered for GST**	$45.00 $15.00 $500.00
Materials Australia (MA) Formerly known as Institute of Materials Engineering Australia (IMEA)	TS05	Individual Retired/Unemployed Graduate less than 2 years Current postgraduate Undergraduate (full-time) Corporate Level 1 (2 states) Corporate Level 2 (all states) ASM/IMEA Joint Membership **TMS/IMEA Joint Membership**	$170.50 $88.00 $85.25 $85.25 $45.10 $590.70 $1108.25 $66.00 **REMOVED**	$155.00 $80.00 $77.50 $77.50 $41.00 $537.00 $1007.50 $60.00 **REMOVED**
Australian Geomechanics Society (AGS)	TS07	Corporate Member Member Engineers Australia Non-Engineers Australia Member Retired Member Retired Non-Eng Aust Member P/Grad Member Eng Aust P/Grad Member Non-Eng Aust U/Grad Student (conditions apply)	$737.00 $176.00 $198.00 $88.00 $99.00 $88.00 $99.00 FREE	$670.00 $160.00 $180.00 $80.00 $90.00 $80.00 $90.00 FREE
Australasian Tunnelling Association (ATS) Formerly known as Australian Underground Construction & Tunnelling Association (AUCTA)	TS08	Member First Year Graduate Student Retired Member Silver Supporting Org Gold Supporting Org	$88.00 $44.00 FREE $44.00 $385.00 $770.00	$80.00 $40.00 FREE $40.00 $350.00 $700.00
Process Control Society (PCS)	TS09	Member Student Engineers Australia Student Non-Engineers Australia	**Not Registered For GST**	$25.00 $5.00 $10.00
Society for Engineering in Agriculture (SEAg)	TS10	Member Student Retired	$88.00 $44.00 $44.00	$80.00 $40.00 $40.00
Australian Earthquake Engineering Society (AEES)	TS11	Member Student Retired	**Not Registered for GST**	$40.00 $20.00 $20.00
Australian Composite Structures Society (ACSS)	TS12	Member Student	$33.00 $16.50	$30.00 $15.00
Asset Management Council formerly know as Maintenance Engineering Society of Australia (MESA)	TS13	Member Student Corporate Bronze Corporate Silver Corporate Gold	$110.00 $27.50 $594.00 $1320.00 $1980.00	$100.00 $25.00 $540.00 $1200.00 $1800.00
Risk Engineering Society (RES)	TS14	Member Student Engineers Australia Student Non-Engineers Australia Corporate A Corporate B	**Not Registered for GST**	$40.00 $5.00 $10.00 $250.00 $500.00
Industrial Engineering Society (IES)	TS15	For Engineers Australia members IES will invoice separately.	Apply direct to www.iie.com.au	
Society of Fire Safety (SFS)	TS17	Member Student Engineers Australia Student Non-Engineers Australia	$110.00 $22.00 $33.00	$100.00 $20.00 $30.00
Australasian Fluid & Thermal Engineering Society (AFTES)	TS18	Member	**Not registered GST**	$15.00

Date Issued April 2008 2008-09 Tech Society Fees

Technical Societies 2008 – 09 Fees

TECHNICAL SOCIETIES	CODE	GRADES MEMBERSHIP	FEES GST INCL	FEES GST EXCL
Society for Sustainability & Environmental Engineering (SSEE)	TS19	Member Engineers Australia Member Non-Engineers Aust Student Engineers Australia Student Non-Engineers Aust Retired EA Member Retired non EA member	$71.50 $93.50 FREE $22.00 $27.50 $38.50	$65.00 $85.00 FREE $20.00 $25.00 $35.00
Systems Engineering Society of Australia (SESA)	TS20	Member Corporate Level 1 Corporate Level 2	$55.00 $330.00 $880.00	$50.00 $300.00 $800.00
Red R Australia (RedR)	TS21	Member	$33.00	$30.00
Red R Donation	MS05		$ OPTIONAL (No GST, Tax Deductible)	
Australian Cost Engineering Society of Australia (ACES)	TS22	Member Student AACE Member	**Not Registered for GST**	$30.00 $15.00 $15.00
Society for Building Services Engineering (SBSE)	TS24	Member	$44.00	$40.00
Manufacturing Society of Australia (ManSA)	TS25	Member Student/Retired/Concession Corporate	$110.00 $27.50 $1100.00	$100.00 $25.00 $1000.00
Railway Technical Society of Australia (RTSA)	TS26	Member Member Non-Engineers Australia Student Engineers Australia Student Non-Engineers Australia Retired Engineers Australia Retired Non-Engineers Australia Life Member Corporate Membership	$66.00 $66.00 FREE $27.50 FREE $27.50 **By Invitation** $990.00	$60.00 $60.00 FREE $25.00 FREE $25.00 **By Invitation** $900.00
Australian Society for Bulk Solids Handling (ASBSH)	TS27	Member Student Retired Corporate	$77.00 $11.00 $33.00 $605.00	$70.00 $10.00 $30.00 $550.00
Electromagnetic Compatibility Society (EMC)	TS28	Member Engineers Australia Member Non-Engineers Australia Student Retired Corporate	$88.00 $93.50 FREE $27.50 $550.00	$80.00 $85.00 FREE $25.00 $500.00
Forensic Engineering Society (FES)	TS30	**CLOSING** TS14 Risk Eng will now include Forensic subject matter		
Electric Energy Society of Australia (EESA)	TS31	Member Retired Corporate Member Student	$77.00 $27.50 $550.00 FREE	$70.00 $25.00 $500.00 FREE
Australian Particle Technology Society (APTS)	TS32	Member Engineers Australia Member Non-Engineers Australia Student Engineers Australia Student Non-Engineers Australia Retired	$27.50 $44.00 $5.50 $11.00 $11.00	$25.00 $40.00 $5.00 $10.00 $10.00
Mining Electrical & Mining Mechanical Engineering Society (MEMMES)	TS33	Member Engineers Australia Member Non-Engineers Australia Student Retired Life Member	$66.00 $88.00 $22.00 $22.00 FREE	$60.00 $80.00 $20.00 $20.00 FREE
Royal Aeronautical Society Australian Division (RaeS)	TS35	Affiliate (Open to Australian Residents only)	Apply direct to www.raes.org.au/membership/memberform.htm	Select grade EA Affiliate

* Note for Australian residents, GST is included at 10%
* Note for members residing outside Australia, rates are GST exempt

Date Issued April 2008 2008-09 Tech Society Fees

The Departments' proposed Bill should not include changes to Migration Act 1958 which obligate sponsoring employers to pay for professional body, accreditation and licence fees and charges.

1.3.6 - To pay certain medical costs OR to pay for health insurance

An obligation such as this would make sponsors liable for medical costs incurred in public hospitals by visa holders, where those costs were not covered under reciprocal healthcare arrangements.

ACEA strongly opposes the proposed obligation in this section of the Discussion paper which would place liability with the sponsor should the insurer fail to pay for any reason. A business would not accept liability for this in any other circumstance, and cannot be expected to accept liability in these instances.

Business sponsored visa holders pay tax at the same or a higher rate than ordinary Australian citizens. This is in sharp contrast with other sectors of the Australian population, for example university students and unemployed Australians who vary in their tax contributions.

For 457 visa holders from countries which do not have reciprocal health care agreements with Australia, ACEA questions why employers are expected to cover public medical cost when 457 visa holders are paying the same tax rate (in some cases a higher rate) as Australian citizens. The migrant should be afforded the same benefit that an Australian citizen is provided from paying the same amount of tax. Although an Australian citizen pays Medicare tax over the period of a lifetime and a temporary visa holder is only subject to this tax for a short amount of time, the risk is far less for a 457 visa holder to fall ill/have an accident within a 6 month period for example than it is for an Australian citizen over the period of a lifetime.

Australian employers in the consulting engineering industry have noted that around 80% of 457 visa holders become permanent residents, thus increasing the amount of funds they contribute to the Medicare scheme.

It is ACEA's view that any private health cover or costs should be met by the employee.

We would encourage the government to seek to increase the number of countries that have reciprocal healthcare agreements with Australia, meaning their citizens, whilst in Australia are covered under the Medicare scheme and our citizens are covered by their scheme when visiting that particular country.

ACEA is opposed to mandating that employers contribute to public health and insurance costs for the reasons stated above and because this mechanism seems an unnecessary compliance burden with no clear outcomes to stop abuse of the 457 scheme.

The Departments' proposed Bill should include changes to the Migration Act 1958 which remove the obligation of sponsoring employers to pay for any medical costs relating to the 457 visa holder.

1.3.7 - To pay education costs for certain minors

An obligation such as this would make sponsors liable for the education costs of visa holders who are required to attend school under Australian law (aged between 4 or 5 and 15 or 16) in State and Territory jurisdictions that do not elect to bear these costs themselves.

ACEA views this proposed obligation as burdensome to Australian employers who seek to bring in highly skilled professionals to mitigate the general skills shortage affecting Australian Industry, and in particular the engineering industry.

Currently two Australian States and one Territory charge secondary 457 visa holders to attend public school. For firms operating in these States, the significant school fees often have to be absorbed by the sponsoring firm. This presents a substantial cost to firms on top of recruitment, salary and relocation costs and may make recruiting from overseas unfeasible. It also potentially creates a competitive disadvantage for small and medium sized firms that are unable to cover the cost of the school fees as well as all the other costs

associated with sponsoring a 457 visa holder, including escalating salaries due to the global engineering skills crisis.

Business sponsored visa holders pay tax at the same or a higher rate than ordinary Australian citizens. This is in sharp contrast with other sectors of the Australian population, for example university students and unemployed Australians who vary in their tax contributions.

In addition, there is a disproportionate amount of 457 visa holders that do not have children; the taxes that 457 visa holders pay are essentially overfunding their stay in Australia. This means there is a portion of the population paying taxes and not receiving the same benefits as their local counterparts, for example most 457 visa holders are not entitled to full Medicare benefits.

Under *The Schools Assistance Act 2004,* we understand that all States and Territories have access to and receive General Recurrent Grants for 457 visa holders. According to Budget Paper No. 1(2008), $3.1 billion will be allocated for government schools through Commonwealth funding.

This being the case, it is ACEA's contention that the States/Territory in question are essentially "double dipping" by charging additional funds for school fees over and above their Commonwealth allocations. This is unfortunate, as it sends a negative message to 457 visa holders in these Sates, as well as exacerbating the dire skills shortage affecting the engineering industry.

Subclass 457 holders are contributing their fair share to Australia's tax pool and should be able to gain access to the same kinds of services available to other Australian working families.

The Departments' proposed Bill should not include changes to the Migration Act 1958 which obligate sponsoring employers to pay for any education fees and charges relating to secondary 457 visa holders.

1.4 OBLIGATIONS – 400 SERIES

The obligations outlined in Section 1.4 should be limited to the visa categories listed in *Attachment B* of the Department's Discussion Paper with one exception. We believe that visa category 442 should be removed from the list as it would no longer serve its intended purpose if sponsorship obligations were enforced for these temporary visitors.

ACEA notes the omission of visa subclasses 485, 476 and 456 in the attached list. ACEA do not believe that sponsorship obligations should be proposed within the legislation for these three aforementioned visas.

ACEA views that these above-mentioned visa categories would no longer serve their original purposes should they become subject to sponsorship obligations for employers.

ACEA requests confirmation from the Department prior to the Bill being introduced as to whether the above-mentioned visa categories are to be included.

ACEA contends, as highlighted in section 1.1.6, that 457 visa holders represent only 5% of all absconding temporary entrants. The 400 series, as evidenced by the same statistics, are a much higher risk category and make up the majority of absconding temporary entrants. If the sponsorship obligations framework were to encompass the 400 series visas, it would be reasonable to ask 400 series sponsors to bear these costs given the risk of the state financing these costs is much higher.

ACEA asserts that employers of 457 visa holders should not be required to pay any location, detention and travel costs with regards to rogue 457 visa holders, this responsibility should fall to Government as it happens on such an infrequent basis.

ACEA has outlined in section 1.1.6 that it is unreasonable for business to accept the burden that is placed on them in the uncommon event that a 457 visa holder absconds. In particular small businesses would be discouraged from using the 457 visa if this policy were put in place as the financial burden would appear too significant to absorb.

It is ACEA's recommendation that 457 visa holders are not included in the proposed obligation which would see sponsors of 400 series visa holders pay for the costs of locating, detaining, removing and processing protection visa applications.

ACEA views that the Department should not include the subclass 442 visa in the 400 series which may attract sponsor obligations. ACEA contends that subclass 485, 476 and 456 should remain excluded from the list of potential 400 series visas to be included for sponsorship obligations.

2. EXPANDED POWERS TO MONITOR AND INVESTIGATE POSSIBLE NON-COMPLIANCE

ACEA has no objection to the Department carrying out standard investigations through a formal process. We believe that sponsors of particular concern should be subject to desktop and in person monitoring.

ACEA contends that in order to further enhance and streamline this process, better cooperation between departments, particularly between DIAC and the Workplace Ombudsman could yield more comprehensive outcomes. Many breaches that occur are in actual fact industrial relations breaches, and as such, should be dealt with through the appropriate department agency and process.

2.1- Desktop-audit monitoring

The proposed legislation would give departmental officers capacity to request relevant specified information in a particular form and within a specified time period together with an appropriate penalty for non-compliance.

ACEA understands that monitoring is an important compliance mechanism. Clear and consistent communication between the Department and the employer will ensure that the required information can be provided to the department in a timely manner.

2.2 - In person monitoring

The proposed legislation would make provision for specially appointed officers to exercise investigative powers. Such officers would have the power to, without force, enter a place of business, or other place (announced or unannounced) in which the Inspector has reasonable cause to believe there is information, documents or any other thing relevant to determining whether the program requirements are being complied with.

ACEA views that in their current form this proposed obligation is too ambiguous. For example the Discussion Paper outlines that "The officer would be able to inspect any things and interview any persons". In person monitoring should be a specific and prescribed process, without the need to inspect 'anything' or interview 'anyone'. The Department should consider clarifying this proposed obligation to outline a more specific set of guidelines that would be adhered to. This will decrease the chance of disturbing business practices.

2.3 - Offence for providing false or misleading information

The proposed legislation would expand the existing offence provision for providing false or misleading information in connection with the entry or stay of non-citizens to cover the provision of false or misleading information in connection with monitoring and investigating possible non-compliance with sponsorship requirements.

ACEA views that providing false or misleading information is a serious offence. ACEA contends that employers who have *deliberately* provided false or misleading information should be penalised in full accordance with the law. However there should be an effort made to determine if any information that has been provided which is found to be false was done so deliberately.

3. ADDRESSING NON-COMPLIANCE

Under current Subclass 457 visa arrangements, the Department may, and does, impose a variety of administrative sanctions set out in the Act. Administrative sanctions have the effect of barring sponsors from the Subclass 457 visa program for a specified period. In some cases, administrative sanctions may also indirectly bar sponsors from accessing other visa subclasses.

ACEA contends that administrative sanctions, applied to employers who have *deliberately* refused access to records or the visa holder for example, are an appropriate penalty for non-compliance. Allowing room for flexibility when addressing non-compliance is essential. This will ensure that employers who do not seek to deliberately act in a non-compliant manner are not penalised unfairly.

3.1 - Administrative sanctions

In some circumstances, administrative sanctions have proven to be highly effective. These include, for example, cancellation and suspension of sponsorship approval. The proposed legislation would seek to retain them and expand their application to other temporary visa programs.

ACEA contends that allowing room for flexibility when administering sanctions will ensure that employers who do not seek to deliberately act in a non-compliant manner are not penalised unfairly.

3.2 - Punitive sanctions

The proposed legislation would introduce a framework for appropriate punitive penalties to actively discourage non-compliance of this kind and to further encourage compliance more broadly.

A system should be put in place which understands that there is a difference between businesses that inadvertently breach 457 requirements and businesses that wilfully and flagrantly breached the 457 requirements.

ACEA view the use of punitive sanctions, namely civil penalties as appropriate when deliberate and wilful breaches have occurred and note that that the exact penalty for a particular offence should be determined by a magistrate or judge. These penalties however should not be applicable to businesses who inadvertently do not comply with their obligations.

4. IMPROVING INFORMATION SHARING

ACEA Views that sharing information, particularly between government departments will generally benefit the scheme. ACEA believes there should be a limit set on the types of information with regards to sharing information with the public (further outlined in section 4.3 of this submission).

4.1 - Between visa holders, sponsors and the Department

ACEA views that any changes to proposed legislation which facilitate full exchange of information between relevant parties for limited relevant purposes, is reasonable and in the best interests of the visa holder, sponsor and the Department.

4.2 - Between government agencies

There is considerable merit in formalising this process in legislation to ensure effective two-way sharing of information between agencies so that compliance with a range of regulatory compliance regimes can be cross-checked without imposing further on sponsors. Legislative amendments would also allow the Department to receive information in return in circumstances where that is currently not possible (from the Australian Taxation Office in relation to whether a visa holder is being paid the correct amount, for example).

ACEA views this as a positive step forward for the scheme. Sharing information between government departments will enable DIAC to monitor and audit sponsors with less disruption to businesses. In the example used above, DIAC could seek confirmation directly from the ATO as to whether a 457 visa holder is being paid the correct amount without needing business to provide this information.

4.3 - With the general public

The Department currently publishes limited aggregate data about visa programs periodically. The proposed legislation would provide for the publication of a greater level of disaggregated data. While it is not intended to provide for the publication of specific details about visa holders and sponsors (such as the names and salaries of Subclass 457 visa holders working for a particular sponsor for example) in order to preserve a certain amount of privacy, it is intended to publish as much data as possible without compromising this principle.

ACEA views that the scope of sharing information with the general public should be further clarified prior to the introduction of the Bill, with the concern that unintended commercially sensitive information may inadvertently become available to competitors.

There is also the potential for information to be released which would go against the grain of the Privacy Act and jeopardise the privacy of the individual.

Final Points

ACEA submitted our comments to the previous Governments' Sponsorship Obligations Bill (2007) as did five other non-government organisations. The current Department's proposed legislation shares a number of similarities and ACEA believes that it is valuable for these views to be highlighted in this context also. The Law Institute of Victoria (LIV) outlined their concerns with the previously proposed legislation by stating that "the problems associated with the subclass 457 visa scheme stem from a lack of funding and human resources to properly implement and enforce the requirements. Any reform of sponsorship obligations and any other aspects of 457 visas must be backed up with a commitment from the Australian government of adequate funding to administer it effectively."[8]

ACEA supports this statement and views that proposed Bill should reflect a commitment from the Government to increase funding to the Department of Immigration and Citizenship (DIAC). This is further supported by figures which ACEA received from DIAC showing that in 2001-2002 DIAC approved 1150 subclass 457 visas for Engineers; this has grown to 5580 subclass 457 visas approved for engineers in 2007-08. With regards to general skilled migration (GSM), the numbers are even more dramatic from 40 permanent or GSM visa applications approved for engineers in 1996-97 to 4299 in 2006-2007. It is important that the level of funding the Department receives reflects the significant increase in visa applications and approvals to ensure that Australia can use skilled labour from overseas effectively in our efforts to mitigate the skills shortage.

[8] Inquiry into the Migration Amendment (Sponsorship Obligations) Bill 2007: Submissions and Additional Information received by the committee as at 11 September 2007. http://www.aph.gov.au/SENATE/COMMITTEE/legcon_ctte/completed_inquiries/2004-07/migration_sponsorship/submissions/sublist.htm

The Australian Industry Group (AIG) commented in response to the Migration Amendment Sponsorship Obligations Bill 2007 that "the changes in the new Bill will make it more difficult and costly for employers to access the scheme…It appears that the changes in the Bill were designed to address a problem of abuse at the margins of the system, but the effect will be to make the Visa program very difficult or impossible for many of those who seek to access it. This has potentially serious consequences for a significant number of businesses. The accessibility and flexibility of the program are the keys to its success. It is important to understand that if the changes go ahead it will make it substantially more difficult for employers to access the immigration system, and there will undoubtedly be a significant economic cost."[9] This statement is still extremely relevant at this time, and we ask the Department to consider these views, with which ACEA fully agrees, alongside the views we have outlined in our Submission to the Discussion Paper.

ACEA views that the 457 visa holder has a level of obligation to meet the terms of their visa and not act unlawfully. If a visa holder breaches their visa conditions they have committed an unlawful act requiring government action to penalise/deport the person, none of which should require the role of industry, including providing funds. Increasing penalties and costs for potential and unforseen circumstances will make the 457 visa migration scheme unusable as employers will become too burdened by cost.

Unexpected medical and travel costs should not fall to employers as a mandatory requirement, many consulting engineering firms will provide private medical cover and cover all travel costs but some small to medium sized firms may not be able to do so and risk loosing their ability to participate in sponsoring 457 visa holders.

A 457 visa scheme which places too many restrictions and burdens on employers is essentially unusable. ACEA encourages a flexible approach to the 457 visa scheme which recognises the different groups employing skilled migrants in Australia, namely the distinction between high-level, highly-skilled professionals versus low-level, semi-skilled workers. Sponsorship obligations, although an important part of ensuring visa holders do not impinge on Australians, must be realistic and distinguish between government and business responsibilities rationally.

We see a 457 visa framework where the temporary visa holder is treated like all other employees, where employers are not penalised for circumstances that are out of their control, and open lines of appropriate communication exist between the Department and employers.

Finally, ACEA wishes to commend the Departments response to the External Reference Group on Migration's Report. We perceive that all recommendations the Government has confirmed it will implement are in the best interest of Australia's business community and in turn the nation as a whole.

CONSULTATION REFORM

ACEA believes that the process in Australia for National and State public Government consultation requires reform. This Discussion Paper was released on the 30th June with Submissions due on the 11th of July. This equates to a 10-business day time period.

The United Kingdoms' Government Department for Business Enterprise and Regulatory Reform[10] has implemented *The Code of Practice on Consultation* which sets out the basic minimum principles for

[9] Inquiry into the Migration Amendment (Sponsorship Obligations) Bill 2007: Submissions and Additional Information received by the committee as at 11 September 2007. http://www.aph.gov.au/SENATE/COMMITTEE/legcon_ctte/completed_inquiries/2004-07/migration_sponsorship/submissions/sublist.htm

[10] Department for Business Enterprise & Regulatory Reform, United Kingdom, webpage: http://www.berr.gov.uk/bre/consultation%20guidance/page44459.html

conducting effective Government consultations. It aims to standardise consultation practice across Government and to set a benchmark for best practice, so that all respondents would know what to expect from a national, public Government consultation.

It is centred around six key consultation criteria which are as follows:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your Department's effectiveness at consultation, including through the use of a designated Consultation Co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The additional benefit of this system is that the Government is required to complete an impact assessment. Impact Assessments ensure those interested in certain policies understand and can challenge why the Government is proposing to intervene, how and to what extent new policies may impact on them, the estimated cost and benefits of proposed and actual measures.

ACEA believes that the Australian Government should move to implement these changes and adopt them as part of an every-day business policy which applies across all policy making activities.