ACPMA
OPENING REMARKS TO JSCM HIGHLIGHTING CONCERNS WITH LABOUR AGREEMENTS

Good Afternoon, Mr Randall

Prior to commenting on the difficulties associated with Labour Agreements, I would like to provide the Committee with some background details about my company's involvement in the Temporary Business Entry Programme over the last seven years.

I am the Principal Solicitor of Connections Migration Law Firm, based in Manly, NSW. Our legal firm works exclusively in the area of Migration Law and, as well as representing the ACPMA, we also represent many Australian Businesses, including one of the large Contract Management Companies, a number of consultancies and approximately 35 Recruitment Companies. All of these companies – and they include several of the major Australian Recruitment Companies, engage in labour hire, or 'on-hire', as it is often called.

We act on behalf of both the sponsoring employer and the visa applicant. Consequently, we have a reasonably wide experience of the 457 scheme, in general, and the issues faced by the labour hire sector, in particular.

As the Committee is, no doubt, aware, it has been proposed that Labour Hire entities should be prevented from accessing the 457 programme other than via the mechanism of the Labour Agreement. This raises a number of major practical and policy concerns. These concerns are as follows:

Lack of Industry Acceptance

There is a widespread belief among employers and the Labour Hire Industry that Labour Agreements are unnecessarily restrictive and unresponsive to the needs of business or the economy.

There is a clear Potential for DIAC to delay or refuse to conclude Labour Agreements

ACPMA has had recent experience of attempting to negotiate a Labour Agreement. As a preliminary, DIAC kindly made available to us a copy of a draft Labour Agreement The conditions in the draft Agreement proffered by the Department did not mirror the requirements of the Migration Regulations but were extremely **prohibitive and restrictive in nature**. However, ACPMA presented a draft agreement to the Department.

The Departmental response was to reject our proposals almost in their entirety, on the basis that they varied from the format presented by them to us for our use. This brings us to a further problem -

The Lack of an Effective Appeal Mechanism

Currently if any member were faced with a refusal of a sponsorship application or a cancellation of a business sponsorship, that member, like every other Australian business, would have recourse to a full appeal process and so the system of checks and balances would operate.

If Labour Hire entities are prevented from accessing the TBE other than via Labour Agreements, this system of balances will be jeopardised.

To place Australian businesses in a position where they are effectively denied any avenue of appeal would be at variance with established Migration policy, namely, that any decision involving an Australian person or legal entity should carry appropriate rights of appeal against a decision to refuse an application. Where a business is faced with intransigence or simply with a lack of commercial awareness on the part of bureaucracy– such as may occur if the present proposals are implemented – there has been no 'decision', as such, and, therefore, no avenue of appeal, other than to the Ombudsman. **Australian businesses could, as a consequence be at the mercy of the individual departmental officers appointed to negotiate the Labour Agreement**.

Another issue is the impact Mandatory Labour Agreements may have on the competitiveness of Labour Hire Companies, both in the Australian market place and in terms of being able to attract highly skilled overseas professionals.
There is no justification for targeting our industry sector for restrictive measures that will not apply to other business sponsors. ACPMA member companies are not seeking to evade their statutory obligations, but merely wishing to ensure that they are accorded the same rights and privileges as all Australian businesses and, specifically, access to the TBE under the same terms and conditions as other Australian businesses.

There is no justification for discriminating against Australian Labour Hire or Contract Management Companies. If any of them are failing to comply, then DIAC has adequate sanctions at its disposal to impose a range of penalties on that company. To isolate and legislate against an entire sector of the Australian business community because of the recalcitrant behaviour of a few, is totally at variance with the principles of our legal system and constitutes an unwarranted breach of the legal rights of ACPMA member companies.

From a general perspective, many companies will be unable to comply with the requirements of Labour Agreements
Labour Agreements do not, at present, work to the benefit of the majority of employers, since the **information that must be provided in the course of negotiating an Agreement is often difficult or impossible for businesses to access**. Projections and details of labour requirements over the life of the agreement must be given at the point of negotiation. Such projections are difficult enough for an individual business to formulate with any degree of certainty. **For the labour hire sector, which is driven by the demands of its various clients, across the entire spectrum of business, industry, commerce and government, the task becomes impossible.**

In fact, it is difficult to conceive of a mechanism which would be less suitable for the requirements of the labour hire sector.

If any of the members wish me to elaborate on the specific data that must be provided at negotiation stage then I can do so in the course of the hearing.

(For example, the following factors must be quantified /identified prior to execution of the Labour Agreement:

- ***i. Exact Number and ASCO coding of each position which will be required. (The market place is significantly serviced by the 457 program and is ad hoc and demand driven so that such projections are impossible).***
- ***ii. Complete details of vacant positions which will be filled by the Labour Agreement Nominee.***
- ***iii. Detailed job descriptions for each occupation included in the agreement.***
- ***iv. Formal or assessable qualifications required for each position.***
- ***v. The level of prior work experience necessary for each position.***
- ***vi. Any pre-requisites for entry into the profession or industry.***

As can be appreciated, the difficulties of accurately predicting any of the above are exacerbated greatly for labour hire companies, whose strength lies in the fact that they can rapidly and effectively respond to demand for labour from all sectors of the economy.)

Labour Agreements Lack the Flexibility and Accessibility that is such a critical aspect of the TBE Scheme.

Again, if any of the members wish further information on how Labour Agreements present obstacles to flexibility and Accessibility, I will be happy to answer questions on that.

Some issues :

- ***A They are lengthy and costly to negotiate and conclude.***
- ***B Labour Agreements are put in place for designated times (say 3 years) making labour requirement projections difficult***
- ***C Labour Agreements, in our experience, appear to constitute essentially, a list of demands by DIAC which revealed scant understanding of the employer's situation and little appreciation of commercial realities.***
- ***D The policy behind the TBE programme is to facilitate access by Australian businesses to overseas labour markets in times of skills shortages. Far from achieving this aim, the cumbersome and time consuming procedures associated with Labour Agreements will hamper the flexibility and high level of responsiveness to demand that is critical to our business clients.***

However, I would like to make a brief comment about one important area where this lack of flexibility is evident:

***E* Labour agreements require a training regime, which can be accurately 'quantified' by DIAC/DEWR before the sponsoring employer is recognised as satisfying training requirements. This system fails to take cognisance of the exceptional skills transfer benefits which sponsorship of highly skilled overseas employees bring to the workplace**, since this benefit is difficult to quantify.

It has frequently been of concern to ACPMA members that, what we regard as our most important contribution to up-skilling Australian employees, appears to meet with little recognition in our interaction with DIAC. I refer to the very valuable contribution Association members make to training Australians by virtue of the fact that they are net importers of high level skills to this country. This contribution to training is frequently included as a specific term in the contracts members conclude with their clients. We appreciate that such a contribution may be difficult to quantify but its effectiveness cannot be disputed and should be recognised.

In summary, ACPMA's preferred position is firmly that Labour Agreements should not be required, particularly for ASCO classification levels 1 to 3 and we continue to maintain that view. We consider that the proposed programme of restrictions, sanctions and prohibitions particularly in relation to Labour Agreements, would impose rigidity on our temporary migration system that would be counter productive and at variance with current labour market trends in the global labour marketplace.

It appears to ACPMA members that DIAC wishes to use the Labour Agreement as a means of committing Labour Hire companies – all major users of the 457 programme – to identify their future requirements. This would assist the Department in predicting demands on the TBE Programme. However, it is simply not practicable to require such a commitment from an industry which is very much demand – driven, which operates at the forefront of emerging business practice and leading edge technology and which must be able to provide a system of immediate, first level response to critical skills gaps across the entire economy.