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Ms Jackie Morris  
Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
Australia

Dear Ms Morris

The Australian Industry Group (Ai Group) welcomes the opportunity to make this submission to the Inquiry into the *Migration Amendment (Sponsorship Obligations) Bill 2007* which will, *inter alia*, create new obligations for sponsors of skilled temporary overseas workers.

Temporary business visas, such as those available under the 457 program, are highly valued by industry as a means to source temporary skilled labour at a time of high and ongoing skill shortages in Australia. This visa category has made an important contribution to Australia's ability to address the current widespread skill shortages, providing many Ai Group member companies with a badly-needed short to medium term source of skilled labour. Shortages among the traditional trades are particularly intense and the 457 program offers employers a flexible alternative at a time when alternatives to employ labour locally are, in some circumstances, non-existent.

Given the high level of skill shortages, our ageing working population and historically low levels of unemployment, such visa programs are likely to be part of the solution for a long time. Because of this it is vital that we get this system working as well as it can.

We understand that a relatively small number of companies have abused the system, and believe that where this is proven employers should be dealt with to the full extent of the law. In this regard, we accept the need for tougher penalties. However, these cases of abuse are exceptions and do not justify making the system significantly more difficult to access for the vast majority of employers who fully comply with their legal obligations under the scheme.

With this in mind, we cannot support a number of the proposed changes which, in our view, will make 457 visas effectively unworkable for many companies.

The recently announced requirements for English language testing to the IELTS 4.5 standard for most skilled trades (ASCO4) will rule out or make it difficult for companies to source such temporary workers from countries where English is less-widely spoken by the target groups, such as China and the Philippines.

Added to this, the changes in the new Bill will make it more difficult and costly for employers to access the scheme. The higher costs which would be imposed by the new health insurance obligations and the liability for return travel costs will have a particular impact on the skilled trades. This is because the total increases to recruitment and health costs will make it financially unrealistic for companies to employ workers in the lower salary range and particularly where contracts are for 12 months or less. Such costs will be disproportionately higher when applied to the relatively lower salaries of employees - such as welders and diesel mechanics - who are in critically short supply in many areas. Our comments on the specific proposed legislative changes are attached below.

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.

Yours sincerely

Heather Ridout  
Chief Executive

## Australian Industry Group Submission to the Inquiry into the Migration Amendment (Sponsorship Obligations) Bill 2007

### 1. Skill Shortages:

Ai Group considers the 457 Visa program to be one of the key ways that companies can alleviate the short to medium term impact of skill shortages. Despite a lift in training in recent years, skill shortages are intense and set to continue.

Shortages among the traditional trades are particularly intense and the 457 program offers employers a flexible alternative at a time when prospects for employing labour locally are poor, and in some circumstances, non-existent.

Notably there are high vacancy levels in the following trades as listed in the *Migrations Occupations in Demand List*.

Trades Persons	ASCO codes
Automotive Electrician	4212-11
Baker	4512-11
Boat Builder and Repairer	4981-13
Bricklayer	4414-11
Cabinetmaker	4922-11
Carpenter	4411-13
Carpenter and Joiner	4411-11
Cook	4513-11
Drainer	4431-15
Electrical Powerline Tradesperson	4313-11
Electrician (Special Class)	4311-13
Electronic Equipment Tradesperson	4315-11
Fibrous Plasterer	4412-11
Fitter	4112-11
Floor Finisher	4423-11
Furniture Upholsterer	4942-11
Gasfitter	4431-13
General Electrician	4311-11
General Electronic Instrument-Tradesperson	4314-11
General Plumber	4431-11
Hairdresser	4931-11
Joiner	4411-15

Lift Mechanic	4311-15
Mechanical Services and Air-conditioning Plumber	4431-19
Metal Fabricator (Boilermaker)	4122-11
Metal Machinist (First Class)	4112-13
Motor Mechanic	4211-11
Panel Beater	4213-11
Pastry Cook	4512-13
Pressure Welder	4122-13
Refrigeration and Air-conditioning Mechanic	4312-11
Roof Plumber	4431-17
Roof Slater and Tiler	4413-11
Solid Plasterer	4415-11
Sheetmetal Worker (First Class)	4124-11
Stonemason	4416-13
Toolmaker	4113-11
Vehicle Body Maker	4215-11
Vehicle Painter	4214-11
Wall and Floor Tiler	4416-11
Welder (First Class)	4122-15

This listing reflects the Department of Workplace Relations Skills in demand list.

Given the acknowledged scale of the skill shortages, if the 457 Visa program is restricted unnecessarily it will not result in more jobs going to Australians. It will result in companies being incapable of completing work and prevented from being able to bid for future contracts.

Ai Group has completed a significant body of research on skill shortages. Our research has found that over one third of Australian companies have cited that they had lost contracts due to the 'inability to secure skilled labour', with over 74 per cent of companies identifying skill shortages as the major barrier to company success and competitiveness over the next three years.<sup>1</sup> The same research found that two-thirds of companies are experiencing skill shortages.

For Ai Group members, 457 visas are not a replacement for training staff. They are to fill gaps that they are unable to fill through the local job market. According to ABS data, 60 per cent of jobs require VET qualifications and only 30 per cent of the working age population have those qualifications. This means there exists huge domestic skills gap

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<sup>1</sup> World Class Skills for World Class Industries, May 2006

and, given the length of time it takes to train skilled tradespeople, it is clearly a problem that can't be solved overnight. Complimentary strategies such as skilled visa programs are therefore essential.

We have given support to hundreds of members to help them access the skilled migration program and in our contact with them the response is almost always the same: they advertise skilled positions for weeks and get no response and, in many cases, they also have difficulties in finding people to fill training positions.

The construction industry in particular has a renewed focus on training. The vastly improved industrial culture in that industry has made a positive contribution to enhancing employer–employee relations and in so doing getting better training outcomes.

## **2. Tougher Penalties under the new Bill:**

Over the past few years there has been major publicity given to a relatively small number of cases of employers paying employees on temporary business visas salaries below the prescribed Minimum Salary Level (MSL), or failing to provide other conditions of employment mandated by the immigration authorities. Efforts to improve compliance with the scheme - provided they do not result in too high a regulatory burden on sponsors which would effectively undermine the flexibility of the initiative - are supported. It is also important that both sponsors and visa holders are aware of their rights and responsibilities under the Initiative, and the potential sanctions for breaching any of its requirements and we would encourage DIAC to be active in publicising any legislative or regulatory changes with employers.

However, both the current Minister for Immigration, Kevin Andrews, and his predecessor, Senator Amanda Vanstone, have highlighted the fact that the number of abuses under the 457 visa system is relatively small:

*“Less than 2 per cent of the approximately 10,000 businesses sponsoring 457 visas have had allegations made against them, and figures to date suggest that at least 70 per cent of these allegations will be disproved or found to have no merit.”* **Amanda Vanstone 18 October 2006.**

*“...The Government also recognises that there is a small minority of employers who have sought to abuse the programme.”* **Kevin Andrews, 21 June 2007.**

This suggests that the Government itself has acknowledged that abuses under the system are relatively few. By Senator Vanstone's estimate, this would equate to around 60 complaints out of around 10,000 having “*any merit*”. Arguably, the changes under the Bill are designed to address complaints at the margins but they will have the effect of penalising all users of the system rather than focusing on the few who are abusing the system.

Where breaches are proven, employers found guilty should be dealt with to the full extent of the law and Ai Group supports the tougher sanctions. However, these abuses should be treated directly and do not justify wholesale changes to the system under the Bill which will potentially make the system unworkable.

### **3. Health Cost Changes:**

#### ***140IF Obligation to pay certain medical costs***

The new requirement under “140IF” will have the effect of obligating sponsors to pay private health insurance for their employees. While under existing rules sponsors had the responsibility to cover health costs, the common practice was to have the employee pay their own health insurance as long as this did not take their salary below the Minimum Salary Level (MSL). We understand that this will not be possible under the Bill.

For sponsors this will be a significant cost. Products offered by the insurance industry for temporary foreign workers vary, but it is generally necessary to take out ‘private’ health insurance. This can range up to as much as \$3,000 a year for the principal insurance holder and additional costs for family members.

It should be noted that the obligation for the employer to cover health costs also extends to the visa holder’s spouse and dependants. We understand that approximately half of all entrants under the 457 scheme are dependants.

This new requirement also has the potential to create major disparities in the workplace between visa holders and their Australian colleagues. Australian employees will be obliged to pay their own health insurance or rely on Medicare while the visa holders they work alongside will have their private health insurance paid for by their employer. There is a real possibility that this could lead to claims from the general workforce seeking employer coverage of health insurance.

We would strongly urge that the new Bill allow employers to require visa holders to pay their own health insurance costs providing the cost would not take the visa holders salary below the MSL.

### **4. Travel Cost Changes:**

#### ***140IE Obligation to pay travel costs of leaving Australia***

The obligation to pay travel costs for applicants leaving Australia will also be substantial for employers. To return a family of four to the UK, for example, would cost a minimum of around \$6,500.

For many companies this will be a new expense as the current practice is in many cases for the visa holder to cover their own return airfares.

While this may not seem significant on an individual basis, it will be a major new expense for labour hire companies and other large scale sponsors who are responsible for many hundreds of visa holders.

We believe it is reasonable for visa holders who have worked in Australia in many cases for up to four years to pay for their own travel costs.

## **5. Other new costs:**

### ***140IG Obligation to pay certain other fees and costs***

The new provision under **140IG** needs clarification: The Bill proposes that an approved sponsor of a primary person for a visa must pay: the fees (including licence, registration, membership or other fees) for the primary person to work in the nominated activity in respect of which the visa is granted; and the costs (if any) associated with recruiting the primary person for the nominated activity in respect of which the visa is granted; and the fees of a migration agent (if any) involved with the visa.

It is unclear the extent to which this obligation extends to migration agents fees paid by the visa holder. It is often current practice for sponsors to pay migration agents in many cases to identify applicants and process their visas. Costs vary widely but it is commonly in the order of \$2,500 per applicant but can be more. In some countries, however, individual applicants separately pay their own agent's fees prior to becoming involved with an Australian company's agent. Also, in countries such as the Philippines, visa fees can be based on the applicant paying the local government a levy of a month's salary. Australian sponsors should not be liable for charges outside the direct migration agent's fees of the agent they engage.

With regard to the fees (including licence, registration, membership or other fees), again it is common practice for visa holders to be responsible for payment of such fees. It is reasonable for an employer to expect when hiring locally that a plumber or electrician, for example, holds the required licences and certifications. It is equally reasonable for an employer to require a visa holder to be responsible for their own licence, registration, membership or other fees.

In some cases an employer will, following negotiation, pay these fees for a visa holder, however they should not be obliged to do so by the Bill. It is reasonable for employers to deduct such costs, provided that these deductions do not take the visa holders salary below the MSL.

## **6. Retrospectivity:**

According to the "Q and A" provided by DIAC, the provisions of the new Bill will be retrospective:

***“Will the new obligations apply to all existing sponsors?”***

*“Yes, the obligations will apply to all existing and new sponsors and the penalties will apply from their date of effect.”*

This apparent retrospectivity is a major concern. Employers could potentially have hundreds of existing visa holders for whom the new obligations will apply. Labour hire companies, for example, will have entered into contracts to supply employees on 457 visas under existing arrangements and the changes will introduce a major unbudgeted expense. One large labour hire company, which is a member of Ai Group, estimates that if the changes are applied to existing visa holders it would potentially cost the company in excess of \$2 million.

As a principle, retrospective operation of legislation is strongly opposed, as it imposes obligations and requirements on parties after the event. In this case, the retrospectivity implied by the Department's Q and A would present major practical difficulties and economic hardship for some employers. We are of the view that the Bill should not be retrospective in its effect, and only apply to parties entering into arrangements after the amendments have come into operation.

**7. English language requirements:**

New requirements have been introduced regarding the English language skills of 457 visa applicants. While this is outside the current Bill, the English language requirements compound the difficulties associated with the Bill, particularly in the area of the skilled trades.

The changes announced by the Minister for Immigration, Kevin Andrews, mean that potential visa applicants in the ASCO 4 and below category will be required to have a relatively high level of English language ability. ASCO 4 applies to tradespersons and related workers and includes electricians, plumbers, brick layers, metal workers, metal machinists, motor mechanics and welders.

There are a number of exceptions to the new regulations. Tradespeople will not require English testing where they have five years of secondary schooling in English or are from countries such as New Zealand, the UK and Canada. The effect of the regulations will be to seriously impede entrants under the Visa scheme from countries such as China, the Philippines and Papua New Guinea, countries where English proficiency among tradespeople is not high.

These countries have increasingly become a source for 457 visa applicants in the skilled trades. As the salary levels in these categories are generally towards the lower end of the range, the impact of the new costs under the Bill will be disproportionately high for the skilled trades category and may make recruitment under the 457 scheme in some cases financially unrealistic. It is our view that the proposed English language requirements are unnecessarily onerous.



The Bill should make provision for the fact that there are serious shortages in the skilled trades in particular in Australia and measures which restrict the availability of skilled workers, or reduce the pool of countries from which they are sourced, could have serious economic implications.

Ai Group fully accepts that all employees need to have adequate English language skills to ensure their efficiency and safety in the workplace. On the issue of Occupational Health and Safety and English language skills, it is understood that OH&S is of paramount importance in the workplace. However, when assessing this issue from the perspective of language skills, it should also be understood that there are already many workplaces in Australia where Australian citizens and permanent residents have little or very low level English language skills and appropriate OH&S regulation exists to address this situation.

There are call centres in Australia, for example, which exclusively service particular foreign language markets and there is no requirement for the employees to speak English. Employers in such workplaces have a duty of care to ensure the OH&S of their staff, and there are many obvious ways that this can be done (for example, translating work procedures and warnings into relevant languages).

It would be most appropriate if sponsors were given principal responsibility to determine whether the proposed visa holder's level of English was suitable for the relevant position. It is in every employer's interest to ensure that a potential applicant has adequate and appropriate English language skills. Consideration could be given to using English proficiency testing as a discretionary final measure in situations where reasonable concerns remain after employers have been provided with the opportunity to use internal assessment procedures.

We do not regard it as necessary for visa holders to have a level of English higher than that required to undertake their duties in an efficient manner and to meet OH&S standards. We do not support the mandatory IELTS testing for ASCO 4 applicants.

## **8. Case Studies:**

Below are a number of case studies which estimate the cost of the provisions under the Bill.

### **Case Study 1: Candidate with three dependents**

**Candidate:** Diesel Mechanic

**Dependents:** spouse, two children

**Country of Origin:** Philippines

**Destination:** Australia, Perth

**Length of sponsorship:** 1 year

Estimated **additional** costs to employing company as outlined below:

**Fixed costs:**

*Recruitment Costs:* Possible country of origin Government mandated fee of one months salary \$3500+

*Migration Agent Fees / visa application fees for employee and family:* \$4,000+

*Return Travel costs:* \$10,000

**Variable Costs:**

*Health Insurance for employee and family:* \$4200+

*Total Costs for one year:* \$21,700

**Case Study 2:** Candidate travelling alone

**Candidate:** Diesel Mechanic

**Dependents:** Nil

**Country of Origin:** Philippines

**Destination:** Australia, Perth

**Length of sponsorship:** 1 year

Estimated **additional** costs to employing company as outlined below:

**Fixed costs:**

*Recruitment Costs:* Possible country of origin Government mandated fee of one month's salary: \$3500+

*Migration Agent Fees / visa application fees for employee:* \$2300

*Return Travel costs:* \$2500

**Variable Costs:**

*Health Insurance for employee:* \$1560+

*Total:* \$9860+

*Note: The above will vary depending on the type of skills required. For example, the cost of recruiting a registered nurse would be higher as the Australian nursing registration process may cost up to \$800.*

**9. Feedback from Ai Group member companies:**

Ai Group member companies briefed on the proposed Bill provided the following comments:

1. Large labour hire firm sourcing mainly from China:
  - 4.5 is too high for trades
  - non-latin (ie Asian) based language source countries will struggle to meet

- for China specifically it will be a major problem - trades people will not have had formal English
  - lots of SMEs lacking skills relying more on this source
  - they do English training but not to this level but middle level trades eg metal fabricators do not need such a level
2. Large company engaged in Infrastructure, Power and Water:
- source mostly from Philippines
  - changes will be "not helpful"
  - their source stream DO have English but not necessarily formalised and will find test traumatic - may fail despite reasonable skills
  - it will make the 457 process much slower and more risky
3. SME engineering company:
- Have 2 Chinese staff on way (visas granted) were planning 6 more
  - Now must reconsider - probably cancel
  - it is impossible to get labour
  - raised concern over possible collapse of China specialist recruiters - if order placed, a deposit is paid - what happens?

### **About the Australian Industry Group:**

**Australian Industry Group (Ai Group)** is Australia's leading industry organisation representing 10,000 employers in manufacturing, construction, automotive, telecommunications, IT, transport, labour hire and other industries. Ai Group's members operate businesses of all sizes throughout Australia and represent a broad and expanding range of sectors. Ai Group provides comprehensive advice and assistance to help members run their businesses more effectively and to become more competitive on a domestic and international level