ASSOCIATION OF CONSULTING ENGINEERS AUSTRALIA

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MIGRATION AMENDMENT (SPONSORSHIP OBLIGATIONS) BILL 2007

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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 250 firms, from large multidisciplinary corporations to small niche practices, across a range of engineering fields represented by ACEA with a total of some 29,000 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.

ACEA'S SUMMARY POSITION ON PROPOSED CHANGES TO MIGRATION AMENDMENT (SPONSORSHIP OBLIGATIONS) BILL 2007

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.

RECOMMENDATIONS

The following is a summary of recommendations specific to the amendments sought in the sponsorship obligations Bill:

- Employers should not be obligated to pay the travel costs of returning visa-holders. Travel costs to and from Australia should be available to negotiate between the sponsoring employer and potential employee.
- Private health cover or costs should be met by the employee.
- An employer should not be required to pay the costs of locating, detaining and removing employees.
- When requesting information from an employer, the written request should include what kinds of penalties will be incurred if the information is not provided.
- An employer should not be required to pay monies to the government where these funds may have been available to the absconded visa holder.

ACEA'S POSITION ON THE MIGRATION SPONSORSHIP OBLIGATIONS BILL 2007

At this time, ACEA has chosen to comment on five proposed sections of the Bill.

140IE OBLIGATION TO PAY TRAVEL COSTS OF LEAVING AUSTRALIA

Mandating that the sponsor must pay for the 457 visa holder to return to their country of origin will impose unnecessary costs on small to medium sized businesses. ACEA views this matter as commercially negotiable between the sponsor and employee. 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 the system should be include the flexibility to accommodate this.

To make this a blanket regulation will impose on small businesses and prejudice their ability to recruit from overseas, as they will not be able absorb the 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.

140IF OBLIGATION TO PAY CERTAIN MEDICAL COSTS

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.

For 457 visa holders from excluded countries, we would question 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. Given the same rate applies, and includes cover for public health costs and public health insurance, the migrant should be afforded the same benefit that an Australian citizen gets 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 than it is for an Australian citizen over the period of a lifetime.

As previously stated, 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.

In addition, any private health cover or costs should be met by the employee.

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.

140IJ OBLIGATION TO PAY COSTS OF LOCATING, DETAINING AND REMOVING ETC. SPONSORED PERSON

It is not feasible to ask the employer to pay all related costs under this section. Imposing these kinds of obligations on employers who wish to sponsor employees on a temporary basis will only deter employers from using the scheme altogether.

ACEA sees a clear distinction between the roles that government and business play regarding obligations. The employer's obligations extend to ensuring the 457 applicant has the appropriate skills to perform the role and is remunerated sufficiently. 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.

140IK OBLIGATION TO PROVIDE INFORMATION

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 between 60 and 300 penalty units apply if the information is not provided and that this should be noted clearly within the correspondence. ACEA would also recommend that a reasonable time period for response from the employer is 21 days.

140SF UNCLAIMED MONEY

The employer should not be required to provide funds to the Commonwealth if they are unable to locate the 457 visa holder. If the temporary visa holder absconds, and returns some time later requesting funds they believe are owed to them, this is a matter for the Court system, moreover a matter between the company and their previous employee.

Final Points

The government must realise 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 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.

All documentation sent to the sponsoring employer should clearly outline any penalties that may be incurred for non-compliance and that a reasonable amount of time (minimum of 21 days) be allowed in order to respond to all queries.

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.