



03 May 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Parliament House
CANBERRA ACT 2600

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Dear Committee Secretary

RE: Senate Inquiry into the Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements.

The Chamber of Commerce and Industry of Western Australia (CCI) is pleased to have the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee on the framework and operation of Temporary Work (Skilled) (subclass 457) visa (subclass 457 visa), Enterprise Migration Agreements and Regional Migration Agreements.

CCI is the leading business and employer association in Western Australia with a membership of over 8,000 organisations in all sectors of the economy. CCI is respected for its advocacy on business issues and provides a wide range of services to members and the broader business community.

CCI has long advocated for a migration system that provides solutions for employers, business and industry to access skilled workers when demand cannot be met by the local workforce. The Western Australian economy has historically required more people and skills than can be supplied by the local workforce, and the majority of those people have been attracted from overseas rather than interstate.

CCI is a strong supporter of educating and training local students and workers to equip them with skills that will lead to employment and allow our workforce to be productive and innovative. CCI encourages business to employ local people first. This makes sound economic, social and business sense.

However, it is vital employers have access to migration solutions to fill vacancies with skilled workers that cannot be met by local capacity. The subclass 457 visa is an instrument that needs to remain flexible in its aim to meet employers skills needs, while safe guarding and protecting overseas workers. The recent publicly announced changes to the subclass 457 visa are concerning. CCI expects that the changes will reduce the flexibility and accessibility of the visa, making it less suitable for employers to meet skill shortages.

The Government needs to continue improving the design of both Enterprise Migration Agreements and Regional Migration Agreements to ensure these instruments are available to major project proponents and regions that are impacted by labour and skill shortages. Both large projects and regions often have unique workforce requirements and face difficulties in attracting sufficient levels of local labour. Western Australian projects, businesses and employers need to have access to options to supplement the local workforce with the skills required to remain efficient and productive.

If you require CCI to appear in front of the Senate to further provide advice on any of the matters in scope of the Inquiry, please do not hesitate to contact CCI to make arrangements. My executive assistant, Christine Denford can be contacted

For further clarification on the submission attached please do not hesitate to contact Angela Lynch, Senior Policy and Projects Adviser, Workforce Development Services

Yours sincerely

James Pearson
Chief Executive



Chamber of Commerce & Industry of Western Australia

Submission

Senate Legal and Constitutional Affairs Committee: Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements.

Executive Summary

The Western Australian economy's strong growth has meant that labour shortages have emerged as a key constraint to doing business in Western Australia. Expected continued economic growth over the coming years, as the State's resources industry continues to develop on the back of increased demand for the State's key commodities, will maintain pressure on the labour market, which has been tight for an extended period.

In order to meet the labour and skill demands that increased economic activity generates, WA employers, including businesses, need to have an easily accessible and flexible migration system to supplement local labour supplies. It is important that the Federal Government get the migration policy settings correct to ensure that economic growth is supported. Employers must not be hampered by administrative and cost burdens, that go beyond what is required to ensure the integrity of skilled migration programs, to acquire the skills that will allow them to provide services on which the community depends and build projects that create wealth and employment for Australia.

WA businesses, not for profits and government agencies use the migration program to respond to short term skill shortages. In turn highly skilled migrants complement the local workforce, bring expertise and global experience and make a positive long term contribution to the economy.

The Temporary Work (Skilled) (subclass 457) visa program plays a vital role for Western Australian employers to source skilled labour if appropriate skills cannot be found locally. Overall the program makes a significant and successful contribution to helping employers to respond to demand for skills, with applications for subclass 457 visas increasing in times of labour scarcity and decreasing when the labour market has softened.

The Government's recently announced changes to the subclass 457 visa program have been criticised by WA employers. Of particular concern is the increased complexities that are being imposed, or considered to be imposed, on applications for subclass 457 visas, such as the additional requirements on applicants and employers due to the proposed extensions of the requirement for English language testing. Overall, these changes will reduce the flexibility of the visa, making it more difficult and more costly for employers to access the skills that they need to maintain existing operations or to grow.

This submission to the Senate Legal and Constitutional Affairs Committee primarily addresses the effectiveness of the subclass 457 visa and CCI concerns with the recent changes that have been announced.

While it is positive that the Government has recognised that different sectors and regions have specialised needs to meet labour and skills shortages by introducing migration instruments such as Enterprise Migration Agreements (EMA) and Regional Migration Agreements (RMA), limited commentary has been provided on these instruments as they have had minimal take up or are yet to be made available to the public. That is not to say that they will not be valuable in helping employers to meet their need to supplement the local workforce with skilled migration when they are carried out in practice (EMAs) or made available (RMAs).

A number of examples from CCI members have been provided to support the positions put forward in this submission. The names and details of the businesses that have provided these examples remain confidential.

Economic Context

Western Australia is in the midst of its strongest period of economic growth for some time, with overall growth rates averaging 4.6 per cent per year over the past five years (more than two percentage points above the national average)¹. CCI expects the WA economy will grow by 6.5 per cent in each of the next two financial years, on the back of massive business investment in the resources sector in recent years and the associated expansion in the State's export capacity, as well as more recent strengthening of consumer activity.

Short-term demand for labour will fluctuate in line with the economic cycle. However, it is clear that Western Australia's labour market has been tight for some time. The State's unemployment rate has remained below the "full employment" level of 5.25 per cent² since November 2009, and only breached this level for five months during the Global Financial Crisis³.

WA's strong growth has meant that labour shortages have emerged as a key constraint on doing business in Western Australia. CCI's own research indicates that labour and skill shortages cannot be met on the basis of the current labour market and population trends. Even with the current strong rates of population growth, CCI estimates that there will still be a shortfall of up to 180,000 workers in WA by 2020, representing a significant challenge for WA business.

At its peak before the Global Financial Crisis, some three-quarters of respondents to the *Westpac-CCI Survey of Business Expectations*⁴ reported difficulties finding labour, more than four times the rate experienced prior to the boom. While this figure has declined in recent times, approximately one in three businesses still report that labour is scarce.

The impacts of labour scarcity on employers, business and productivity can be wide ranging. Increased competition for workers can drive wage growth, adding to the cost of doing business. It can also hamper economic productivity and growth if employers are unable to access the skills required to support business continuity or new projects to come on line.

Government needs to allow migration levers to increase the supply of overseas labour to supplement the local workforce to ensure demand can be met. Providing employers with an accessible and flexible skilled migration program is an effective way for government to alleviate skills shortages.

¹ Data from ABS Cat. 5220.0: State Accounts 2011-12.

² Kennedy, S. 2007. *Full employment in Australia and the implications for policy*. Accessed online at <http://www.treasury.gov.au/>

³ Data from ABS Cat. 6202.0: Labour Force, Australia

⁴ Data from consecutive *Westpac-CCI Survey of Business Expectations*

(a) Effectiveness in filling areas of identified skill shortages and the extent to which they may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements

The Temporary Work (Skilled) (subclass 457) visa program supports Western Australian employers to supplement the local and regional workforce to meet its growing labour and skills requirements. The subclass 457 visa, while there is some room for improvement, has in general been a flexible and efficient option for employers to effectively address to skill shortages when needed.

Overall the program has been successful in responding to demand for skills, with applications for subclass 457 visas increasing in times of labour scarcity and decreasing when the labour market has softened.

Between July 2012 and February 2013, the number of 457 visa applications granted by the Department of Immigration and Citizenship (DIAC) to employers in Western Australia stood at 10 350. The overwhelming majority (93 per cent) of these were granted for high skilled managerial, professional or technical occupations, while close to 60 per cent of visa applicants were to be working in the mining, mining services or construction industries⁵. This demonstrates that those industries experiencing growth (mining, mining services and construction) have been the highest users of the visa.

As economic growth has eased in different parts of country, so the demand for 457 visa workers has eased as well. In 2009/10, the number of primary 457 applications lodged in Western Australia fell by 46.7 per cent from 11 600 to 6 180⁶. The general decline can be attributed to employers' response to the Global Financial Crisis. Notably, the rise in the unemployment rate in Western Australia over the same time period reached a seasonally adjusted high of 6.2 per cent in July 2009⁷.

Western Australian employers, while being able to use the subclass 457 visa, also invest considerable time and resources into training local men and women, including young people and Indigenous Australians.

Data collected by the state Department of Training and Workforce Development indicates that WA employers have increased their investment in apprentices and trainees for the last three years, with 44 847 apprentices and trainees in training as at 31 December 2012, up from 37 926

⁵ Data from Department of Immigration & Citizenship. Subclass 457 State/Territory summary report 2012-13 to 28 February 2013. Accessed online at <http://www.immi.gov.au>

⁶ Data from Department of Immigration & Citizenship. Subclass 457 State/Territory summary report 2009-10 Financial Year to 30 June 2010. Accessed online at <http://www.immi.gov.au>

⁷ Data from ABS Australia car. 6202.0 Labour Force, Australia. Accessed online at www.ausstats.abs.gov.au

at 31 December 2011 and 37 375 at 31 December 2010⁹. These figures demonstrate that employers are investing heavily in local training to meet demand.

In addition to this investment in training, CCI members have provided examples of why it is necessary for employers to retain access to a flexible temporary visa to supplement their local workforce. For example, a mid-tier Western Australian civil construction company that employs both professionals and trades peoples such as qualified Civil Engineers, Project Managers, Quantity Surveyors, Carpenters and Mechanical Fitters, is reliant on the subclass 457 visa system to supplement the local workforce in order to meet its labour and skill needs.

The company stresses it is important to note their preference is to employ locals – it is more cost-effective, and local employees are more likely to have relevant work experience. To ensure this, they advertise widely and make every effort to attract local talent. However, due to its regional position, the company is reliant on 457 workers to fill positions that would otherwise go unfilled. For them, reduced access to subclass 457 visa holders would be a disaster – construction projects would be delayed and the company's ability to operate profitably would be seriously affected.

For regional WA, particularly those with little or low unemployment need to have the capacity to recruit skilled workers as the need arises and as promptly as possible. Without a sufficient skilled workforce, opportunities for growth are limited and investment may be hampered.

For example, a regional health services CCI member has raised concerns with the difficulty in accessing skilled local staff. In Broome its local dental nurse left last year. The position has been unable to be filled. There are existing long waiting times for basic services or local people are forced to fly the nearly 2 000km to Perth. Compounding this problem is the lack of tertiary training options available in the Kimberley. As a result the whole community suffers from lack of access to services that are taken for granted in many other places. Migration is currently the only answer to the shortage of skilled labour in this community.

(b) Accessibility and the criteria against which applications are assessed, including whether stringent labour market testing can or should be applied to the application process;

Since the visa's inception, CCI has advocated for improved flexibility and accessibility of subclass 457 visa for employers. CCI broadly supported the Federal Government's reforms to the Subclass 457 (temporary worker) program in 2009, as they sought to strike a balance between minimal bureaucracy for employers and protection of overseas workers.

The introduction of stringent labour market testing will reverse the balance of minimal administrative burden. It may reduce the visa's conduciveness to allow employers to access skilled labour in an efficient and productive manner.

(c) The process of listing occupations on the Consolidated Sponsored Occupations List, and the monitoring of such processes and the adequacy or otherwise of departmental oversight and enforcement of agreements and undertakings entered into by sponsors

The recent change to combine all existing skilled migration lists including the General Skilled Migration list and the subclass 457 visa program temporary list, into one consolidated list – the Consolidated Sponsored Occupations List (CSOL) - is a positive step. This reduces some of the duplication and confusion that occurs when consulting with industry, as well as simplifying the system for employers.

However, given the widespread skill shortages occurring in Western Australia, CCI would like to see the list of occupations able to be sourced through the subclass 457 visa program expanded. Mechanisms also need to be put in place to allow employers to source occupations in demand if they are not on the list, particularly to meet needs in regional areas.

Often an unrecognised skills shortage becomes apparent due to unforeseen circumstances. For example, a CCI member has voiced concerns about regional pressures. This mid-tier civil construction company would like to see the CSOL expanded to include semi skilled workers, such as operators of construction plant and machinery. Experienced grader operators are in very short supply in regional Western Australia, and work on sites is regularly delayed because a skilled grader operator is not available thus affecting productivity.

Likewise, another CCI member in the Wheatbelt area of Western Australia has identified challenges in sourcing skilled plant operators. The business finds it difficult to source labour for its regional offices as people prefer to stay in population centres. While this is a skilled position for the manual operation of machinery, there is no qualification available with experience as the only indicator of expertise. Good candidates with 20 years' experience are ineligible to apply for the subclass 457 skilled visa.

The CSOL process of adding occupations in shortage on to the list needs to be made flexible to accommodate the idiosyncrasies that occur across the nation. Employers need flexible options to meet niche or unique skill needs. This could be done by having state or region specific nominated positions as a subset of the consolidated list and a process that can allow for urgent additions to the list.

(d) The process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes

Sponsors should be clear on their compliance responsibilities, and consequences of non-compliance, when applying for a subclass 457 visa. This will minimise any unintentional misuse or abuse. The current compliance conditions should be adequate to monitor and reprimand sponsors if misuse is detected, without additional regulations being applied. DAC must be

allocated the appropriate levels of resourcing to ensure that the integrity of visa use is maintained.

Resources should be dedicated to the education of employers to ensure that employers are clear on usage responsibilities.

DIAC should also be required to provide clear evidence based rationale when altering visa conditions to ensure transparency of changes is upheld. To date, limited evidence has been provided to substantiate the need to make these suites of recent reforms.

(e) The economic benefits of such agreements and the economic and social impact of such agreements

WA businesses, not for profits and government agencies use the migration program to respond to short term skill shortages. In turn highly skilled migrants complement the local workforce, bring expertise and global experience and make a positive long term contribution to the economy.

The Enterprise Migration Agreements and Regional Migration Agreements will play a vital role for Western Australian employers to source skilled labour if appropriate skills cannot be found locally. WA businesses, not for profits and government agencies use the program to respond to short term skill shortages. In turn highly skilled migrants complement the local workforce, bring expertise and global experience and make a positive long term contribution to the economy.

Enterprise Migration Agreements (EMA) have been established on the recommendation by industry to assist large resource projects access labour and skills to ensure projects are deemed viable and able to progress.

EMAs are a custom-designed, project-wide umbrella migration arrangement suited to the resource sector. EMAs have been designed to ensure that skill shortages do not create constraints on major projects and jeopardise Australian jobs.

CCI is supportive of this instrument and commends the Federal Government for working with industry to design the EMA. Industry was concerned that it would be unable to adequately resource major projects if there was not a supply of skilled labour available. However, to date there has been limited take-up of EMAs by project proponents. While CCI supports the EMA instrument, the complexity to establish an agreement has proven to be difficult.

For project owners to qualify to entering an EMA they must demonstrate a minimum of \$2 billion in project value. The minimum number of workers a project must have at its peak is 1500 workers and a comprehensive training plan for Australian workers is also required. These requirements limit the number of major projects that can access EMAs. CCI has argued for the

project value threshold to be reduced to a reasonable limit in order that the potential benefits of EMAs are available to a greater number of projects.

This is an important instrument for the resource sector to have access to meet labour and skill demands. An assessment of the negotiation process, qualification thresholds and training benchmarks should be undertaken to ensure they are suitable for industry. This may make the instrument more accessible and of benefit to the resource sector.

As part of Budget 2011–12, the Federal Government announced the new Regional Migration Agreement (RMA) initiative. RMAs are aimed at bringing together employers, local and state government and unions to cooperate on addressing local labour needs. The RMA has been designed to assist local regions implement workforce strategies that support growth while ensuring Australian workers remain the first choice for employers and industry.

CCI supports the formation and intent of RMAs. Access to skilled labour in regional Western Australia is limited. However, to date guidelines on how this program will operate have not been publicly released or made available for regions to apply. This two year delay in implementing this program is disappointing and is hampering regional employer's ability to meet labour needs. Regional areas are currently at a disadvantage with limited or no access to a migration instrument that addresses regional concerns. CCI is aware of potential demand for RMAs in regional areas of WA.

CCI also understands that when guidelines are released, in order for an RMA to be operational it requires agreement between the Australian Government and a state or territory government, regional council, or another local stakeholder and local business. RMA proponents must specify the occupations, numbers and visa requirements for the sponsorship of workers from outside Australia to certain regional locations.

DIAC or state governments will need to provide support to RMA proponents that are willing to be responsible for the regional agreement. Intensive relationship building, data collection, proving genuineness of vacancies and monitoring of compliance will be required from the proponent in order for an RMA to be successful. While the outcomes of an RMA will benefit industry and local communities, there is a large responsibility and very little commercial incentive for a proponent that is not government, or provided with government to support, to take on an RMA.

(f) Whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on such visas

Robust long term workforce forecasting is extremely important in determining working population levels over time, skills/occupation needs of industry and training investment requirements. However, economic modelling and forecasting cannot predict emerging skill

needs, new technologies or economic booms and busts. All these factors may trigger a need for in new skills, new occupations and increased number of skilled workers that can not be met by the existing workforce. Employers must be able to access workers through the migration system to fill the gaps the local workforce cannot meet.

CCI would like to bring to attention the recent work undertaken by the Australian Workforce and Productivity Agency (AWPA) in its *Future focus, 2013 National Workforce Development Strategy*.

This commendable report makes assumptions based on feasible economic scenarios to determine the supply and demand for skills to 2025. It cleverly details how Australia can position itself for growth in the Asian century, in a competitive global environment, where technology and patterns of work are rapidly changing.

Investing in modeling such as this and improved data collection of industry skill needs will assist governments, industry and employers to better plan for workforce needs. However, employers need to have options to find solutions to workforce shortfalls that will undoubtedly occur over time, regardless of long term forecasting.

(g) The capacity of the system to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights

The Government has recently announced that it has increased the power of Fair Work Inspectors to investigate employer sponsoring arrangements of subclass 457 visa holders. This was implemented by the Government to increase the compliance capabilities of the government to ensure visa holders are being paid market rates of the approved visa occupation and that migrants are performing roles that match the approved title and description on the visa.

Temporary skilled migrants are already afforded all of the same protections as Australians under current workplace relations laws, occupational health and safety laws and compensation rights. The vast majority of businesses that are compliant with their current obligations will be adversely impacted by increased regulatory and reporting requirements.

A targeted approach to those industry sectors and employers assessed to be at most risk would seem to be the most effective use of government resources to identify and intervene in cases of non-compliance.

(H) The impact of the recent changes announced by the Government

As mentioned previously the 2009 reforms provided greater flexibility for Australian employers to manage their workforce planning, whilst safeguarding Australian worker entitlements. It is disappointing that the Government is now seeking to change these measures to a more restrictive and onerous process for business.

In February 2013, the Government announced a raft of reforms to the subclass 457 visa including the addition of a genuine vacancy clause; increased market salary exemption thresholds; removal of a number of English language testing exemptions; increased training thresholds; and increasing existing obligations regarding recovery of costs to ensure that sponsors are solely responsible for certain costs.

CCI is concerned with measures proposed to extend significantly the English language and skills assessment requirements, including to additional occupations.

Extending the English language testing requirements could mean that a significant additional number of people will need to undertake English language testing when applying for a subclass 457 visa. This would make the process of nomination more costly and place additional administrative burden on employers, reducing the efficiency of processing these visas.

Furthermore, we are concerned at measures announced to strengthen the scrutiny of employers applying to bring in workers through occupation roles of 'Program and Project Administrator', 'Specialist Managers' nec (not elsewhere classified). Employers applying for 457 visas to fill these roles are now required to have 457 applicants undertake skills assessments.

The changes are said to be made to reduce a perceived misuse of the occupation streams by a broad range of industries. It has been suggested that numerous employers are bringing in migrants under these occupations who are not actually working in these roles, once onshore. However, there has been a lack of substantial evidence of misuse by employers to warrant these changes. While these occupations were added to increase flexibility for employers to access the skills that meet the needs of their particular business, requiring skills assessments of these occupations is an additional burden on employers.

CCI understands that Australian, New Zealand Standard Classification of Occupations (ANZSCO) contains "nec" generalist occupations were introduced to give flexibility to the classification system. There are a number of hybrid occupations, particularly in the resource sector, that do not have separate occupation codes. The 'nec' descriptions in ANZSCO exist to allow flexibility to capture all occupations.

In addition, of concern to CCI's members is the impact that the recently announced changes to the temporary migration system will have on regional Western Australia. In particular regional health and services and the wider professional sector that need the option of recruiting from overseas to meet skill shortages.

Employers would also be concerned at any move to change the current training benchmarks. Any changes would need to reflect the actual capacity of employers to meet the benchmarks,

and have the flexibility to accommodate the wide range of training needs and practices across the employer community.

Any flow-on consequences of changes to the 457 training benchmarks on the employer sponsored permanent migration categories must also be considered. Both the Employer Nomination Scheme (ENS) and Regional Sponsored Migration Scheme (RSMS) categories have requirements that the employer must also meet the 457 training benchmarks.

CCI

3 May 2013