

Level 2
423 Bourke Street
Melbourne, Victoria 3000, Australia
GPO Box 1697, Melbourne Vic 3001

Ph: 61 3 9670 7555
Fax: 61 3 9670 7799

info@expat.com.au



EXPAT
INTERNATIONAL

*Personnel Relocation Management
& Global Migration Consultants*

6 May 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
Leg.sen@aph.gov.au

Dear Committee Secretary,

We welcome the opportunity of making a submission to the Senate Legal and Constitutional Committee on its inquiry into the Framework and operation of the Subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements. Please find attached a submission from Expat International.

Expat international is an independent full-service privately owned Australian migration consultancy. The company was established in 1983 and has consistently provided the highest quality visa and migration services to our clients for over 25 years. Expat specialises in corporate employment related visas and has written this submission considering our clientele, and our hands on experience working with employers on Subclass 457, Enterprise Migration Agreement (EMA) and Regional Migration Agreement (RMA) visas.

Yours Sincerely,

Tamara Thomas
Visa Division Team Leader
MARN: 0957622

The Terms of Reference of the programmed are addressed as follows:

(a) their 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;

Working alongside a person with specialised skills and watching them at work in a production environment, is one of the best forms of learning, especially an apprentice. No one becomes skilled by doing a short course or even a degree, alone. The majority of the Skills Assessing bodies do not assess on qualifications alone. Skills are developed through practice and in honing specialised skills by working with others. Limiting this learning stream from the training effort, may in fact adversely impact the apprenticeship trade given that they mimic the quality of their work largely from what they are taught on the job. Being satisfied because some skills have been learnt from someone in a few months is not sustainable for future learning.

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

We are open to the legislation and policy being readily available to the public as it is currently under New Zealand Immigration Law.

Labour market testing can be a lengthy and expensive process. Criteria is in place to ensure that 457 visa holders do not take the place of local hires, by way of market salary rate and the 817 work limitation. Most companies will have looked locally before looking overseas. Recruiting a new hire from overseas is an expensive process for a business, not a cheap alternative.

(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 Consolidated Sponsored Occupations List is not broad enough. To be effective it should be maintained regularly, and adjusted to follow the ebbs and flows of the Australian employment statistics.

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

Consistency of the granting process is necessary to ensure continuity with statutory requirements. The introduction of service level agreements with high end users within the legal community would help monitor against discrepancies within the granting process.

(e) the adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities;

In some cases the level of testing to granting visas sets a very high standard in terms of relevant qualifications and work experience. Local employment opportunities would find it difficult to compete for those particular positions. If business is more profitable as a result of a highly skilled work force, the knock on effect should create more employment within the local community.

Applications for intra-company transfers should be assessed in a much more streamlined way. The onus should be on the global company to ensure that the applicant has the relevant skills and experience. For many global companies a secondment from its overseas office to Australia is available only to its most highly skilled people.

(f) the economic benefits of such agreements and the economic and social impact of such agreements;

We see evidence that this is encouraging growth to regional areas of Australia and small communities are developing. A lot of our clients develop close knit communities through their work connections in remote areas.

(g) 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;

A solution for long-term forecasting should employ a process of compare and contrast to other similar situations, rather than solitary decisions on what we think is best. The reform is closely related to the point made earlier at (a).

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

The workplace rights are included in the requirement for terms and conditions of employment to be no less favourable than any Australian citizen or permanent resident performing the same or similar role in Australia. The system works where case officers make necessary enquires to ensure the requirement is satisfied. However, attempts to request unnecessary or irrelevant information is to be challenged. In our daily operation, we look to ensure that relevant jurisdictions areas are adhered to by the relevant parties. There is a need for consistency across all Department of Immigration and Citizenship (DIAC) processing offices when assessing the requirement of no less favourable terms and conditions.

(i) the role of employment agencies involved in on-hiring subclass 457 visa holders and the contractual obligations placed on subclass 457 visa holders;

This is a matter for Contract Law, where certain change occurs within the timeline of the person's employment.

(j) the impact of the recent changes announced by the Government on the above points; and

We agree with 4 of the 7 reforms to “strengthen the integrity” of the 457 program which were released on 23 February 2013. The reforms that we reject to and reasons why are as follows:

(1) A provision to allow the DIAC to take action against employer sponsors who engage in discriminatory recruitment practices.

Discrimination is too important and broad a subject to be confined in such a way, and requires debate at a higher level of the executive. The idea conflicts with current methodology, for example if a case officer makes an assessment for character issues, power is not conferred to take further action as result of that assessment. Once the visa is granted, subsequent issues relating to Character are managed under the jurisdiction of Criminal Law.

(2) Clarifying that 457 workers must be engaged on an employment contract (as opposed to an independent contractor) and not assigned to an unrelated entity unless they are sponsored under a labor agreement, or an exempt occupation.

This could have an adverse effect on large international organizations and the movement of their staff to other locations to complete temporary assignments. For example, it is normal for an employee to transfer from one office to another and to still retain their contractual employment of their country of origin. The provision of a signed letter of support indicating a tripartite agreement between the current employer, the employee and the Australian company is sufficient.

(3) Strengthening the existing obligations regarding recovery of costs to ensure that sponsors are solely responsible for certain costs.

Under the code of conduct there is a requirement for Registered Migration Agents (“agent”) to work in the best interest of the client. Therefore we ensure that our clients are fully aware of their responsibilities, including recovery costs. It is not necessary to amend existing obligations where the client has appointed an agent operating lawfully under the code.

(k) Any related matters.

Expat International have no further comments to make.

