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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

The Australian Industry Group (Ai Group) is pleased to provide the comments below in reference to the Senate Inquiry into the *Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements*.

While it has always been Ai Group's position that the training of our workforce should be our first priority, skill shortages persist in our economy and the 457 program has long proven to be a highly flexible and effective means of temporarily addressing such shortages.

The current debate over the program has unfairly focused on the relatively few employers who do not meet their obligations. In our view, those employers should face whatever sanctions are available. However, no evidence has been presented which points to widespread or systemic abuse and we strongly object to the tone of the public debate which has had the effect of vilifying both employers and those who themselves hold 457 visas.

We have made a number of submissions to various Senate inquiries on 457 visas as well as to the Deegan Inquiry and I would refer the Committee to those contributions. We offer the following in response to the current Inquiry:

Terms of Reference:

The current framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements, including:

- (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;**

Ai Group Comment:

Reforms to the way the Department of Immigration identifies skills in demand in recent years have improved the effective targeting of the program. The Consolidated Sponsored Occupation List (CSOL) ensures that 457 visas apply to occupations where there are identified skill shortages. In so doing, this process limits the possibility of the scheme impacting on Australia's training effort.

Our own research demonstrates that skill shortages are continuing to impact on our economy. A survey we conducted of 500 businesses across the economy late last year¹ (*Annexure*) found that skill shortages in key occupational areas have not abated and companies see no relief ahead. During 2012 the greatest skill shortages were for technicians and trade workers (33.3 per cent), closely followed by professionals (20.4 per cent).

These skills are required immediately and where they can't be filled locally the 457 program helps businesses to, for example, win contracts that they may otherwise lose. Indeed, support from the 457 program in key positions could help a business to survive and keep employing their predominantly Australian workforce.

An example which critics often raise to demonstrate the claim that the 457 program is being abused and contributes to a decline in Australia's training effort is the Information and Communications Technology (ICT) Industry. This claim that 457 visa workers are taking ICT jobs that Australians would otherwise fill shows how divorced from reality and politicised this debate has become.

There is an acute ICT skills shortage in Australia which is unrelated to immigration issues. The main reason is that the number of Australian students studying ICT subjects has declined dramatically over the past decade at both secondary and tertiary levels.

- Domestic commencements in tertiary ICT courses has declined from 17, 436 in 2001 to 9,263 in 2011, hitting a low of 7,470 in 2008.
- Completions of ICT tertiary courses by domestic students decreased by 58% from 2001 to 2011, from 8,268 down to 4,855.

As the Australian Workforce and Productivity Agency recently noted "*the statistics indicate that, in the short to medium term, overseas students are likely to meet the majority of industry demand for ICT graduates*".

There are other issues contributing to ICT skills shortages, for example, the lack of female participation in Science, Technology, Engineering and Maths (STEM) subjects, including ICT, and the changing nature of ICT roles as the emphasis shifts to workers with advanced skills in areas such as data analytics and optimisation. Lower skilled in-house ICT roles are likely to decline as ICT users shift to cloud-based shared services models.

The dynamic and complex nature of ICT work means there will always be areas of specialisation that cannot be accommodated by domestically trained workers alone. The good news is that there will also be areas of specialisation where Australia excels and supplies services and workers to other countries around the world. Such is the nature of the global, digital world in which we live.

¹ Lifting our Science, Technology, Engineering and Maths skills – Ai Group Report

ICT skills shortages are such an acute problem that the Federal Government Australian Workplace and Productivity Agency (AWPA) has commenced a study into ICT workforce issues. Industry is working constructively with AWPA to work out what can be done to address these challenges. The work arose after the Prime Minister intervened on the issue of ICT skills shortages following industry concerns raised at the Prime Minister's Digital Economy Forum in October 2012.

We agree that all of these issues need to be addressed and these problems require long-term solutions. There is much that can be done, starting with measures to increase participation rates in ICT subjects in the school system, improving industry and education sector links, and developing a coherent vision for Australia's skill needs in the digital economy including both ICT skills needs and the needs of the broader workforce. It will take time to rejuvenate a passion for these subjects amongst Australian students and many years for them to graduate from Australian tertiary courses and in the meantime skilled migration must also remain part of the mix.

This demonstrates that the decline in ICT skills is clearly unrelated to the 457 program. The scheme is instead having a positive impact both in helping the industry cope with skill shortages not of its own making and bringing in highly skilled workers who, incidentally, can also contribute to up-skilling our own ICT workforce.

On the separate question of whether the 457 program impacts on apprenticeship commencements, it is clear that it does not.

Firstly, while apprenticeship commencements are indeed falling, this downturn is being driven primarily by a number of factors including:

- business conditions and the capacity of companies to take on apprentices in uncertain economic times;
- the shortage of young people willing to become apprentices;
- the failure of the education system to channel people into the Vocational Education and Training path; and
- in recent years, the draw of the minerals sector offering young people - who may otherwise have become apprentices - relatively low skilled jobs at high salaries.

Secondly, apprenticeships typically have a four year developmental pipeline. Trade level proficiency and experience, highly valued and sought by employers, takes longer. Yet the demand for skilled labour is immediate.

Thirdly, while it may be argued that bringing in a skilled worker on a 457 visa may displace the need for longer term training, it needs to be remembered that 457 visa holders carry a significant cost premium and a company will always prefer to train and source labour locally if that was a possibility.

- (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;**

Ai Group Comment:

Sourcing skilled labour via 457 visas attracts a significant premium over hiring locally and this ensures that in the vast majority of cases employers will only go down the 457 path when they have exhausted local options. In this way, employers themselves test the market thoroughly before choosing to hire through the 457 program. The visas are also available only for skills which are demonstrated to be in demand. Stringent testing will simply add more unnecessary bureaucracy.

There is also the question of what “stringent testing” means. There have been suggestions in the past of proving positions have been advertised over a period of time but for a business this would be time consuming and costly when they may know from past experience that their chances of sourcing labour locally are non-existent. Delays caused by such testing could prevent a business from meeting urgent commercial needs.

In terms of Labour Agreements (LAs) and Enterprise Migration Agreements (EMAs), both LAs and EMAs require significant demonstration that the proposed positions cannot be filled from the local labour market.

As the Department of Immigration and Citizenship web site itself states in reference to LAs:

The employer must be able to demonstrate that they have made significant efforts to recruit workers from the Australian labour market before the Australian Government will consider entering into a labour agreement with them. They must provide concrete evidence that there are no appropriately qualified Australian workers readily available.

The employer must provide detailed information about all advertising and recruiting efforts over the past six months. This includes the period the job was advertised for, the number of applications received, the number of applicants who were hired, and reasons why those unsuccessful were found to be unsuitable.²

This is sufficient testing given the broader scope of these Agreements over standard 457s. Also, criteria such as TSMIT and Training Commitments (and to some extent the Sponsor obligations) effectively prompt the employers to consider the local labour market first. Adding any further administrative burdens to the visa program will make the visa less accessible and less able to meet the economic need for which it was designed.

Similarly EMAs require: a) Evidence that there are genuine skills shortages in the local area, and b) Evidence of efforts to use Australian workers first.

² Labour Agreement booklet – DIAC website

- (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;**

Ai Group Comment:

The recent changes which have given Fair Work Ombudsman (FWO) inspectors the power to monitor and enforce compliance with 457 visa conditions will address any concerns critics of the program should have in this regard. The inspectors will deal with employers who misuse 457 visas and ensure more checks are undertaken and more suspicious activity is picked up and stopped. Those employers found to have misused the immigration program should be dealt with to the full extent of the law. However, it is a fact that extremely few employers are found to be abusing the system and we expect the numbers to remain low. It is also a fact that the vast majority of complaints to the FWO also relate to other visa categories and this should not be confused in assessing misuse of 457 visas.

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

Ai Group Comment:

The Department has sought to improve the process of issuing 457 visas in recent years with commitments from the Department to speed up processing times for fully documented applications and to have more senior specialist officers involved in decision making including in regard to EMAs. This has been aided by the ongoing outreach officer program by which DIAC places an officer on secondment within Associations such as Ai Group and other organisations to assist with skilled migration matters. This has been a highly successful program both through the support it gives to business and the greater understanding of business issues and priorities that the officers take back to the Department. The scheme has our strong support and should continue.

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

Ai Group Comment:

This has been addressed above.

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

Ai Group Comment:

The temporary skilled worker program provides enormous benefits across the economy in terms of giving companies the flexibility to respond to economic needs through the ability to source otherwise scarce skilled labour. As mentioned earlier, for a company already under significant economic pressure, including for many, from the high dollar, failure to be able to source skilled labour could mean the difference between their survival and continuing operations. For some, without access to such a program, the pressure to move their operations off-shore may become compelling to the detriment of its employees in its domestic operations.

All data has shown that 457 visas are extremely responsive to economic conditions and that their use, for example, falls dramatically during economic downturns as was the case in 2007.

- (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;**

Ai Group Comment:

The current skilled occupation lists are adequate in this regard and there is already significant forecasting of workforce needs and available data through agencies such as the Australian Workforce Productivity Agency, DEEWR and the ABS.

The example above in relation to the ICT industry shows that improved training, including in STEM skills at the school level, could potentially have some impact on the longer term needs for temporary skilled visa programs. However, the needs are immediate and the lead time for such reforms is such that businesses will need support from temporary migration programs for the foreseeable future.

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

Ai Group Comment:

457 visa holders do not work within a vacuum. They work under existing laws which are designed to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights. There have been suggestions in the past, which have been rightly rejected, that special DIAC investigators should focus on the application of such rights in regard to 457 visa holders. Any such moves would unnecessarily duplicate current systems and would be strongly opposed.

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

Ai Group Comment:

The recruitment / labour hire industry is a major, reputable industry. Labelling on-hire arrangements as "undesirable employment relationships" is extremely inappropriate and offensive. Many recruitment / labour hire companies play an important role in assisting employers to source labour, including 457 visa holders. The existing protections are adequate.

- (j) **The impact of the recent changes announced by the Government on the above points;**

Ai Group Comment:

In addition to the expansion of the role of the FWO inspectors referred to above, the latest changes are listed below with comment:

Make business sponsors declare that they will commit to employing Australian citizens:

- Unnecessary change – the vast majority of employers would prefer to hire locally if they could and any declaration is further unnecessary regulation.

Make training Australian citizens an enforceable requirement of 457 applications:

- The current training requirements are more than adequate and the problems with the training system are far broader than the immigration program.

Make employers show that the position is genuine:

- Unnecessary change - the Department should be in a position to judge whether or not an application is genuine under the *current* process.

Restrict the number of workers that a business can sponsor:

- An application should be judged on its merits and without setting arbitrary limits which could damage or delay business operations or expansion plans.

Tighten the definitions of eligible positions:

- The ability to be able to tighten definitions of eligible positions is understandable but should not be used excessively.

Strengthen the market rate provision to stop undercutting of local conditions:

- The current market rate salary arrangements are adequate.

Tighten on-hiring arrangements so that sponsors cannot bring someone in and then let them work for an unrelated company at a different salary:

- The recruitment / labour hire industry is a major, reputable industry. Many recruitment / labour hire companies play an important role in assisting employers to source labour, including 457 visa holders. The existing protections are adequate.

I thank the Committee for the opportunity to present these views and would welcome the opportunity to add further to these comments.

Yours sincerely



Innes Willox
Chief Executive