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27 October 2008

Peter Hallahan
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
Australia

Dear Mr Hallahan

The Australian Industry Group (Ai Group) welcomes the opportunity to comment to the Inquiry into the Migration Legislation Amendment (Worker Protection) Bill 2008.

We have made a number of submissions on the 457 visa program and would refer you to our Submission to this same Committee considering an earlier version of this Bill and lodged on 14 July 2007.

The 457 Visa program is highly valued by industry as a means to source temporary skilled labour at a time of high and ongoing skill shortages in Australia. One of the major benefits of the program is its flexibility. It is a naturally demand driven mechanism to address skill shortages in Australia and in principle its level of usage should reflect broad economic circumstances.

However, resolving the skill shortages in our workforce cannot be achieved overnight and despite the pressures on employment from the global financial crisis our members still report serious shortages of skilled labour.

In terms of the current Bill, it should be noted that while the vast majority of sponsors fulfil or exceed their obligations we understand the need to have in place an improved framework to deter and penalise abuses under the scheme. We therefore support the measures in the Bill which seek to further improve compliance under the scheme subject to a rigorous regulatory impact statement on the regulations which will accompany the Bill after its passage. Given the pressures on business in the current economic

environment together with ongoing skill shortages it is essential that we retain such a flexible visa program and not overburden it with costs and regulatory complexity.

Until those regulations are available it will be difficult to assess the overall impact of the Bill on business. However, we are concerned with the section of the Bill as it relates to transitional matters and the effective retrospectivity which will increase costs for business.

In Section 46 of *Schedule 1 Part 2—Transitional matters*, it is made clear that the Bill applies to a person that was a standard business sponsor before this schedule commences (rather than after). Part 3 states:

On and after the day on which this Schedule commences:

(a) the undertaking ceases to have effect; and

(b) the person must satisfy any applicable sponsorship obligation prescribed by the regulations under section 140H of the new law.

Unless stated otherwise in regulations, the effect of this provision would be that from the date the legislation is passed, all new and existing sponsors of 457 visa holders will be bound by the provisions of the new law irrespective of whether or not their sponsorship was approved prior to the implementation of the new legislation.

We strongly oppose this approach as it has the potential to significantly increase sponsors' financial liabilities. While the regulations associated with the Bill are yet to be finalised, there are a number of measures which have been widely canvassed for possible inclusion in the legislation. One example of this is the suggestion that sponsors will be required to pay health insurance costs for visa holders.

In many cases sponsors will have made arrangements with existing visa holders such that visa holders expect to pay own health insurance in the same manner as their locally engaged co-workers as long as it does not reduce their salary below the designated Minimum Salary Level.

Such arrangements are commonly part of packages negotiated directly with visa holders. In the area of health insurance we have argued that the existing requirements are reasonable. That is, that the Commonwealth should not be left with any liability regarding health costs for visa holders and that employers should ensure their sponsored visa holders are covered by adequate insurance. Whether this means employers or visa holders pay the insurance should be a matter for determination within the employment relationship as long as minimum salary levels are not breached.

Labour Hire companies and businesses sponsoring large numbers of visa holders would not have factored in these and other costs associated with yet to be determined regulations and would be immediately liable for large and unbudgeted expense under the new Bill.

We propose that the Bill be amended so that it effectively allows existing employment arrangements to remain in place for existing visa holders and that new regulations

concerning the employment relationship apply only to sponsors approved after the date of effect of the legislation.

We look forward to commenting on the regulations that will accompany the Bill when details are available and I would be happy for myself or a representative to be made available to comment further to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read "Heather Ridout". The signature is written in a cursive style with a small flourish at the end.

Heather Ridout
Chief Executive