



**CCIQ SUBMISSION - INQUIRY INTO THE  
CURRENT FRAMEWORK AND OPERATION  
OF 457 VISAS, ENTERPRISE MIGRATION  
AGREEMENTS AND REGIONAL  
MIGRATION AGREEMENTS**

**HOUSE STANDING COMMITTEE ON LEGAL  
AND CONSTITUTIONAL AFFAIRS**

**CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND**

▾ 26 APRIL 2013

## 1. Overview

1. As Queensland's peak industry organisation for small and medium business, CCIQ welcomes the opportunity to make a submission into the inquiry by the House of Representatives Standing Committee on Legal and Constitutional Affairs into the current framework and operation of subclass 457 visas (457 visas), Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs).
2. CCIQ notes that the Australian Chamber of Commerce and Industry (ACCI) will make a submission to this inquiry addressing broader, nation-wide issues. CCIQ supports that submission, and will use our own submission to highlight matters specifically affecting Queensland employers (although it is likely that these will also be of relevance to Australian employers generally).
3. CCIQ's submission has a strong focus on 457 visas and to a lesser extent, RMAs. While CCIQ supports the use of EMAs as a means of maximising the opportunities of the resources boom, they are clearly a tool for large businesses or for government and are of little relevance to small and medium businesses. While RMAs are of greater relevance, given that they are designed to facilitate increased labour flows to regional areas experiencing acute labour shortages, an RMA has yet to be approved in Queensland or Australia. The difficulties involved with their establishment makes their role in the overall skilled migration framework questionable, and this will be explored in CCIQ's submission.
4. It is important to state at the outset that CCIQ's consultation with and feedback from our members is that they *want* to hire Australian workers. However, skills shortages, particularly in certain Queensland regions and industries, have precluded businesses from using local workers to fully meet their staffing requirements in the short to medium term. This has meant that employers need to consider engaging a skilled foreign worker through one of the various channels for temporary skilled migration.
5. CCIQ therefore supports the continued availability of skilled migration channels into Australia as a means of combatting skills shortages, and 457 visas in particular are a key part of this. As such, the overarching message of this submission with respect to the framework and operation of the skilled migration system in Australia will focus on the need for:
  - a. Greater regulatory consistency and stability to enable employers to have certainty and confidence in the skilled visa system, particularly with respect to 457 visas;

- b. The removal of unnecessary red tape. This is pertinent in respect of both 457 visas, and RMAs, which have proven extremely difficult to negotiate and put in place; and
  - c. More effective monitoring to ensure that measures are targeted and existing legislative compliance mechanisms are used.
6. Rather than tightening the regulatory framework around 457 visas, and therefore punishing those employers who have genuine skills shortages and participate in the program in good faith, there is a need for better and more effective monitoring of the program using the tools currently available to the Federal Government following reforms made in 2009.
7. Despite this, the Federal Government announced on 23 February that it was introducing new measures around the use of 457 visas 'aimed at strengthening the Department of Immigration and Citizenship's capacity to identify and prevent employer practices that are not in keeping with the criteria of the subclass 457 program'.<sup>1</sup> CCIQ is concerned by some of the changes, which include:
  - a. Employers must demonstrate that a genuine shortage does exist;
  - b. The strengthening of compliance powers; and
  - c. English language requirements for certain positions will be raised.
8. CCIQ also considers that the Consolidated Skilled Occupation List (CSOL) and the methodology behind it is flawed, to the detriment of small and medium businesses.
9. While not all of the announced changes will negatively impact on SMEs, the failure of the Federal Government to clearly explain the effect or intent of the changes has resulted in a perception among employers that becoming a sponsor, or continuing to sponsor foreign workers, is simply too difficult and too risky.
10. Our feedback suggests that small and medium businesses are becoming increasingly frustrated, confused and apprehensive about sponsoring an employee on a 457 visa. Importantly, this does not appear to have led to them hiring more local workers – despite being genuinely affected by skills shortages. Consequently, they are left without the staff that they require, and their businesses tend to stagnate and shrink.
11. This submission will therefore raise issues with the 457 visa program and RMAs under the broad discussion areas set out by the Committee, and provide recommendations where appropriate.

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<sup>1</sup> *Strengthening the integrity of the 457 program* (2013). Department of Immigration and Citizenship. Available from: <http://www.immi.gov.au/skilled/strengthening-integrity-457-program.htm#b>.

## 2. Discussion issues

- 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***

### 457 visas

12. Queensland employers have told CCIQ that they are eager to hire local (Australian) workers: it is quicker and generally more cost effective to hire from the local workforce (particularly given the extremely rigorous, expensive and time-consuming process that businesses must go through to become a sponsor under the 457 program). Moreover, doing so enables them to make a significant contribution to their local community, which is important to small and medium business owners.

- a. There is little evidence demonstrating an over-reliance on temporary skilled workers in Queensland. Indeed, as at the end of February of this year, 15,140 457 visa applications that nominated Queensland as their location of work were granted.<sup>2</sup> This is not a significant number, given that labour force data published by the Australian Bureau of Statistics showed that in February, the total number of people employed in Queensland was 2,348,200.<sup>3</sup>

13. It is often incorrectly asserted that when employers sponsor employees on 457 visas, they will no longer hire or train Australians, but instead fill the majority of staffing needs through skilled migrant workers. These claims have little veracity for two reasons:

- a. Businesses make use of 457 visas where they have positions to fill, are unable to find appropriate staff and/or Australian workers cannot be trained up to the appropriate level in the short-term.
- b. In order for businesses to gain eligibility to be a sponsor under the 457 program, they must demonstrate their contribution to the training of Australian workers and must provide evidence that they have met certain training benchmarks. These benchmarks may be met by:
- i. recent expenditure of at least two percent of the payroll of a business in payments to an industry training fund that operates in the same industry as the business; or
  - ii. recent expenditure of at least one per cent of payroll in the provision of training to employees of the business who are Australian citizens or residents.

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<sup>2</sup> *Subclass 457 State/Territory summary report: 2013-13 to 28 February 2013.* (2013) Department of Immigration and Citizenship. Available from: <http://www.immi.gov.au/media/statistics/pdf/457-state-territory-summay-report-feb13.pdf>.

<sup>3</sup> *Labour Force, Australia* (2013). Australian Bureau of Statistics. Available from: [http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/70B7EC25FEF4162ECA257B2D000D426B/\\$File/62020-feb%202013.pdf](http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/70B7EC25FEF4162ECA257B2D000D426B/$File/62020-feb%202013.pdf).

14. Businesses must also show a commitment to maintain this level of expenditure in each fiscal year for the term of approval as a sponsor, and are unable to offer employees on a 457 visa a permanent position via the Employer Nomination Scheme (subclass 186 visa – Temporary Residence Transition stream) unless they have met the prescribed benchmark for the training of Australian citizens or Australian permanent residents.
15. There are a range of ways that employers can meet these benchmarks where they choose to provide training to their Australian employees, including by:
  - a. taking on an apprentice or a trainee;
  - b. paying for either new or existing employees to undertake a formal course of study;
  - c. funding scholarships in a formal course of study; and
  - d. employing a person who trains a business's Australian employees and providing structured on the job training (subject to certain conditions).
16. One of the most effective ways that a business can meet this benchmark is to take on an apprentice or trainee, as 100 percent of their salary may be counted as part of the required expenditure on training. The relevant training contract (which in any case must be lodged with the Queensland Department of Education, Training and Employment) may be adduced as evidence of expenditure on training.
  - a. Unfortunately, small and medium businesses that are seeking to sponsor an employee through a 457 visa holder are often in areas that are affected by skills shortages (such as regional areas of Queensland). They often have extreme difficulties finding an apprentice or trainee, or, as is the case in regional areas where mining has a major presence (such as Central and Central Western Queensland), they are not confident that they will not leave on completion of their training for a (more highly paid) job in the resources sector.
  - b. It should also be noted that any effort to attribute the recent diminution in the number of apprenticeship commencements is fairly tenuous, given the multitude of other factors that can operate to affect commencement numbers (such as changes to employer incentives, the location and quality of training institutions, the attraction of the resources sector, workplace relations issues, and so on).
17. Generally, however, employers are happy to provide their employees with training, and are often pleased to discover that they are able to fulfill the benchmark requirements by offering opportunities for training and skills development to their existing Australian workforce.

***Recommendation 1:*** CCIQ recommends that DIAC work with employers and industry groups to ensure employers are aware of both the training benchmark requirements that apply to

*businesses sponsoring 457 visa holders, and the various ways in which they can meet those requirements.*

## **RMA**s

18. A RMA has not yet been approved in Australia. The Northern Territory Government has been negotiating with the Federal Government since early 2012 to put one in place, but it has yet to be approved.

- a. This is particularly concerning given the clear evidence that exists in the NT that it is or will shortly experience serious skills shortages – it has very low unemployment, very high projected growth and several large resources projects either planned or underway. Moreover, one of the reasons cited in the announcement that an RMA would be negotiated was that small businesses in particular would ‘find it difficult to use standard migration programs’ and that ‘demand for workers...(is) expected to outstrip local and national supply.’<sup>4</sup>
- b. The drawn out process for obtaining approval of an RMA undermines its designated role, which is to act as a pressure valve for the local economy and help ‘businesses experiencing a shortage of staff to find workers when none can be sourced locally’.<sup>5</sup> If employers cannot be reasonably confident that RMAs can be negotiated in an expedient manner that allows them access to labour when they need it, then they cannot expand their businesses to maximise opportunities that come to the region.
- c. The NT’s experience with putting an RMA in place has implications for Queensland. While the announcement of major development projects in central and northern Queensland (such as those recently announced on Great Keppel Island) are welcomed, those regions have been identified as having pronounced skills shortages and labour mobility issues, which could put such developments (or future developments) at risk due to difficulties in securing an adequate skilled workforce. The time that is apparently involved with putting an RMA in place does not make them a viable means of alleviating this issue, as doing so would delay projects significantly.

19. The use of RMAs should not result in a decline in Australia’s training effort: indeed, RMAs can often serve as a valuable means of highlighting where skills shortages exist and in what regions or industries there has been an insufficient focus on training and education.

- a. While making it easier to access the labour of skilled foreign workers in the short-term alleviates pressures caused by these skills shortages, the fact that there is a

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<sup>4</sup> ‘New agreement to meet Darwin’s growth challenges’, 16 February 2012. The Minister for Immigration and Citizenship, The Hon Chris Bowen MP. Available from: <http://www.minister.immi.gov.au/media/cb/2012/cb182623.htm>.

<sup>5</sup> Ibid.

need for an RMA in a region should serve as a catalyst to industry and to government that a more coordinated and targeted approach to training must commence immediately so that local workers can fill 'skilled jobs' in the medium and long-term.

***Recommendation 2:*** *The Federal Government should review the requirements for the establishment of RMAs, with a view to ensuring that training efforts are concentrated in skill areas where shortages have been identified.*

***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***

#### **457 visas**

20. One of the new measures announced by the Federal Government with respect to 457 visas will be:

to introduce a requirement for the nominated position to be a genuine vacancy within the business. Discretion will be introduced to allow the department to consider further information if there are concerns the position may have been created specifically to secure a 457 visa without consideration of whether there is an appropriate skilled Australian available.<sup>6</sup>

21. Essentially, this would require employers to undertake rigorous labour market testing each time that they believe that they will need to sponsor a 457 visa holder in order to fill a position.

22. CCIQ considers that labour market testing is ineffective, time-consuming and of little use with respect to small and medium employers, and is really only a practical requirement for large employers. This is because:

- a. It is relatively easy to circumvent or falsely undertake by those who would seek to do so;
- b. Insisting that employers advertise for certain positions, and show evidence of having done so (for example, allowing a certain period of time to elapse to allow applicants to apply, conduct interviews, etc) is frustrating for employers urgently seeking to fill a position and are familiar with the challenges of the local employment market;
  - i. Businesses in remote and rural areas, including from towns such as Charleville and Mareeba, have told CCIQ that they have experienced staff

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<sup>6</sup> See above n1.

turnover of up to 100 per cent in a six month period. Other workforce issues have been raised by employers in tourist locations, including the Gold Coast and Cairns, to the effect that they have difficulty finding staff who want to consistently work a five-day week.

- c. While government and large businesses can place job advertisements that seek Australian staff on a 'fly-in, fly-out' (FIFO) or 'drive-in,drive-out' (DIDO) basis, thus appealing to a wider market of Australian job applicants, small and medium businesses in regional areas cannot afford to employ workers on this basis. The cost of their flights and accommodation would be prohibitively expensive, and indeed, poor labour mobility in Queensland has contributed to the skills shortages problem that the state faces. CCIQ certainly does not believe that FIFO/DIDO agreements should become 'mainstream' for businesses of all sizes, and that measures need to be taken by government to improve labour mobility;
- d. Similarly, jobs boards (utilised following the announcement of the Roy Hill EMA) are useful tools for labour market testing on a large-scale level, but are not a practical option for small and medium businesses; and
- e. Moreover, the use of high level data, such as unemployment levels and workforce participation, can often be of limited use in providing a window into the actual state of the labour market in a given region. For example, the unemployment rate in Far North Queensland (FNQ) in November 2012 was 8.1 per cent; however, businesses in a range of industries have reported to CCIQ that they have difficulty attracting and retaining staff given the remoteness of the region.<sup>7</sup>

23. Clearly, there needs to be flexibility in the criterion against which applications are assessed, and that a 'one-sized fits all' model is not necessarily appropriate. If the Federal Government is seeking a means of verifying the legitimacy of an employer's application to sponsor a 457 visa holder, CCIQ considers that Regional Certifying Bodies (RCBs) could play an important role in this respect by attesting to the existence of skills shortages in a given region.

***Recommendation 3:*** *Requirements for labour market testing should be removed for businesses in regional areas and for businesses with less than 20 employees.*

***Recommendation 4:*** *RCBs should be given a designated role in attesting to the existence of skills shortages in respect of a business sponsorship application.*

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<sup>7</sup> *Labour Force, Australia – November 2012 (2012)*. Australian Bureau of Statistics.



## **RMA**s

24. RMA
s require extremely rigorous evidence of labour market testing demonstrating that there are critical short-term labour needs, and require proof of a 'downward trend in unemployment, a high labour market participation rate and growth in employment over the previous two years'.<sup>8</sup>25. CCIQ considers that RMA
s should be industry-driven and linked, rather than being tied to an entire region. This would ensure that industries which are or are projected to experience extreme skills shortages can negotiate a more targeted agreement that ensures the skilled workers that come to the region under the agreement are right for the available positions.26. In light of the problems with RMA
s around lead-in times, CCIQ also believes that there is a good case for the reintroduction of regional concessions for business sponsors of 457 visa holders, particularly with respect to minimum salary and skill level requirements.

**Recommendation 5:** *The Federal Government should review RMA*s and how they are used, with a view to allowing them to be industry specific, so that they are of greater use in facilitating skilled migration to regional areas.

**Recommendation 6:** *The Federal Government should consult with small and medium businesses and industry groups over the reintroduction of regional concessions for 457 visas.*

**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**

27. The development of the CSOL is an area of significant concern for small and medium businesses in Queensland.
28. CCIQ has, on a number of occasions, communicated these concerns to the Federal Government, particularly over the methodology applied in determining occupations of inclusion in the CSOL.
  - a. We question whether the CSOL adequately reflects the skills needs of Queensland's small to medium sized businesses, particularly those in regional and remote areas. Current methodologies appear to be hinged on a judgment of the relative value of particular occupations and skills to the Australian economy,

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<sup>8</sup> *Fact Sheet 48c – Regional Migration Agreement* (2011). Department of Immigration and Citizenship. Available from: <http://www.immi.gov.au/media/fact-sheets/48c-rma.htm>.

which is a highly subjective process that is made even more complex by the diverse nature of Australian industry.

- b. CCIQ does not wish to see an outcome where SMEs are disadvantaged because the skills they are faced with are not classified as being of 'high economic value' to Australia. This is particularly relevant in Queensland, where, while fulfilling the skills and labour needs of the resources industry is important, a singular focus on those needs has meant that those of other industries (including those that compete with the mining sector for staff) have been overlooked.

29. Notably, the CSOL omits many professional 'business' skill areas such as entrepreneurship, small business management and commerce. Encouraging people with these skills to come to Australia is vitally important to the growth of the Queensland and Australian economies: this is because it is they who are more likely to start a business, or become involved in the management of a business, that will employ and train Australians.

30. CCIQ considers that if there have been efforts to 'rout' the CSOL, that is, by employers sponsoring an employee on a 457 visa holder in a profession on the CSOL but then putting them to work in a lower skilled occupation *not* on the CSOL, this may highlight the need for a 'semi-skilled' visa analogous to the Seasonal Worker visa program.

31. CCIQ strongly recommends that more consultation with small and medium businesses, relevant industry bodies and RCBs are necessary, as they are well-placed to advise on the professions that are sought after, but which have not been identified by the Federal Government as 'priority'.

***Recommendation 7:*** *The Federal Government should review its processes for developing the CSOL, and consult more closely with small and medium businesses, industry bodies and professional bodies over its content.*

***Recommendation 8:*** *The CSOL should include small business skills areas such as entrepreneurship, management and commerce.*

***Recommendation 9:*** *The Federal Government should consider creating a semi-skilled visa category, particularly for use by regional businesses, or review the Seasonal Worker visa program with a view to broadening it to include a greater number of industries.*

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

32. CCIQ considers that the grounds on which the Federal Government announced recent changes to 457 visas, that is, that 457 visas were being used as a means to discriminate against local workers, or that there has been significant rorting of the 457 program, are not based on sufficient evidence. CCIQ considers that better information and data is needed on the incident and extent of such occurrences, so that measures can be appropriately targeted.

33. There is a clear case for better and more effective monitoring of the 457 program, rather than implementing more regulation. Employer sponsors already must meet a number of stringent requirements under their sponsorship obligations, including:

- a. Ensuring overseas workers receive terms and conditions of employment no less favourable than those for an Australian citizen or permanent resident carrying out the same position in the employer's workplace at the same location. This is a continuing obligation on employers;
- b. Ensuring that sponsored workers only work in approved occupations – that is, at the time that the 457 visa is granted, the occupation in which the visa holder must work is specified and this role must be occupied for the term of the visa, unless an application is made to DIAC to change this;
- c. An obligations to keep records of compliance with employers sponsorship obligations, that generally go beyond the records that must be kept under general laws;
- d. An obligation to provide information to DIAC on certain events occurring. This essentially applies to any change in the initial information provided to DIAC, including change of name of company name, change of the company or business address and the appointment of new directors;
- e. An obligation to cooperate with DIAC inspectors, which commences at the time the business sponsorship is approved and ceases five years after the sponsorship ceases; and
- f. Training benchmarks (as discussed above).

34. It is difficult to argue that the process for becoming a sponsor is not transparent or rigorous. In addition to these obligations, new sponsors must go through a very demanding process in order to become a business sponsor and provide extensive, detailed information to DIAC in order to meet the requirements that:

- a. The business is a lawfully operating business;
- b. Has no adverse information about it or any of its directors; and
- c. Meets DIAC's training requirements.

35. Depending on the structure of the business, and whether it is a new or existing business, this requires the provision of financial reports and statements, tax returns, leases, BAS and bank statements. Not only is this a time-consuming process, but it is an expensive one - it is difficult to undertake go through the application process without the advice of a migration lawyer or agent.
- a. Employers have told CCIQ that they began the process for becoming a sponsor, but changed their mind once they became aware of what was involved.
36. There are straightforward methods of preventing rorting of the 457 program by employers, including requiring them to provide payslips, letters from accountants, internal payroll records and performance agreements and reports to verify that employees remain in the employment of their sponsor.
- a. These could easily be accommodated under existing requirements, which provide DIAC with extensive powers in this respect.
  - b. Further, if DIAC was active in pursuing prosecutions of employers who breached their sponsorship obligations, and publicised the fact that it was doing so, this would serve as a strong deterrent to those doing (or contemplating doing) the wrong thing.
37. It seems that a perception exists that DIAC's resources are particularly stretched and that they do not have the logistical capacity to investigate breaches of sponsor obligations. This does not mean that they do not have the tools under the relevant regulatory framework to do so.
38. In fact, there are significant penalties involved for employer breaches, including sponsorship approval being cancelled, sponsors being barred from obtaining sponsorship status, issuing of infringement notices and application for civil penalties under the *Migration Act*.
39. Improved monitoring of the adherence or otherwise by employers to their obligations would provide the government with better data on the incident of breaches. This would in turn ensure that targeted measures could be taken toward certain businesses – rather than implementing broad-scale regulatory change that unnecessarily impacts all employer users (both existing and potential) in the program.

***Recommendation 10:*** *The Federal Government must ensure that DIAC is appropriately resourced to carry out its existing monitoring and enforcement functions under the 457 program, rather than implementing additional regulation.*

**Recommendation 11:** *The Federal Government should ensure that extensive records of employer breaches and prosecutions are maintained, and that details of prosecutions be made public to create deterrent effect.*

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

**f) *the economic benefits of such agreements and the economic and social impact of such agreements***

40. With respect to discussion point (e), there does not appear to be extensive evidence of the impact of 457 visas being granted on local employment opportunities. Similarly, with respect to discussion point (f), there does not appear to be significant data directly relating to the economic benefits of the 457 visa program or RMAs, or their economic and social impact.

a. This again goes to the need for better and more holistic monitoring of the 457 visa program, and for its results to be measured against various economic indicators.

i. However, as noted already in this submission, the number of applications for 457 visas in Queensland in the last year is modest when considered in the context of the size state's workforce.

b. However, the general point can be made that the ability of a business to get the right staff at the right time is essential to its continued viability and prosperity.

c. It should also be noted that RMAs should be considered a means of allowing a region to fully exploit the benefits of good economic condition, because they (are supposed to) enable regional areas to secure a steady supply of labour ahead of projected periods of growth.

**Recommendation 12:** *The Federal Government should undertake a study of the economic advantages and disadvantages of the 457 visa program as a means of testing its social and economic impact, including on local employment opportunities.*

**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***

41. CCIQ readily acknowledges that there have been concerted efforts at the state and federal level in recent years to provide better long-term forecasts of workforce needs and the associated skills training that will be required in Australia in the future. Through bodies such as the Australian Workforce Productivity Agency (AWPA) working together with state-based skills authorities, we now have a better idea of the extent of future

skills shortages, where they are likely to occur, and what areas training need to be undertaken in.

42. However, it must be reiterated that some regional areas are facing long-term skills shortages, and that skilled migration channels are likely to always be needed in a country of Australia's size.
- a. It is extremely important that governments take steps to address problems with labour mobility, and that entrenching DIDO/FIFO arrangements as standard outside a few select industries is neither practical nor desirable.

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

43. CCIQ strongly believes that employers do not seek out skilled migrants because they believe that they can provide them with a lower level of workplace conditions or to reduce or remove workplace rights that they would otherwise provide Australian workers.
- a. CCIQ notes that again, there have been insufficient grounds raised to support claims by the Federal Government and some union groups that there has been abuse by business in this respect.
  - b. If abuses have occurred, there are appropriate measures available to DIAC under the current regulatory scheme, including revocation of sponsor status. There are also measures available to a range of other authorities responsible for the workplace rights of employees, including Workplace Health and Safety Queensland and the Fair Work Commission.
44. This is an issue that highlights the need for increased monitoring of businesses sponsoring 457 visa holders. Those businesses that do breach their current obligations as sponsors should be penalised; however, CCIQ reiterates that we do not believe that there is a strong case for making the entire 457 program more harsh (to the detriment of the majority of employer sponsors doing the right thing by their employees on 457 visas), especially when there is little evidence to support doing so.
- a. Indeed, the most recent DIAC data shows that as at the end of February this year, 66.0 per cent, or two-thirds, of 457 visas granted in the 2012-13 year were to Managers and Professionals, that is, educated people who tend to have a greater awareness of their work rights under their visa.<sup>9</sup>

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<sup>9</sup> See above n2.

**Recommendation 13:** *The Federal Government should ensure that new and existing business sponsors are aware not only of their sponsor obligations, but that their obligations to their 457 employees are largely the same as their obligations to their Australian workforce.*

***j) the impact of the recent changes announced by the Government on the above points***

45. Throughout this submission, CCIQ has sought to discuss the recent changes announced by the Federal Government as they were relevant to the above points.

46. However, we wish to emphasise that effect of the announcement of these changes has been to create a strong feeling of uncertainty among small and medium businesses, and undermined the role of 457 visas as an important mechanism for helping them address short-term skills shortages.

- a. Employers tell us that when they need staff, the need them *now*: the jobs that they want to fill may not be available in six to twelve months' time – not because they have been filled, but because businesses are 'limping' on without the staff that they need.
- b. The announcement of these changes have fostered (incorrect) fears among employers currently sponsoring 457 visa holders that the changes will apply retrospectively, or that there is going to be a 'crackdown' on 457 employment arrangements.
- c. The Federal Government must be cautious when it is announcing such changes that doing so does not unnecessarily impact the stability and consistency of the system, or result in 'regulatory churn' for business.

**Recommendation 14:** *The Federal Government should ensure that the 457 program does not become politicised, and decisions about it are made in response to properly gathered evidence and data.*

***k) any related matters***

***English language requirements***

47. CCIQ is concerned that the most recent changes announced by the Federal Government to the 457 visa program will raise the English language requirements for certain positions.

48. CCIQ has consistently expressed concerns over the formal English language requirements for skilled migration visa applicants, as we consider that the high standard imposed operates to partially compromise the flexibility and capacity of the program to attract skilled migrants. We also consider that these requirements impose unnecessary

red tape on both businesses and workers, given that the requirements can exclude otherwise excellent visa candidates or delay their entry into Australia.

49. Queensland businesses recognise the need for English language capabilities in the workplace, particularly for workplace health and safety reasons. However, we note that many businesses encourage and/or offer assistance for intensive English language classes for their workers as a matter of course.

50. CCIQ strongly recommends that DIAC should conduct broad consultation with small and medium businesses, industry groups, professional and certifying bodies and other stakeholders over appropriate English language requirements.

***Recommendation 15:*** *The Federal Government should ensure that it only raises English language requirements following a thorough consultation process with relevant stakeholders.*

### **3. Conclusion**

51. CCIQ believes that it is important to maintain a broad-based skilled visa program that is accessible, responsive and fit for purpose: it must allow businesses that are genuinely unable to fill positions with local staff to employ temporary foreign workers without unnecessary complexity or expense.

52. The function of skilled migration channels into Australia should not be a political issue at the expense of the regulatory stability and certainty that employers, particularly in small and medium businesses, so desire. However, the most recent changes announced to the 457 visa program appear to be part of an effort by the Federal Government to appear that they are being 'tough' on foreign workers, and are protecting Australian jobs – rather than because of any actual evidence giving rise to a need to further regulate the system.

53. CCIQ believes that deliberate breaches of sponsor obligations should attract penalties, and that preserving the integrity of the skilled migration system is crucial. However, as we have highlighted in this submission, DIAC already has the legislative and regulatory tools to do so. It is therefore the task of the Federal Government to ensure that it is able to carry out its role in this respect, rather than imposing harsh new measures at the expense of the vast majority of employers who adhere to their sponsor obligations in good faith.