



The Hon Terry Redman MLA
Minister for Training and Workforce Development; Water; Forestry

Min Ref: 39-22169

Senator P L Wright
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Wright

Thank you for your letter dated 22 March 2013 regarding the inquiry into the current framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements.

A consolidated response reflecting the position of the Western Australian State Government is attached for your consideration.

Yours sincerely

HON TERRY REDMAN MLA
MINISTER FOR TRAINING AND WORKFORCE DEVELOPMENT

29 MAY 2013

SENATE INQUIRY INTO THE 457 VISA PROGRAM WESTERN AUSTRALIAN STATE GOVERNMENT RESPONSE

The Commonwealth Senate referred the current framework and operations of the 457 visa program, Enterprise Migration Agreements and Regional Migration Agreements to the Senate Legal and Constitutional Affairs References Committee for an inquiry.

The Western Australian State Government submits the following for consideration by the Committee.

EFFECTIVENESS OF THE TEMPORARY SKILLED MIGRATION PROGRAM

Western Australian employers have been significant users of the 457 visa program during the past five years (2007-08 to 2011-12) and are likely to continue to rely on the program to assist in meeting the labour demand from local employers, especially those involved in constructing and operating the State's major projects.

As of March 2013, there were 39 resource projects with expected capital expenditures of \$2 billion or above in Western Australia. Half of these projects (19) have disclosed labour requirements totalling 57 250 construction workers and 15 820 operational workers over the next five years.¹

There is a strong relationship between the number of primary 457 visas granted and changes in overall labour demand. For example, during the Global Financial Crisis (GFC) (2008-10) the number of 457 visa applications lodged by workers sponsored by Western Australian employers fell by 50.6%.² As economic activities in the State improved post-GFC, this number rose by 63.9% (2009-10 and 2011-12). This indicates the 457 visa program is responsive to fluctuating economic conditions and subsequent labour demand.

For the period 1 July 2012 to 28 February 2013, there were 10 350 primary visas granted under the 457 visa program to workers sponsored by Western Australian employers. This represents 21.8% of the number of visas granted nationally.³

The number of primary 457 visas granted to workers sponsored by Western Australian employers reflects the sources of the State's economic growth. For example, since 2007-08, employers in the Mining and Construction industries were the largest sponsors of 457 visa workers, accounting for 33.4% of the State's total primary 457 visas granted.⁴ Output from these two industries accounted for 44.8% of Western Australia's Gross State Product in 2007-08 and 47.2% in 2011-12.⁵

As at February 2013 there were 23,800 primary 457 visa holders in the State (22% of the national 457 visa holders). Nearly one-half (49%) of the 457 visa holders were

¹ Department of State Development, 2013.

² Department of Immigration and Citizenship (various Issues), Subclass 457 State/Territory Summary Report, Canberra.

³ Department of Immigration and Citizenship (2013), Subclass 457 State/Territory Summary Report 2012-13 to 28 February 2013, Canberra.

⁴ Department of Immigration and Citizenship (various Issues), Subclass 457 State/Territory Summary Report, Canberra.

⁵ Gross State Product measures the economic growth in the state/territory. It is analogous to Gross Domestic Product, Australian Bureau of Statistics (2012), Australian National Accounts: State Accounts 2011-12, Cat No. 5220.0, Commonwealth of Australia, Canberra.

in the Mining and mining-related industries, such as Construction, Professional and Scientific and Technical Services.⁶

Furthermore, the total primary 457 visas granted to workers sponsored by Western Australian employers in the highly skilled occupations highlight the importance of this visa program to the State. From 1 July 2012 to 28 February 2013, 38.3% of the State's total primary visas granted to workers sponsored by Western Australian employers were to Professional occupations and 41.2% were to Technicians and Trades Workers occupations. These occupations were identified in the Department of Education, Employment and Workplace Relations' (DEEWR) Internet Vacancy Index (IVI) as having strong growth in the levels of advertising between 2011 and 2012. Specifically, occupations for Professionals experienced 10.6% vacancy growth between February 2011 and February 2012, while Technicians and Trades Workers occupations experienced a 18.1% advertising growth over the same period.⁷

Since February 2012, the IVI has declined, indicating a fall in the levels of job advertising across Western Australia.⁸ The latest data from the Department of Immigration and Citizenship (DIAC) shows overall 457 visas granted to Western Australia are declining in line with these falls⁹, giving an early indication the program is working as intended, following the demand levels of the local labour market.

While Western Australia continues to experience strong economic growth, its industries compete globally. It must therefore continue to strive for innovation and efficiencies to maintain its competitive advantage. Without access to skilled overseas workers to fill vacancies unable to be filled by local workers, the demand for labour from Western Australian businesses will place further labour cost pressures¹⁰ on local employers or worse, disrupt production and development, thus reducing the competitiveness of Western Australian industry¹¹.

For Western Australia, the 457 visa program has assisted the State's employers to access skilled workers in a timely manner, contributed to the transfer of knowledge and skills to domestic workers, enabled the operation of resource projects to proceed, enabled businesses to take advantage of global opportunities and injected funds into the economy.

⁶ Department of State Development, 2013.

⁷ DEEWR Internet Vacancy Index, February 2013

⁸ DEEWR Internet Vacancy Index, February 2013

⁹ Department of Immigration and Citizenship (various issues), Subclass 457 State/Territory Summary Report, Commonwealth of Australia, ACT.

¹⁰ Wages in Western Australia grew 23% over the five years to December 2012, higher than the 19% national growth. Wages in Australia's mining industry grew 25% over the five years to December 2012, higher than the 19% growth across all Australian industries.

¹¹ According to the Fraser Institute Mining Survey, Western Australia ranked 44th for its "supply of labour and skills" and 46th for "labour regulations, employment agreements and labour militancy or work disruptions".

While the State supports the use of the 457 visa program to help alleviate skill shortages, there are a number of issues of concern:

RESOURCES FOR MONITORING AND ENFORCING COMPLIANCE

The Commonwealth Government has stated that the proposed reforms to the 457 visa program announced recently have been prompted by claims of rorting of the system and exploitation of overseas workers by employers. There appears to be little evidence, however, provided to support this claim. Further, Western Australia is concerned over the extent to which the Commonwealth Government is able to monitor the compliance of employers in meeting the current regulations. The introduction of any new regulations should be accompanied by a commensurate increase in resources to ensure compliance. Western Australia is concerned that in the absence of additional resources to monitor the program on a frequent basis, any proposed reforms would be ineffective.

TRAINING REQUIREMENTS

The Western Australian Government's first workforce development priority is the training of local workers and it fully supports the current training requirement (under the 457 visa program) for employers to expend 1% of payroll on the direct training of a firm's Australian workforce or the payment of 2% of the firm's payroll into a training fund. In addition to the fact that no evidence has been provided to indicate the current requirements are ineffective, the State has a number of further concerns regarding the proposed reforms to the training benchmarks.

Proposed Training Benchmark 1

Australian apprentices to represent at least 15% of the sponsor's trade workforce. Recent Australian higher education graduates with less than 12 months post-qualification paid work experience to represent at least 5% of the sponsor's managerial and professional workforce.

The stipulation of 15% does not appear to be supported by evidence. The proposal appears to rely on data quoted in a 2009 DEEWR consultation paper¹² which states:

"In its *Australian vocational education and training statistics 2007* annual publication the NCVET reported that at December 2007 trainees and apprentices represent 14.3 per cent of the trades workforce nationally."

However, the latest data available from NCVET shows that the ratio of trades apprentices and trainees as a proportion of the trades workforce (for 2007) has been revised down to 11.9%. The latest data also shows that for 2011 (latest data available) the proportion is also 11.9%.¹³ This is more in line with the current level of apprentice and trainee employment as a proportion of the total Technician and Trades Worker workforce in Western Australia – 11.0%¹⁴. There was however, significant variation in this proportion across industries, such as 3.7% in the Health Care and Social Assistance industry and 10.5% in Mining.

¹² The Implementation of Training Benchmarks for Employer Access to the Temporary Business (Subclass 457) Visa Program Through Standard Business Sponsorship, Department of Education, Employment and Workplace Relations, 2009.

¹³ Department of Industry, Innovation, Science, Research and Tertiary Education (2012), *Australian Vocational Education and Training Statistics: Apprentices and Trainees Annual 2011*, NCVET, Adelaide.

¹⁴ Department of Training and Workforce Development 2012

If this benchmark is to be retained, the methodology used to derive the required quota should be reviewed to reflect the latest trend in training within the trades workforce.

Further, the specification of 'trades workforce' and who is responsible for training in non-traditional employer-employee employment, such as on-hire companies and sub-contractors is unclear. Furthermore, the overall mechanics for validating the training benchmark by the employers are ambiguous. As employers are unlikely to keep a record of each employee's ANZSCO code, it is unclear how employers will be able to validate they have met the training benchmark.

The training benchmark proposed does not take into account the ability of businesses to provide appropriate training and the relationship to firm output. Specifically, the minimum benchmark is not sensitive to firm size. For example, for a small firm to have at least 15% of its 'trades workforce' as apprentices is more onerous than for a larger firm to meet this benchmark. Specifically, the apprenticeship component of a firm's workforce could affect its output. This is because apprentices have to be trained by experienced workers. These experienced workers need to allocate a portion of their time to training, thus having less time to complete their own tasks. For a small firm, diverting labour away from production to training could have a severe impact on its output.

The State is also concerned over firms' ability to meet the benchmark relating to higher education graduates, especially smaller firms without sufficient capacity, either due to the availability of staff to act as mentors, the availability of equipment or infrastructure or fiscal constraints.

Proposed Training Benchmark 2

At least 2% of the total gross wages for the sponsor's workforce to be expended on training linked to the completion of units of competence under the Australian Qualification Framework for the sponsor's workforce.

It appears that the training expenditure to payroll requirement stipulated in the proposed training benchmark 2 (2%) has arisen from the Australian Bureau of Statistics (ABS) publication *Employer Training Expenditure and Practices Survey*, which was last published in April 2003. Referring to this survey, the DEEWR consultation paper *The Implementation of Training Benchmarks for Employer Access to the Temporary Business (Subclass 457) Visa Program Through Standard Business Sponsorship*, (2009) states:

"In that survey net direct expenditure on structured training (excluding the salary of employees while undertaking the training) by all employers during the 2001-02 financial year averaged \$458 per employee and 1.3 per cent of total gross wages and salaries. This rose to 1.5 per cent if only those employers who provided structured training were considered. However if those industries which are not large users of Subclass 457 visas are excluded it is estimated expenditure on training as a percentage of gross wages and salaries rises to around 2 per cent..."

The estimated expenditures quoted from the above survey are average expenditures for all sizes of business. However, for firms of 5-9 employees who provided structured training the estimated expenditure was 1.3% (i.e. 0.2 percentage points below the average) and for firms of 10-19 employees the estimated expenditure was 1.0% (i.e. half the average expenditure). As at 30 June 2011, firms of these sizes make up 28% of all employing businesses in Australia¹⁵, and if the proposed benchmarks were to be introduced they would need to increase their training expenditure by 54% to 100% to qualify for the 457 visa program under this benchmark. This of course would place a significant burden on these businesses.

The training requirements for the permanent Employer Nominated Scheme (ENS) and Regional Sponsored Migration Scheme (RSMS) are based on the 457 visa program¹⁶. In the absence of any contrary advice from the Commonwealth Government, it is assumed that the proposed training benchmarks under the 457 visa program would also affect employers using ENS and RSMS. Therefore, the impact of the proposed reforms stretches further than just employers using the 457 visa program. However, no data has been provided to indicate the scale of this impact.

In addition, there is no specific duration stated for an employer using the ENS and RSMS to meet this training commitment.

The State also has concerns regarding the requirement for the 2% of payroll to be expended on training linked to the completion of units of competence under the Australian Qualifications Framework (AQF). Firstly, the survey outcomes discussed above from the *Employer Training Expenditure and Practices Survey (2003)*, which appears to have informed the establishment of the 2% requirement, does not distinguish the training expended on AQF linked training from that of expenditure on "structured training", defined as "where training activities have a specified content or predetermined plan"¹⁷. While data on the level of expenditure on structured non-accredited training provided by employers in Western Australia is not available, it is estimated to be significant. Therefore the actual expenditure by employers on AQF linked training as a proportion of their payroll is expected to be considerably less than the 1.5% expended on structured training as quoted in the survey report.

English language exemption

Currently workers sponsored under the 457 visa program are exempt from English language requirements for a number of reasons including their occupational classification¹⁸. Under the proposed English language reform:

- English language testing exemption by occupations across all occupations will be removed.

Research suggests that increased English language ability may lead to improved labour productivity, knowledge transfer to local workers as well as better social

¹⁵ Counts of Australian Businesses, Including Entries and Exits, Jun 2007 to Jun 2011, (Cat. 8165.0)

¹⁶ Department of Immigration and Citizenship, "Permanent Employer-Sponsored Program - 1 July 2012 Reforms", Information Sheet.

¹⁷ Employer Training Expenditure and Practices Survey (2003), ABS (Cat. 6362.0)

¹⁸ If visa holders' nominated occupations fall within the exempt occupations list (which covers most non trades occupations) they are exempt from English language testing.

outcomes for migrants.^{19,20,21} This is because workers who are proficient in English can better understand instructions in the workplace and converse with colleagues. Moreover, as noted from the review of the 457 visa program in 2008, changes to the English language requirement were expected to assist migrants to understand occupational health and safety issues.²²

However, while the State recognises the benefits of English language proficiency in the workforce, there is no evidence to suggest that the current English language requirement for the 457 visa program has a negative impact on overseas workers' productivity. Further, the reforms have the potential of reducing the pool of eligible skilled migrants and therefore local employers access to skills and expertise, which may have a negative impact on firm productivity and the Western Australian economy.

No evidence or modelling has been provided to illustrate the impact on training outcomes or the impact on employers from the implementation of the proposed reforms. Given that the proposed benchmarks are considerably more onerous (for employers) than the current requirements, it is possible the proposed reforms will provide a significant disincentive for employers to utilise the 457 visa program. This may have a negative impact on both the level of training provided by employers (by the removal of the requirement to meet the current benchmark) and also on firm productivity through decreased access to skills.

Due to the concerns raised above the Western Australian Government strongly recommends that further information be provided as to the appropriateness of the reforms, including information on the impact on both training outcomes and employers.

Regional Migration Agreements / Enterprise Migration Agreements

The Western Australian Government is aware of significant frustration within some industry sectors over the process of negotiating Labour Agreements with the Commonwealth. With this in mind the State is supportive of the recent introduction of the Enterprise Migration Agreements and the proposed Regional Migration Agreements. However, the State supports the need for the proponents of these agreements to clearly demonstrate that skill shortages exist in the occupations requested under these agreements. The State further supports the need for the proponents of these agreements to further contribute to the training and up-skilling of the Australian workforce.

In regards to Regional Migration Agreements (RMA), the State Government is frustrated with the continual delays in the release of the guidelines for this program since its announcement. While skill shortages exist throughout Western Australia,

¹⁹ The survey was undertaken in 2008 of Australian Human Resources Institute (AHRI) members. The respondents were employers of 457 skilled migrants, employees working alongside the 457 skilled migrants, persons from organisations that have not employed skilled migrants and 457 skilled migrants themselves. Australian Human Resources Institute (2009), "Australian Experience with Skilled Migration – Perception and Reality", HRpulse Research Report.

²⁰ See, for example, Chiswick, B.R. and Miller, P.W. (2011). "Matching Language Proficiency to Occupation: The Effect on Immigrants' Earnings", The Stockholm University, Linnaeus Center for Integration Studies Working Paper, 2011:4.

²¹ Deegan, B. (2008), "English Language Requirement/Occupational Health and Safety", Issues Paper No. 2, Visa Subclass 457 Integrity Review.

²² Deegan, B. (2008), "English Language Requirement/Occupational Health and Safety", Issues Paper No. 2, Visa Subclass 457 Integrity Review.

they have a more significant impact in regional Western Australia and the RMAs are considered an effective mechanism for addressing these shortages. The State Government has been approached by potential applicants for an RMA but the lack of program guidelines is limiting the extent to which the State can provide the necessary support.

Industrial legislation and legislative instruments

Currently the employment conditions required under the 457 visa program directly impact on the ability of employers to comply with their workers compensation obligations under the *Workers' Compensation and Injury Management Act 1981*. For example, as a 457 worker cannot move to another employer without sponsorship, an injured worker on a 457 visa cannot undergo rehabilitation or engage in a work trial with another employer. Also, a 457 worker must not engage in work not directly related to his or her nominated occupation. Therefore, the employer is required to continue to pay compensation to the injured worker rather than offer the worker alternate duties.

It is suggested that the regulations regarding the duties permitted to be undertaken by a 457 worker be made more flexible to accommodate an employer's obligations under workers compensation legislation.

In the event that a 457 visa holder suffers a serious injury, the worker may require a tailored specialised treatment program including operative procedures. However, if the employer terminates the worker's employment or the visa expires, the worker may have no option but to return to their homeland.

Better recognition of an employer's obligations under workers compensation legislation in the 457 visa regulations is required to ensure 457 visa holders are afforded the same workers compensation rights as local workers.

Settlement services assistance

The integration of skilled migrants and their dependents into the community is important as it affects their labour market outcomes as well as general well-being.²³ However, the settlement services available to skilled migrants and their dependents are limited.

Services available in regional areas are especially limited. Non-government organisations providing services to migrants are often approached by 457 visa holders and their dependents for support. However these organisations are funded to provide services to a limited client group (mainly humanitarian) through the Department of Immigration and Citizenship Settlement Grants Program. Hence, the organisations do not have the resources to provide services to all migrants.²⁴

The State recognises the importance of migrants' integration into the community and requests the Commonwealth Government reviews current settlement services to skilled migrants.

²³ Liebig, T. (2007), "The Labour Market Integration of Immigrants in Australia", OECD Social, Employment and Migration Working Papers, No. 49.

²⁴ Office of Multicultural Interests, 2013.