



MASTER BUILDERS
A U S T R A L I A

26 April 2013

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Thank you for the opportunity to make a submission to the *Inquiry into the current framework and operation of subclass 457 visa, Enterprise Migration Agreements and Regional Migration Agreements* (the Inquiry).

Master Builders is the leading national building industry association, with over 33,000 members across the residential building, commercial building and infrastructure construction sectors. The building and construction industry is a major driver of the Australian economy and makes a major contribution to the generation of wealth and the welfare of the community.

Master Builders continues to give strong support to a substantial immigration program focussed on skilled migration. Immigration has played an important role in the growth of the building and construction industry in Australia, allowing the industry to meet increased demand for managerial and skilled workers that is not able to be met in the short term from domestic sources. Temporary skilled visas in particular have helped facilitate the timely and cost-effective delivery of infrastructure, resources and building projects over many years, with bi-partisan political support.

Master Builders reiterates our longstanding position that temporary skilled visas and other channels of immigration complement – but do not substitute for – the skilling of the Australian workforce. Master Builders Australia and the building and construction industry remains strongly committed to the training and employment of Australians as its primary workforce objective. There is no evidence that the availability of 457 Visas has affected this to any significant degree. Indeed, even in current weak conditions for the industry, the number of apprenticeship completions is approximately double what it was a decade ago.

Master Builders believes that the 457 Visa system continues to function well, and we congratulate the Government on working with industry to streamline access to the program for regular users with a good track record of meeting immigration requirements. Unfortunately, we recognise a small number of users are non-compliant, and so we also support appropriate compliance action under current immigration arrangements to address this.

At the same time, Master Builders is highly concerned that isolated compliance issues have been used to characterise 457 Visas as 'widely abused' and 'undermining Australian jobs', when the opposite is in fact the case. It is telling that

only a very small number of examples are brought forward as 'evidence' that the system is failing. It is particularly disappointing that, in the most recent public debate on 457 Visas, some members of the Government also made misplaced and inflammatory comments about overseas workers in Australia.

There are already numerous safeguards built into the 457 Visa program, including minimum salary requirements and training benchmarks, that discourage an employer from using 457 Visas as a first resort for finding staff. Given the built in disincentives and paperwork involved in the program, it is unlikely that employers would seek to employ overseas workers on a 457 Visa when there are already Australian workers willing and able to fill a position.

We are concerned about misinformation about the recent growth of 457 Visa numbers. Although applications grew during 2011-12 as a number of major projects commenced, the number of 457 Visas granted has been in decline since August 2012, reflecting challenging business conditions in construction, manufacturing and many other industries. In the six months to December 2012, there were 4650 Subclass 457 applications from the construction sector (out of a total workforce of nearly a million) at an average base salary of \$90,600. Over two thirds of these positions were professional roles such as engineers and project managers rather than tradespeople.

However, even though construction output and therefore use of 457 Visas in our industry has temporarily slowed, there remain many locations and occupations where it is hard to fill positions domestically and where 457 Visas provide employers the only practical option. A clear majority of these are for professionals such as construction engineers and project managers, but in some cases the ability to access tradespeople under a 457 Visa pathway is also important for a project's success. This is confirmed by DEEWR skills shortage research and also by the findings of reviews such as the *National Resources Sector Employment Taskforce*.

Master Builders estimates that, based on current industry labour force attrition rates and growth projections, around 50,000 entrants to the industry will be required each year, on average, over the next decade with around two-thirds (or some 35,000 persons) of this demand being for skilled positions. These figures compare with construction trades apprenticeship completions of just 12,000 persons in 2012.

There have been suggestions that more stringent 'market testing' be required before an employer can access overseas workers under a 457 Visa. Such proposals fundamentally misrepresent the employment process and would have a major negative impact on productivity. In the first instance, it would add significant time to the 457 Visa process that would be simply impractical in a project-based industry such as construction. Secondly, it would undermine the right of a business to determine suitability for employment. The implication appears to be that the employer must take *any* qualified Australian that applies, and would have to justify the decision not to employ an Australian before some form of tribunal. This would simply kill off the 457 Visa system, which is precisely what its proponents intend.

There have been a number of changes to 457 Visas were announced recently by the Immigration Minister the Hon Brendan O'Connor. The new 'genuineness' criterion, the removal of English-language exemptions and expanded regulatory powers for Immigration Department represent unnecessary and backward steps that increase red tape for industry, and so were opposed by Master Builders. The recent referral of investigatory powers relating to 457 Visa compliance to the Fair Work Ombudsman

(FWO) was also opposed by us, on the grounds that this was an inappropriate use of FWO resources in an area outside their field of expertise. This responsibility should properly be undertaken by a properly resourced Immigration Department.

The Consolidated Sponsored Occupations List (CSOL) forms a part of the terms of reference for the Inquiry, although its application is much broader than 457 Visas. This list is currently set internally by the Immigration Department based on research and stakeholder feedback. Reflecting their importance to the economy, most skilled construction occupations are listed on the CSOL. There are however a number of additional occupations, such as concreters and structural steel workers, that we would seek to include on the CSOL in future.

There is a view there should be a more open and transparent process for the listing of occupations on immigration lists such as the CSOL. Such a process would, however need an appropriate representation of industry interests to ensure that the list reflected economic needs and was not curtailed by narrow ideological agendas.

The terms of reference for the Inquiry also refer to Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs). We understand that there is only one signed EMA and no RMAs so it difficult to comment on their operation. However, Master Builders supports this framework as an appropriate one for allowing a degree of extra flexibility for e.g. very large resources projects. The reality is that very few projects will successfully pursue EMAs, and so a more important question from our perspective is whether the flexibility that exists in EMAs in areas such as eligible occupations should exist more broadly in the immigration system.

I would welcome the opportunity to appear before the Committee to discuss these issues further. I can be contacted on [REDACTED]

Yours sincerely

Wilhelm Harnisch
Chief Executive Officer