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05 FEB 2007  
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Submission No. 11  
Date Received

# RCSA Submission to the Parliamentary Joint Committee

submission in relation to the current  
monitoring, enforcement and reporting arrangements

for the

subclass 457 Temporary (Business (Long Stay)) visa

Date: 2<sup>nd</sup> February 2007

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# RCSA Submissions for Parliamentary Joint Committee

The RCSA (Recruitment and Consulting Services Association) takes this opportunity to thank the Joint Committee for this opportunity to make submissions in relation to the current monitoring, enforcement and reporting arrangements for the subclass 457 Temporary (Business (Long Stay)) visa ("the visa").

## 1. OVERVIEW

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1.1 The recruitment industry is responsible for supplying the Australian Economy with over 3.7 million workers each year, according to the Australian Bureau of Statistics (*Employment Services 8558.0*).

1.2 There are four categories of recruitment and on-hire firms currently using 457 visas:

- (a) permanent recruitment firms working for a client that recruit offshore for the client. In this arrangement it is the client who is the employer/ sponsor of the worker;
- (b) on-hire firms who recruit and employ offshore skilled workers using 457 visas and then place workers in client sites but otherwise remain in an employer/ employee relationship;
- (c) recruitment firms who engage offshore skilled 457 workers as employees of the firm to perform recruitment and administrative functions; and
- (d) hybrid contract management arrangements which are not recognised as traditional recruitment. Contract management firms are an example of a hybrid model; they allow skilled workers to find their own positions and manage the contract between the worker and the end user who can be an on-hire company. These companies are deemed to be suppliers of a service to employers- but not recruitment or on-hire services.

1.3 In the first two arrangements, the end user pays the recruitment/ on-hire company for all associated costs.

1.4 Contract management firms are not Members of the RCSA, as they do not fall within the Association's definition of a recruiter. Therefore these submissions do not represent the views of the Contract Management Industry.

1.5 The above categories of recruitment provide a simplification, as other perspectives exist. It is possible for some companies to form an alliance or relationship and deliver all four models.

## 2. ADEQUACY OF CURRENT ELIGIBILITY REQUIREMENTS

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### 2.1 Minimum Gazette rate

Throughout discussions with our Members there was constant agreement that the standard wage gazetted by DIAC is not an issue and that many Members are in fact paying above the specified rate.

Research conducted in 2003 by RMIT (*On-hired Workers in Australia: Motivations and Outcomes*) found that 68% of RCSA Members' on-hire white-collar employees receive above minimum payment, and 66% in the case of blue-collar employees.

Arguments are continually raised that the on-hire sector, particularly blue collar, abuse minimum wage requirements and award rates - this has proven to be an incorrect assertion in a range of instances and the RCSA has yet to be provided with evidence of where this is happening - in fact the reverse is often the case as the on-hire sector want their candidates to be valued and feel valued. This doesn't occur if wages are compromised. In some cases RCSA Members have found that this minimum wage has pushed up the sectoral average wage; for example, in the case of regional nurses. RCSA supports the continued enforcement of this issue.

### 2.2 English Language Requirement

The current standard only requires immigrants to have enough use of English to be able to function in the Australian community (approximately IS4). We support a standard which ensures that sponsored workers have sufficient knowledge of the English language to understand Occupational Health and Safety standards for their profession. It may be prudent to have defined levels of English language

levels for specific professions, for example more technical roles such as Electricians and Doctors would be required to have a higher fluency than Chefs. These levels would need to be provided by the appropriate authority e.g. the Australian Safety and Compensation Council.

### **2.3 Required skill level**

The Association has no issue with this requirement as it currently stands.

### **2.4 Training requirements**

While there is a perception that the Industry does not provide training for its on-hired employees, research among the RCSA's Members conducted in March 2006 indicates that this is not the case. In fact almost half provide training of various types, including in-house training – both formal (20%) and informal (39%); external formal training (23%); mentoring (35%) and vendor training (13%).

The topics covered by such training are broad, and range from technical skills, to numeracy and literacy to career development. Just over half of Members use Registered Training Organisations (RTO), 13% have formal links to one or more, and 9% act as an RTO themselves.

Training for OH&S is also crucial for on-hired workers, and the RCSA has taken a proactive role in facilitating better outcomes in this area. Its dedicated OH&S Committee has helped to drive the creation of a user-friendly, web-based induction program called WorkPro.

Training is an important and accepted part of the recruitment and on-hire industry, and in a skills-short employment market, will continue to be so.

## **3. GENERAL COMMENTS**

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### **3.1 Effectiveness of Monitoring**

The Association believes that the current monitoring systems in place for the 457 Visa can be improved with the cooperation of relevant state and federal departments with Industry. Increased monitoring must be balanced against the speed in which visas are issued. The appeal of the 457 Visa is the speed the Department can issue them allowing recruiters to respond to the needs of Australian business requirements. If an increase in monitoring is not implemented in a streamlined manner the effectiveness of the visa will be jeopardised.

The RCSA supports a strong monitoring regime that encourages the exchange of information between the relevant Commonwealth Departments such as DIAC and DEWR. DEWR's access to more localised resources will enable higher scrutiny of employers utilising the visa and encourage compliance.

Members of the RCSA are bound by an ACCC authorised RCSA Code for Professional Practice ("the Code"). This code implements its own disciplinary proceeding for Members who are in breach of the code. It is our view that poor behaviour by a particular Member brings the whole industry into disrepute. RCSA as an organisation is keen to ensure that any complaints that are raised against its own Members are reviewed through our own Disciplinary and Dispute Resolution procedures as well as through our Professional Practice Procedures.

The RCSA supports a close relationship between the Department and Industry to ensure that Industry bodies are aware of any Members' actions who breach the requirements of the 457 Visa. A close relationship between the parties will ensure that the system is monitored more closely and effectively. The RCSA delivers regular training opportunities to inform their Membership of changes to legislation and compliance requirements ensuring Members are aware of the penalties, which may be- and have been- imposed for failures to discharge legal obligations.

Better monitoring of the Industry's performance could be introduced through the implementation of Industry based Labour Agreements for our Members. Labour Agreements provide flexible terms for sponsorship requirements. If the Department is concerned about a specific Member's history of compliance a Labour Agreement will afford stricter obligations to be imposed in turn for concessions in other areas. Labour Agreements that require State Government input will provide the added benefit of ensuring that the relevant State Governments can monitor the injection of a number of workers in one particular location. The Association supports the implementation of Labour Agreements for its

Members as it will benefit the industry with swifter 457 visa nomination approvals and benefit our Members and their clients.

### 3.2 Enforcement

The RCSA submits that the current enforcement mechanisms in the Migration Act do not provide adequate deterrents for those employers found to be breaching their obligations. As an industry we have found that when a Member is made an example of for a particular breach of legislation or the Code for Professional Practice, it results in the remainder of Members swiftly ensuring their practices comply with the relevant requirements.

The issues that have been raised in discussions between RCSA and DIAC with respect to breaches need to be understood in the context of a small group of companies. Prevention of the on-hire sector from being engaged in 457 visa sponsorship, when only a sample, usually not of our Membership, are behaving inappropriately, would be detrimental to Australian businesses who look to this industry to provide solutions to their labour problems.

The Association's Code does not extend to offshore recruitment or on-hire firms. Although breaches of the 457 visa have occurred by offshore on-hire firms enforcement of the breaches against non-compliant parties appears to be difficult when they are not operating in Australia. Sanctions should be imposed on offshore recruiters found breaching their obligations.

We support the implementation of a fines and/ or civil penalty regime being introduced to penalise those employers who breach their sponsorship obligations. Fines and/ or civil penalties should be proportional to the offence and in accordance with the Attorney General's scale.

### 3.3 Reporting Arrangements

We can see major advantages in centralising the Department's management of the section 457 visa to its office in Canberra. Current arrangements under the Standard Business Sponsorship systems results in Members reporting to the Department's Regional Offices, which can result in different reporting expectations arising for different Members. In order to ensure that the Association can adequately train its Members on their reporting requirements, a centralised system is supported.

We propose that with the implementation of Labour Agreements for the Industry, all reporting and monitoring of the industry's actions should be managed through a centralised location in Canberra.

## 4. PROCEDURES WHICH CAN BE IMPROVED

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The Association recommends that the 457 Visa program can be improved through a number of other additional procedures:

- An information service, similar to Doctor Connect be developed for companies who engage 457 visa applicants so that there is a central information source that recruitment and on-hire firms can be directed to. Most of the material is available on the DIAC site – RCSA needs to develop it to assist users to find and understand more rapidly and that an email hotline be established - as we have done with WorkChoices to address concerns and queries in the language and terminology of the industry.
- An education program - similar to RCSA's WorkChoices program - that ensures there is a public seminar series, an email advisory service and website and a teleseminar ongoing program to deliver essential DIAC messages to the industry.
- Requirements that workers' compensation, medical insurance and other basic rights are clearly understood. RCSA Members for example cannot become Members unless we see evidence that they are compliant with all regulatory statutes to do with workers' compensation, superannuation, payroll tax etc. This can be actioned to include questions with respect to 457 visas.
- That the Government make amendments to the Migration Regulation requiring on-hire recruitment companies to enter into either an industry based Labour Agreement or an

individual Labour Agreement in order to nominate workers wishing to enter Australia on the 457 visa.