

Submission No. 14a  
Date Received.....



Tuesday, 26 June 2007

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Committee Secretary  
Joint Standing Committee on Migration  
Department of House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

RECEIVED  
03 JUN 2007

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Dear Committee members,

ACEA recently provided evidence to the Joint Standing Committee on Migration. As a result of the testimony provided ACEA took some questions posed by the Committee on notice.

Please find below the questions posed by the Committee and responses provided by ACEA regarding the inquiry into temporary business visas.

Also attached is ACEA's model for a two-tiered approach to the 457 visa application process which was introduced to the Joint Standing Committee within ACEA's Submission and recent testimony.

We thank the Committee for the opportunity to comment on these issues and would be pleased to provide any further information should this be required by the Committee.

Yours sincerely,

Megan Motto  
Chief Executive  
Association of Consulting Engineers Australia





## QUESTIONS TAKEN ON NOTICE

**Senator POLLEY – Approximately how many employees do you have in the industry who are here on 457 visas? It would be good if you could provide that as well as the country of origin.**

ACEA has contacted the Department of Immigration and Citizenship (DIAC) and have been advised that the department provided the committee with this type of information on the 1st June at the committee hearing in Canberra.

**“Senator POLLEY – Some people who come out on these visas act more or less as a pool of employees who go from country to country to work in specific areas. I would imagine that that would occur in your industry. Are there concerns about this because of complications with taxation? People might prefer to have their wages paid into an account in their country rather than into one in Australia for which they would have to go through the Australian taxation system.”**

ACEA have concluded after consultation with members it is unlikely that there is a pool of employees in our industry that go from country to country to avoid paying Australian tax. This position is re-enforced by member firms suggesting that the number of 457 visas holders in the engineering industry transitioning to permanent resident status is around 80%.

**Senator PARRY - Are there issues? It might be a thing like a fire on an oil rig, when you need a particular type of skill or engineer to assist with putting it out. Do you have examples you can provide to the committee? Anything where there is a fast need to bring in someone on a temporary work visa would be great.**

Please find below three examples provided to ACEA by member firms:

### **Example 1 – Intra-Company Transfer**

In late 2006 GHD was awarded a large landmark project with a major Australian resources company. The project team required an additional Civil Engineer and given that GHD continually advertises for Civil Engineers in Australia, it was evident at this stage that a suitable candidate could not be found in Australia within the required time frame. GHD quickly identified a suitable qualified and experienced staff member, an Egyptian Civil Engineer, in our Middle East (ME) operations.

This ME staff member had previously indicated his interest in relocating to and working in Australia and could mobilise at short notice. The ME staff member was scheduled to start work on the project at the beginning of 2007; however, due to a visa processing time of 10 weeks, he only arrived in mid-March. Consequently, other project team members were required to carry his workload, which resulted in regular overtime and generally higher stress levels, with the obvious increased risk to safety and work outcomes.

### **Example 2 – International Recruitment**

It was established in February 2007 that GHD required two drafters for a specific project with an anticipated start date of late March. Due to the current lack of skilled drafters in Australia, GHD identified and successfully recruited two suitable candidates, Filipino nationals, subject to 457-visa approval.

The 457 Business Nominations were lodged on 23 February 2007. However, the nominations were only approved on 15 March 2007, well beyond the usually expected approval time. Both candidates

lodged their applications on 3 March 2007 and their visas were finally approved on 24 April 07. From that point in time, the applicants had to give 4 weeks' notice to their current employers and were not able to start work with GHD until 28 May 2007. During the time of the expected start date and the actual start date the project and all team members involved were negatively impacted. Employees worked long hours and sacrificed their weekends to meet project requirements.

Now that the new staff members have arrived and are working on the project, the benefits are self-evident and felt by all team members.

### **Example 3 – Existing 457 visa holder**

SKM made an offer to a person already in Australia under 457-sponsorship with another company. Upon receiving the offer from SKM this person tendered their resignation with their employer expecting that the application for a 457 visa with SKM could easily be obtained within his four weeks notice period.

Unfortunately more than 8 weeks later and the 457 had still not been granted by DIAC. Apparently the visa was taking so long as the candidate was a national of Syria and DIAC therefore required detailed security checks to be undertaken. This requirement was completely unexpected as these checks had been undertaken only a short time earlier as part of the initial 457 application with his previous employer.

Eventually, after numerous petitions for fast tracking from migration agents, the application was approved however the significant delay resulted in the following:

- The applicant was unable to earn an income for several weeks as they were unable to work for their previous employer but could not yet work for SKM.
- Additional pressure was placed on already stretched SKM staff to meet the demands of the role that was being held open for this candidate. SKM were at the point of withdrawing the offer of this position when the visa was then approved.
- SKM management were at the point of risking damaging client relationships due to the delay in the completion of the project that this candidate was expected to work on.

This third example/scenario has been identified as the most commonly frustrating issue by ACEA member firms. The general consensus is that processing times for existing 457 visa holders to change sponsors should not be excessive as the required information and qualifying documents have already been presented.

**“Senator POLLEY – I am following up, as to the information that you are going to provide to the committee, how many people that come through your industry on these visas are actually becoming permanent residents?”**

ACEA has contacted DIAC and were advised that the department provided the committee with this type of information on the 1st June at the committee hearing in Canberra.

After consulting with our members, ACEA have been advised that the bulk (80%) of 457 visa holders in our industry become permanent residents.



## TWO-TIERED APPROACH TO APPLICATIONS MODEL

One of the key recommendations ACEA has outlined to the Joint Standing Committee on Migration is the need for a two-tiered approach for processing 457 visa applications. Following ACEA's submission and testimony to the Committee, we are pleased to further explore the two-tiered system and provide recommendations to the Joint Standing Committee on how this model might function.

Due to strong economic growth and unemployment at a 32 year low, the engineering industry requires a large number of highly-skilled engineers that are not available domestically. Importing skills into Australia quickly to address the skills shortage crisis is a feasible temporary and longer term (considering the high percentage of conversions to permanent residency) solution.

By identifying businesses who have a good track record with their use of the 457 visa and are recruiting for skills that are in critically short demand domestically, the Department of Immigration and Citizenship (DIAC) can prioritise these applications so that firms do not experience unnecessary delays.

Within the engineering industry, highly skilled and highly paid professionals undergo extensive interview processes and checks by the employer firm prior to the 457 visa application being lodged. The level of rigor and the length of time a 457 application is now taking is simply not meeting the needs of Australian Engineering firms. 2/3 of our member firms are either delaying infrastructure projects or not bidding for projects because they simply do not have the staff available.

Without an accessible and timely approach to 457 visa applications, Australia's short-term skills requirements cannot be met. For the engineering industry this can be demonstrated by the three contemporary examples provided in our responses to questions taken on notice. (Above)

ACEA believes the below set of criteria can be used to classify businesses into either tier-one or tier-two.

<p style="text-align: center;"><b>Tier-one</b></p> <p style="text-align: center;">All criteria must apply</p>	<p style="text-align: center;"><b>Tier-two</b></p> <p style="text-align: center;">One or more of the following criteria apply</p>
<p>Excellent reputation and history with regard to the employer's use of 457 and/or other visa categories. (1<sup>st</sup> time users included)</p>	<p>Some concerns as to the appropriate use of 457-visa based on past incidents.</p>
<p>457 visa applicant possess the skills as listed on Australia's Migration Occupations in Demand List (MODL).</p>	<p>Skills area by potential 457 visa holder not in critical shortage.</p>
<p>The employer demonstrates a willingness to work with DIAC, including giving DIAC direct access to the 457 visa applicant/holder if required.</p>	<p>The employer does not demonstrate a willingness to work with DIAC, including giving DIAC direct access to the 457 visa holder/applicant.</p>
<p>All Current requirements for minimum salary, health and background checks etc are completed satisfactorily.</p>	<p>Not all or insufficient information for minimum salary, health and background checks etc provided satisfactorily.</p>



ACEA proposes that businesses listed within the tier-one category would have their 457 visa applications processed as a priority to tier-two 457 visa applicants. ACEA believes that it should take no longer than two weeks (10 working days) for the Department of Immigration to process a 457-visa application from the time all required information and documentation is received.

### **Incident severity listing or categories**

ACEA's considers that there may be a need for incidents of breach of conditions to be given severity listings or be placed into a severity level category. This process would enable a transparency through which employers could understand why they have been listed in tier-two or why others have remained in tier-one. Severity listings would really only apply to the first criteria in Tier-two "*Some concerns as to the appropriate use of 457-visa based on past incidents*". There must be a differentiation between employers who knowingly and purposefully seek to abuse the 457 visa scheme and those who may be uneducated or have made genuine mistakes. DIAC may also choose to place Incidents occurring more than 5 years ago in the low severity category to allow business who meet all other tier-one criteria to apply for tier-one listing.

### **Tier upgrading and downgrading**

If a business remains on the tier-two list for a period of 5 years without further breach or incident, the business should have the ability to apply to DIAC to be upgraded to the top tier (Tier-one). DIAC would possess the discretionary powers to move businesses between the tiers by providing the business with the decision in writing prior to making the adjustment.

### **Appeals Process**

ACEA sees the requirement for an appeals process through which businesses can apply to the department of immigration to appeal against tier-two listing decisions.

If an appeal is lodged by a business the following should be provided to the business by DIAC in writing:

- Why the business was listed in the tier-two category
- From which date the business was listed in the tier-two category (to identify how much longer of the 5-year listing will remain if the decision is not overturned)

An independent body should be tasked to review the appeal, assessing any evidence presented by the business and respond to the business in writing with decisions and outcomes.