



Submission No. 72
Date Received

Minister for Skills, Education Services and Employment

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Dr Kate Sullivan
Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Dr Sullivan

JOINT STANDING COMMITTEE ON MIGRATION INQUIRY INTO TEMPORARY BUSINESS VISAS

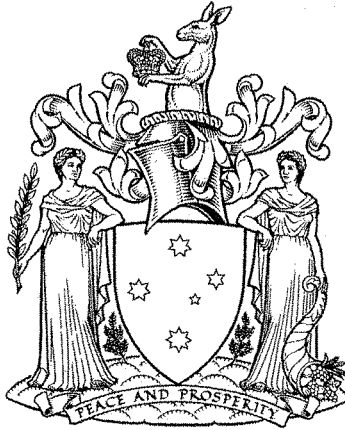
Thank you for your letter dated 14 December 2006 inviting the Victorian Government to make a submission to this Inquiry.

The Premier has requested that I present the enclosed submission on behalf of the Victorian Government.

Should you wish to discuss any aspect of this submission further, please contact Mr Stephen Ward, Director, Employment Programs, Department for Victorian Communities on 03 9208 3343.

Yours sincerely

Jacinta Allan MP
MINISTER



**VICTORIAN GOVERNMENT SUBMISSION
TO THE JOINT STANDING COMMITTEE ON MIGRATION
INQUIRY INTO TEMPORARY BUSINESS VISAS**

Victorian Government Submission to the Joint Standing Committee on Migration Inquiry into Temporary Business Visas

- Australia's economy has experienced 15 years of continued economic growth, and Victoria's and Australia's economies are forecasted to continue to grow strongly over the coming years. In this context, employers are finding it increasingly difficult to recruit skilled employees. The demand for skilled labour will be further exacerbated by an ageing population.
- Skilled migration, both permanent and temporary, provides Government and industry with an important policy lever to address areas of industry skill shortages. Skilled migration is also important in boosting our population and developing our communities.
- Temporary skilled migration can be of benefit to the Australian economy provided all other reasonable methods have been exhausted. However, permanent visa options for skilled migration are strongly preferred by the Victorian Government.
- The Victorian Government is not a key user of the 457 Short Stay Business Visa, and does not intend to increase its use of this visa in the near future. However, the Government acknowledges that Victorian public sector employers (including hospitals) do access this scheme. Although other States have entered into Labour Agreements in order to access overseas skilled workers for particular occupations (such as police or nursing), Victoria's policy is that this Government will not enter into, or become a signatory to, Labour Agreements.

Victorian Involvement in the COAG Process

- On 14 July 2006, COAG asked the Ministerial Council on Immigration and Multicultural Affairs (MCIMA) to identify and implement cooperative measures to ensure the effectiveness, fairness and integrity of the temporary skilled migration arrangements. MCIMA is expected to report to COAG in April 2007 with proposed recommendations.
- MCIMA has established a Commonwealth-State 457 Working Party, with membership from all States including Victoria, to develop the recommendations to COAG. The position adopted by Victoria in its representations to the Working Party has been based on the following principles:
 - The overriding Victorian principle is that the 457 visa is a Commonwealth instrument. Consequently, the Commonwealth bears major responsibility to improve the integrity and compliance of the 457 visa scheme, however Victorian agencies will investigate and pursue allegations of breaches of Victoria's laws and regulations (including OHS) within the State's existing roles and responsibilities.

- Victoria abides by COAG agreements to strengthen the integrity of the 457 arrangements while maintaining the benefits of the temporary skilled migration programme and ensuring smooth access to the programme by employers.
- The use of temporary skilled migration visas must be complementary to the local labour market. Safeguards are essential to ensure that no Australian citizen or permanent/provisional migrant is disadvantaged or displaced by use of 457 visas. Such safeguards include:
 - prior labour market testing to agreed standards before visas are granted to ensure that domestic workers have first opportunity to fill vacancies;
 - ensuring minimum pay and conditions for 457 workers are set to be equitable with those of domestic workers;
 - setting a price signal that favours hiring and training Australians by requiring employers to meet additional costs such as return airfare, health care (or insurance), visa and recruitment costs for the migrant;
 - ensuring the migrant has the appropriate skills and experience for the vacancy;
 - improving communication with the migrant and employer, and increased English language requirements to reduce risk of exploitation and OHS issues; and
 - requiring a robust and enforceable declaration from employers that no Australians have been displaced for a 457 visa worker. If there is a breach of this condition, ensuring that any displaced worker is provided with an effective remedy.
- Victoria supports stronger investigation and audit activities by the Commonwealth and supports the introduction of a fines and sanctions regime for breaches of the 457 visa conditions.
- All data and agreements regarding the 457 visa should be transparent and publicly available. Broad consultation with all stakeholders (including unions and industry bodies) is required in the development of new agreements.
- Victorian Government agencies will collaborate with the Commonwealth to share information (insofar as legislation permits) and will act on referred allegations based on the risk management frameworks of Victorian agencies.
- Victoria will continue to support Regional Certifying Bodies to enable regional employers to access skilled workers via the RSMS and 457 visa schemes, but seeks reforms to the RCB structure to improve consistency and accuracy of decisions, while improving accountability to the State.

Victorian Concerns with the 457 Visa Scheme

- The Victorian Government has concerns that continuing negative media coverage associated with the 457 visa has the potential to negatively impact on migration to Australia. Particular concern is the possibility of

reducing community support for migrants and migration, and the risk of negative perceptions by potential migrants that Australia is not a welcoming country. Also, there is anecdotal evidence that this media coverage has led to some employers becoming increasingly reluctant to fill their skills needs through the 457 program.

- More broadly, Victoria is concerned about the substantial increase in the use of the 457 visa program over the past year. We consider that many of the problems currently associated with the 457 visa program are due to the program being used in a manner which was never intended during its establishment.
- In particular we are concerned that this has led to sub-optimal solutions to a number of labour market issues, including (a) skill shortages; and (b) IR environment.

Skill Shortages

- The increasing demand for 457 visas indicates the difficulties that industries are having in recruiting skilled workers in Australia.
- In Victoria, the demand for skilled workers is compounded by the Queensland and Western Australian Governments initiating campaigns to recruit skilled workers from Victoria and New South Wales. Western Australia has set a target of 40,000 recruitments over the next ten years, while Queensland has a target of 1,500 recruitments in the first half of 2007.
- The Victorian Government considers that temporary migration provides an unsatisfactory solution to Australia's current skill shortage needs as it only provides a short-term solution and can discourage industry involvement and investment in workforce planning, skills development and training of domestic workers. Although the Commonwealth requires employers or industry sectors to demonstrate a strong commitment to training Australians as a precondition for granting 457 sponsorships, analysis conducted by the Australian Expert Group in Industry Studies and the University of Western Sydney identified possible long-term risks posed by the visa program to Australia's skills formation system.¹
- It is important that temporary migration is recognised as only one component of Australia's skills supply, and that issues associated with the visa program and any proposed reforms are considered in the broader context of Australia's skill formation and supply system.
- Victoria considers that the Commonwealth and State Governments should work together to move away from the current high dependence on the 457 visa program to ensure that Australia has an adequate, permanent skills base to support our economy. Policy responses should include:
 - Reforming the permanent migration scheme to enable it to be more responsive to industry needs, whilst ensuring that migrants meet character, health and security checks. For example, this may include

¹ *Temporary Skilled Migration: A New Form of Indentured Servitude*, Australian Expert Group in Industry Studies and the University of Western Sydney, 2006.

greater use of State-based visas or streamlining of permanent visa programs (in particular measures to reduce red tape). The Victorian Government notes that the standard DIAC health and character checks are vastly streamlined for potential 457 visa workers; whereas it usually takes 12-18 months to complete the checks for permanent visa applicants, approval for potential 457 visa workers can be granted in twenty days.

- On-going reform to the education and training sector to provide access to high-quality education and training opportunities for all Australians, ensuring that Australian workers have the skills and knowledge required by industry. The Victorian Government has a number of initiatives already underway in this area including the \$24m *Workforce Participation Partnerships* Program, the \$241m *Maintaining the Advantage: Skilled Victorians* package, and the \$34.6m *Nurse Recruitment and Retention Strategy* which includes both training of new entrants and return and re-entry of qualified nurses who have left the sector.
- The Victorian Government would welcome further opportunity to work with the Commonwealth on options to improve the permanent migration program to meet our skills needs. This has previously occurred, with considerable success, through the Commonwealth-Victoria Working Party on Migration, which in 2004-05 developed a number of initiatives to encourage more migrants to settle in regional Victoria.

IR Environment

- Australia and Victoria have experienced a rapid expansion in the use of the 457 visa in response to domestic skills shortages. Access to a global supply of skills through the 457 visa program has traditionally focused on managerial and professional occupations. In recent years this focus has expanded to include both skilled and semi-skilled occupations in Manufacturing, Construction and Accommodation, Cafes and Restaurants and Construction Trade Services.
- The expanded role of 457 visa within these industries and occupations has given rise to an increasing concern about the program's ability to ensure adequate safeguards to protect less skilled 457 visa workers from exploitation. The media and unions have focused attention on numerous cases involving Chinese, Korean and Pilipino workers who have not been provided with appropriate employment entitlements by their employers and who have had difficulty in accessing appropriate services to assist them to redress this.
- Recent cases demonstrate that a combination of: limited or no English; being engaged in lower skilled occupations, having few financial and social resources, not understanding rights and entitlements and avenues for enforcement, limited labour market mobility and in some cases bearing a financial debt to a migration agent contribute to an environment in which 457 visa workers are vulnerable to exploitation and fear being sacked and deported.

- The 457 visa program was not designed for these workers and has proven unable to ensure appropriate safeguards to protect and enforce the rights and entitlements of vulnerable workers. In contrast, skilled migrants working in professional and managerial occupations are less likely to experience adverse employment conditions. It is likely that they have greater labour market mobility within Australia and internationally. There have been no publicised cases to date of highly skilled professionals being exploited. An approach that increases the safeguards and reduces the risk profile of visa holders is critical.
- Cases of 457 visa holders being subject to considerable OHS risks and incidents are characterised by limited English and workers not comprehending local OHS legislation. Recent cases in the construction industry have highlighted the vulnerability of 457 visa holders being subject to an unsafe working environment, not knowing their rights and entitlements in the event of serious injury, engaging in unsafe work practices and working with unsafe power tools.
- In a Work Choices environment where Award wages and conditions are increasingly irrelevant to employees' rates of pay and employment contracts, 457 visa holders can be used at an industry level to reduce wages and conditions or maintain wages and conditions at a rate that would otherwise be unsustainable in the industry. There have been cases highlighted in the construction industry where the employers have been up front about using 457 visas to pay considerably less than the prevailing employment entitlements.
- The use and abuse of the program in particular occupations and industries is further complicated by the use of migration agents who reside and operate in the applicants' home country. Overseas migration agents who extort exorbitant fees from applicants and/or misrepresent the opportunities to make the money working in Australia will pose a considerable challenge to the Commonwealth Government with respect to scrutiny and enforcement. It is likely to be those applicants from countries with significant differentials in the living standards and wages who are most vulnerable.
- Compliance and enforcement mechanisms are going to become critically important if current trends in the use of 457 visas continue. Protection for both domestic workers and skilled migrants requires considerable commitment from the Commonwealth Government. 457 visa sponsorship should be a last resort to longer term domestic solutions and permanent migration.
- Finally, it should be noted that all temporary employer nominated schemes (including subclasses 442, 456 and Trade Skills Training visas) are open to potential abuse by employers. The key protections being developed under the COAG/MCIMA agenda, such as the skilled occupation and Minimum Salary Level tests, can be circumvented by employers abandoning 457 visas for these other schemes. Therefore, all temporary employer nominated schemes should be subject to the same forms of protections and rigorous approaches to enforcement that are currently under development for the 457 visa scheme.