MIGRATION INSTITUTE
— OF AUSTRALIA —

"Inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas"

Submission to the
Joint Standing Committee on Migration

A submission by the members of
The Migration Institute of Australia Limited

February 2007

MIGRATION INSTITUTE OF AUSTRALIA: BACKGROUND

The MIA is the major, representative, professional organisation for Australian Registered Migration Agents. Our membership runs to 1500 out of a total of 3300 RMAs currently. Founded as the Australian Migration Consultants Association 20 years ago the MIA (name change to the MIA in 1992), has grown and developed to be a significant professional body, respected in the community and within Department of Immigration and Citizenship. As a professional organisation representing our membership we have a major and on-going working relationship with DIAC, including responsibility for operating those parts of the Migration Act concerning the Migration Agents Registration Authority.

A number of Registered Migration Agents are not active or do very little client work, while the great majority of MIA members are active on a day-to-day basis. They operate in a variety of regimes including major legal and accounting firms, independent private firms and sole practitioners. The majority of members operate in a small firm private practice environment. Across all practice operation types our members undertake significant levels of client work involving temporary resident visas and in particular 457 temporary resident visas.

When undertaking client work in the temporary business visa area our members have a major interface with corporate Australia, acting for small, large and multinational companies across all sectors of the economy, and in metropolitan and regional Australia. In that sense and in the context of this Inquiry, we are representing the views and concerns of our business clients as well as our own members, having continuous and active involvement with temporary business entry to Australia.

Our members assist employer clients and visa applicants in a variety of ways including:

- guidance and advice on employer and visa applicant procedures and eligibility;
- initial and on-going guidance and advice on employer obligations;
- liaison with DIAC on behalf of a wide range of 457 oriented mutual clients;
- preparation of forms, submissions and other relevant documentation for sponsorships, nominations and visa applications
- assistance to employers who have monitoring, reporting and compliance obligations, and issues to resolve with DIAC

This submission is written to the Parliament in MIA's representation role as the professional body, and in no way is a submission provided in MIA's capacity as the professions regulator.

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1 ISSUES

1.1 Employer sponsored temporary residence is very important to Australia and is fundamental to economic development. A declining birth rate and aging population, coupled with a buoyant economy has led to Australia facing the biggest skills-shortage since the 1950's.

1.2 The subclass 457, Business Long-Stay visa has been a highly effective tool in addressing the above issues facing Australian businesses. This programme has assisted Australian economic growth, while maintaining a number of businesses who would have otherwise closed or taken operations off-shore, at a cost to local jobs, local economy and tax revenue from Australian workers.

1.3 During the course of 2006, concern was expressed in several quarters about instances of exploitation of Australia's system of temporary entry for employment. We believe much of what has happened in this regard is related to the activities of overseas recruitment agents, who are unregulated and have acted with impropriety in bringing workers to Australia on 457 Visas.

1.4 Although the number of complaints received has been very low in comparison to the overall benefit that has been afforded by the programme, there has been widespread media attention to these events and this may have caused a loss in the publicly perceived integrity of employer sponsored temporary residence policies and procedures..

1.5 The activities of these unscrupulous overseas recruitment agents are not currently subject to the relevant parts of Australia's Migration Act, while domestic recruitment firms and Registered Migration Agents certainly are, and significantly so.

1.6 It is pleasing that the terms of reference for the Inquiry are providing an opportunity to review the adequacy of eligibility requirements, post arrival activities and areas for improvement for this important program. Thus it allows an opportunity to enhance and refine the current arrangements to better serve bona-fide employers in Australia. This submission seeks to contribute to that process and we have suggested a range of areas where improvements might be made in the body of our submission.

1.7 There has been considerable change in Australia's temporary entry policies in the past decade and it would be fair to say in general terms that an historically stricter approach to temporary entry policy was significantly eased in that decade. DIAC currently grants in the order of 60,000 employer sponsored temporary (457) visas annually. A decade ago, that number was less than 10,000.

1.8 This change of policy was a response to industry demand for skilled staff at a time of increasing global demand for and movement of such staff. Other factors promoting this include increasing specialisation within traditionally recognised

occupations, and rapid technological change. There has been ample evidence of sustained labour market shortages in Australia across a wide range of occupations in recent years. These shortages have received widespread attention across many forums in Australia.

1.9 While there may be some current shortcomings, which we address in this submission, temporary business entry has been vital as a policy instrument in addressing these skill shortages in the short to medium term.

1.10 Further, it is noteworthy that a significant proportion of temporary business entrants go on to change their status to that of permanent resident after arrival in Australia. As such, temporary business entry has been a significant feeder into Australia's migration program currently running at skilled visa grants of around 97,500 out of a total annual migration program of approximately 140,000.

1.11 The major advantage of temporary business entrants choosing to remain in Australia under Australia's migration program is that we have applicants who have become part of the Australian society, made their home here and are in employment.

1.12 Thus, temporary resident policy must be viewed as a vital labour market policy instrument in both the short and long term. The system for sponsoring and bringing to Australia skilled and experienced (product/technology specific) workers and executives must be adequate and efficiently managed.

2 ADEQUACY OF CURRENT ELIGIBILITY REQUIREMENTS

2.1 The MIA considers that the adequacy of the current eligibility requirements is generally acceptable to employers in Australia, and in turn, to many of our members, who act for and represent such employers in their day-to-day dealings with DIAC. There are aspects of the way DIAC administers the temporary residence system for which they should be complimented. There are other aspects that need urgent attention.

2.2 We submit that the progress that has been made with temporary entry policy in recent years has created more complexity and more demands on employers and our members who provide professional assistance and guidance to them. That would have been well and good if processing continued to be speedy and visas granted quickly. That has not been the case however, and current delays with processing for employers seeking to meet these eligibility requirements are causing widespread frustration. These delays appear related to DIAC administrative, systems and staffing issues.

2.3 "Adequacy" is not a fixed, static measure of the success or otherwise of a government programme. There are a number of areas in the eligibility requirements that MIA feels would lift the level of adequacy in serving the needs of Australian industry and community, and simplify the processes in sponsoring and applying for 457 visas. This can be achieved without putting at risk the

integrity of the programme. It needs to be said however that such government programmes can rarely be made "bullet proof" in terms of nil levels of abuse or exploitation without making such a programme impossible to access and utilise for legitimate purposes.

2.4 With the exception of the English proficiency issue discussed below these are important but not major policy/procedural suggestions. The MIA considers it important to leave the current eligibility requirements generally undisturbed and to only implement change at the margins to what is already there. We would certainly not (on behalf of our members' clients), support a retraction or tightening of the current eligibility requirements which are in all practical ways properly serving the needs of Australian employers.

3 NOMENCLATURE

3.1 For some years now the 457 Visa has been known officially as the Temporary Business (Long Stay) visa. Yet the whole purpose of the visa in policy terms is to facilitate the entry to Australia of skilled **employees** from overseas.

3.2 Frankly the current name may not be the most suitable in our view. It misleads the public and employers and people overseas because it uses the word "business" which to everyone implies entry to Australia to "do" business, and not for employment whether by an Australian or overseas headquartered company. There is a short stay business visa (456) available for such business entry. There is a variety of other business visas available for such purposes with completely separate eligibility requirements.

3.3 We recommend the visa be renamed Temporary Employment (Long Stay) visa to remove any uncertainty as to its purpose.

4 SHORT TERM 457 PROBLEM

4.1 The 457 visa has long had an initial validity period of 4 years (maximum), and is able to be rolled over under current eligibility requirements to enable extended temporary stays in Australia for employment purposes.

4.2 There is a continuing problem when employers need to bring someone from overseas into their Australian business for urgent or important short term assignments. An example might be where a private hospital has purchased a new computer controlled and monitored boiler system from Europe, and the engineering company doing the installation and commissioning needs a specialist engineer from an ETA approved country for 2 months. This engineer is critical to the project at that particular point in time.

4.3 Such situations currently require the employer and visa applicant to meet the full eligibility requirements. Later in this submission we discuss processing delays for 457 visa activity and point to serious and increasing delays in that

regard. Current processing time for an electronically lodged package with DIAC Sydney in the above example is 8 weeks.

4.4 Registered Migration Agents acting for employers have no choice but to advise their client that there will have to be a deferral of the commissioning of the new equipment for 8 weeks currently. It is very hard for an employer to accept such a proposition having made perhaps a multi-million dollar capital investment of its shareholder's funds, or perhaps significant interest payments on borrowed funds.

4.5 There is a simple solution to this problem. That is to enable much faster processing for short-term (less than 3 months) 457 applications, removing the requirement for employer sponsorship and nomination. Of course an extension of time beyond 3 months would require a meeting with full sponsorship, nomination and visa eligibility requirements.

4.6 A procedure along these lines did in fact exist before the current 457 arrangements, where a 4 month employer supported visa was granted on the basis of a visa application and a letter from the employer explaining the short term urgent need. These applications were lodged at Australian missions overseas. They were able to be quickly assessed by DIAC staff in terms of bona-fides and policy criteria and a visa quickly granted to enable urgent travel. Employers were well served by those arrangements.

4.7 Those short-term arrangements were collapsed into the current 457 eligibility requirements following the Roach Committee review of Temporary Residence. Fast track processing of urgent short -term employer sponsored 457 visas is not possible under the current arrangements.

4.8 To encounter such processing delays for short-term needs of Australian employers is simply unacceptable in the way businesses operate nowadays.

4.9 It was intended by DIAC that the Business (short stay) 456 visa would suffice for the circumstances described above, however following policy shifts, this visa is now much more aimed at applicants wishing to undertake business activity in Australia and not for employment. The description in DIAC policy guidelines of activities allowed on a 456 visa is vague and specifically discourages direct, full time short term (3 months) employment situations. Policy has diverged from the Migration Regulations in this area.

4.10 This leads to uncertainty as to whether Australian employers and short-term employees from overseas are complying with visa conditions or otherwise. This situation also frequently leads to rejection of an otherwise entirely justifiable and legitimate application for a visa for employment purposes in response to an urgent short term need. As a result there is tendency to seek longer periods of stay even though only 3 months is needed, because processing delays may be the same.

4.11 The 456 Business (Short Stay) Visa and its electronic equivalent the 956 Visa, are quick and relatively easy visas to acquire, especially in those countries for which DIAC electronic visas or applications are available. However, under current policy, it is not intended for people entering Australia solely for direct, short-term, bona-fide employment to meet the urgent needs of Australian employers.

4.12 In MIA's view it is dangerous indeed to tell an employer client that they may bring a foreign worker to Australia on a 456 visa for legitimate employment purposes. Many DIAC officers would hold the view that a 456 visa is not for short-term employment purposes but for business purposes. That would cause a position where there is a breach of a visa condition and such advice would be in breach of the Code of Conduct for Registered Migration Agents. The Code of Conduct is set out in the *Migration Agents Regulations 1998*.

4.13 This anomaly needs immediate attention. It causes frustration and uncertainty among employers, visa holders and registered agents. A simple and practical solution would be to re-introduce a 457 Short Stay (3 month) visa suggested above. This would achieve two outcomes of considerable value to employers and businesses.

4.14 Firstly it would create a distinct more easily understood and complete separation of temporary entry requirements for employment and business.

4.15 Secondly it would remove the current "grey area" in understanding what is "business" and what is "employment". Both types of visas must be capable of being secured quickly and easily for legitimate bona-fide employment and business purposes.

5 ENGLISH LANGUAGE PROFICIENCY

5.1 The main driver behind the introduction of English language proficiency was due to the issue with occupational workplace and safety issues, specifically through the trades, which include abattoir workers. The ACTU put forward that overseas workers with little or no English were putting the safety of Australian employees at risk.

5.2 The second argument that is put forward in relation to English language proficiency aims to ensure that overseas workers can assimilate into the workplace and the Australian community with comfort and ease. This will reduce the isolation often felt by overseas workers in Australia, especially in rural and remote areas.

5.3 While we understand the rationale for the introduction of English language requirements in some areas, the MIA is seriously concerned about suggestions in some places that the standard of English language proficiency be raised for **all** 457 visa applicants. We submit that English language proficiency should not be a mandatory prerequisite for all such applicants as that would seriously stifle the adequacy of the overall temporary resident program.

5.4 There are exemptions for English Language requirements under the Employer Nomination Scheme and we feel that a similar arrangement may benefit the 457 programme. Not to have exemptions would have a negative impact on certain businesses. An example would be where a specialist worker was recruited to pass on skills that could be demonstrated as opposed to verbally explained.

5.5 The MIA would support such exemptions in rural and regional areas where suitable employees could not be located.

5.6 Ethnically based businesses of which restaurants are the most obvious situation of where English language proficiency should be an exemption. Temporary residents (holders of 457 visas) are the lifeblood of much of the ethnic restaurant industry and they, and indeed Australian society, would be much the poorer if English language proficiency at any level were to be introduced as an absolute requirement. Australia's vibrant and diverse ethnic restaurant industry which is such a major aspect of our tourism industry, would suffer greatly. Chinese, Thai and Japanese restaurants for example, are dependent on a constant replenishment of chefs from those countries to regenerate menus and maintain internationally competitive standards of both quality and quantity.

5.7 If Occupational Health and Safety concerns are the reason behind any English language proficiency requirement these could be addressed by requiring a common second language base in the relevant workplace where English is not the main language. For example in a Chinese restaurant kitchen this might be either Mandarin or Cantonese and the employer would be required to provide OH&S training in that language and to ensure that appropriate signs are in both English and Chinese ie adopt a practical approach/solution to address the issue, rather than impose a barrier.

5.8 Such people may not pass a vocational English language test (Higher School Certificate or University Entrance standard) but nevertheless may be excluded should English proficiency standards be raised or made more rigid. This would not be wise given the critical skill shortage coupled with the push for greater migration, and a strong set of polices currently in operation to facilitate greater movement of people to regional Australia

5.9 There may be a case for insisting on some minimal standard of English for the lesser skilled occupations on the current list of acceptable occupations for 457 visa applicants and their sponsors. There is a strong case for a vocational English being insisted on for high skill professional qualifications where professional communications must be at that standard.

5.10 Further, it is well known that applicants for permanent residence whether sponsored by employers or making applications for skilled migrations under the points test arrangements, must meet significant English language proficiency standards, usually at the vocational level.

5.11 The MIA submits that the approach to English language proficiency in our Temporary Resident eligibility requirements must be flexible and must be

administered in a manner that assists sponsoring employers. To not do so will cause a breakdown in the system of enabling temporary entry of much needed skilled labour at a time when we can least afford to do so.

5.12 There is a strong argument that it should be left to the employer to determine what level of English language proficiency is necessary for the tasks to be performed by the 457 visa applicant. Employers have responsibility for OH&S in their workplace and it should be the role of the relevant agencies with responsibility for workplace/industrial issues to enforce compliance – not visa rules.

5.13 The MIA believes that there is a need to avoid needless testing such as IELTS for native speakers ie those who are schooled from primary through secondary to tertiary levels in the English language only.

6 IELTS DELAYS

6.1 Where evidence of English Language proficiency is required under the existing eligibility requirements visa applicants are required to undergo testing with the International English Language Testing System (IELTS). The organisation in Australia responsible for administering IELTS and providing examination facilities cannot cope with the demand placed on visa applicants for both temporary and permanent residence.

6.2 There are long and unacceptable delays between exam dates, crowded exam facilities and frustrating administrative arrangements for people wishing to access IELTS testing opportunities. Similar experiences are occurring in other countries as well. IELTS organisations are simply not geared to cope with the demand. While we do not agree there should be any major change to the existing arrangements on English language, any change that is made should take account of the limited capacity and long delays inherent in the IELTS system. Frankly, the last thing the 457 system needs is further inbuilt delays.

7 LABOUR HIRE COMPANIES AS EMPLOYER SPONSORS

7.1 Some serious concerns have arisen in more recent times about the activities of overseas “labour hire” companies and overseas recruitment agents who are taking a short-term, opportunistic approach to utilising Australia’s 457 temporary residence procedures. We expect this is a concern for government because any tightening of temporary residence eligibility requirements would be unwelcome by Australian employers. It would also be a concern for government that there is little legal recourse in dealing with people and firms outside of Australia who engage in exploitative activities or behave without integrity where Australia’s entry policies are concerned. The MIA would be most concerned if approval to access electronic lodgement facilities and approval to sponsor employees were to be extended to overseas labour hire firms.

7.2 An example of activity coming out of labour hire companies is known as "benching". This involves having a 457 visa holding employee of the labour hire company in Australia "on hold" or "sitting on the bench" with no salary or benefits while they await their next assignment - this may last for several months.

7.3 This comes about because such employees cannot leave their employer without a new approved sponsorship, nomination and visa application with a new employer. Thus, the choice for a "benched" employee with a labour hire company is to stay in Australia with no pay or benefits until a new assignment comes along, or to go back to their home country. There have been instances of serious exploitation of people in such situations along with other activities such as withholding wages, paying subsistence level wages in breach of undertakings, and deducting insufficient PAYG tax instalments from wages.

7.4 The MIA, in consultation with DIAC and the ACTU, has established a pro-bono scheme for our members to assist 457 workers caught up in such exploitative situations. For example, it is often possible for us to help by working towards obtaining an approved sponsorship, nomination and visa application to help such a worker move to a new and more desirable employer.

7.5 Legitimate, Australia based labour hire companies operating with integrity and good service to their clients should not suffer because of the activities of a small number of such operators. A legitimate labour hire business has as much right to operate in the Australian business community as any other type of legitimate recruitment business. The issue here is to deal with exploitative employment activities on the part of a few, without impeding the flow of skilled temporary workers. The current settings for employer obligations in this regard are adequate in the view of the MIA. It is the area of monitoring, reporting and enforcement that action may be available to deal with such matters.

7.6 We feel that the area of monitoring, reporting and enforcement should have more emphasis and greater penalties imposed on employers who deliberately flout current requirements and obligations agreed to under their sponsorships. While we recognise that some businesses may make mistakes, repeat offenders should be dealt with in a way that discourages employers from exploiting workers. This issue is discussed more fully at paragraphs 14 and 15.

8 LABOUR AGREEMENTS

8.1 There is a serious problem with Labour Agreements. We are aware that not a single Labour Agreement has been signed off and approved in the past 9 months from the time of writing this submission. There appears to be "decision paralysis" in DIAC and the Department of Employment and Workplace Relations when it comes to these agreements

8.2 The MIA believes the current arrangements for Labour Agreements would be used to a greater extent if the bureaucratic excesses in trying to achieve such agreements were significantly less. It is very difficult for our members to

recommend to their clients that Labour Agreements should be applied for where they are clearly desirable, if the hurdles to cross in securing same are too high due to the ongoing administration and onerous requirements. We have no doubt Labour Agreements would be more popular with employers if they were easier to secure and easier to report on.

9 COMBINATION OF OCCUPATIONAL CLASSIFICATIONS

9.1 Current eligibility requirements for 457 visa applicants require an occupational classification from the Australian Standard Classification of Occupations (ASCO) for a single occupation. Much has changed in the nature of occupational descriptions in the past decade or two. This has been an inevitable outcome from rapid technological change and diversification of more traditional occupations. There is much more specialisation and it increasingly occurs that to find the correct single occupational classification in ASCO is impossible. ASCO was last updated a decade ago.

9.2 There is a new updated version, which was released in September 2006, known as the Australian and New Zealand Standard Classification of Occupations (ANZSCO) It is clear that reliance on a single ASCO occupational classification (which was promulgated 10 years ago), is out of date, unrealistic and just adds to the existing frustrations for employers trying to access urgently needed temporary staff from overseas. The ANZSCO is not in use by DIAC as yet and all Occupations in Demand listings are still tied to ASCO.

9.3 More recent policy changes in employer sponsored permanent residence (ENS) arrangements enabled presentation of a combination of more than one ASCO classifications to more appropriately describe the nature of the actual occupation and the appropriate skill level. This enables a more genuine and realistic presentation of occupational descriptions for visa purposes even taking into account the fact that much of the detail in ASCO is out of date.

9.4 MIA submits that occupational classification for temporary (457) visa applicants should be operated in a manner identical with that for employer sponsored permanent residence, and that this should be able to be achieved quickly and easily. Such a change would increase flexibility, and would better serve the needs of employers.

9.5 The need for flexibility and understanding concerning occupational description is a most important issue. Combination of occupational descriptions would contribute significantly in reducing “red tape” and delays in the system where job descriptions and functions cross the boundaries of traditionally understood occupations.

9.6 The implementation of the new ANZSCO by DIAC is needed urgently, however the need for occupational combination as discussed above will still be essential to the 457 system working in the best interests of bona-fide employers.

10 WAGE LEVELS

10.1 The MIA accepts that minimum salary levels are required so that sponsored employees can maintain an acceptable lifestyle in Australia, while contributing to the economy in the form of purchases and paying tax to maintain services. It also reduces the risk of exploitation and does not act to the detriment of Australian workers. Feedback from our members indicates general acceptance of the current cash component salary levels and the regional/non-regional variation arrangements.

10.2 While the majority of the feedback was accepting, we have had members indicate that the minimum salary level for certain occupations may be well above what Australian staff are currently paid. Examples of this include Nurses and some trades, who have awards which are substantially below the gazetted minimum salary levels. The issue here is that often an employer will need to increase the salary of the local workers to maintain harmony in relation to equal wages. Local workers may not feel that overseas workers 'deserve' as much as they do, and this may lead to the local worker seeking alternate employment.

10.3 The MIA is not advocating wholesale change but we believe that some additional flexibility is warranted, especially in regional Australia. Additional flexibility should be consistent with current labour market conditions and allow scope for employers and employees to structure the non cash elements of remuneration packages to assist expatriate 457 employees with short to medium term issues such as accommodation, recreation leave travel costs, and regional allowances etc.

11 REGIONAL CERTIFYING BODIES

11.1 Regional Certifying Bodies have been established to determine if regional salary concessions should apply to certain sponsors and occupations. The MIA accepts that a local organisation can be well placed to make such decisions.

11.2 The MIA has heard of some RCBs charging high fees for their services with some RCBs seemingly having conflicts of interest. Any change in this area needs to ensure that there can be no perception that it is possible to "buy a certificate" from a RCB. This role also needs to be resourced for fast turnaround and consistent approach.

12 LABOUR MARKET TESTING

12.1 The current arrangements where local and national labour market testing are not required in terms of employer sponsorship eligibility criteria have proved most valuable to employers. This is especially so in the current buoyant labour market conditions where there are well-known major shortages in many occupations and especially the trades occupations.

12.2 Labour market testing for employer sponsored migration is nowadays only required in a minority of cases. Eligibility requirements for employer sponsored migration are generally and understandably stricter than for temporary residence 457 situations. Legitimate employers are pleased they no longer have to undertake what is often futile and inappropriate vacancy advertising for expatriate staff and we strongly recommend these arrangements remain as they are for the present.

12.3 The MIA believes that in the current economic situation, the skill-based test currently used is much better than the previous reliance on labour market testing. The previous system was excessively bureaucratic, slowed processes and served little purpose beyond enriching newspaper proprietors. The labour market testing requirement could be easily circumvented by unscrupulous employers placing bogus advertisements or claiming to have had no response to apparently legitimate advertisements.

13 TRAINING ARRANGEMENTS

13.1 The MIA believes the current policy settings for employer training arrangements are appropriate and do not need to be tightened. Australian employers experiencing difficulty in competing locally or internationally often have limited training budgets and little room to manoeuvre.

13.2 Yet such employers regularly have the need to recruit skilled temporary resident employees from overseas, and these employees may be vital in enabling their competitive effectiveness. Employers in these situations with limited training budgets may be required by the 457 eligibility requirements to spend more than they have available in their business operating environment.

13.3 There is a need for more flexibility and understanding as to the feasibility of some training requirements placed on employers, and the on going monitoring of those requirements. This is especially so for small and medium sized business as decisions about training requirements tends to fall more heavily on businesses in that size range, and even more so for newer businesses.

EFFECTIVENESS OF POST ARRIVAL ARRANGEMENTS

14 MONITORING

14.1 The MIA considers that a greater monitoring effort by DIAC is an appropriate and necessary means of building integrity, confidence and compliance on the part of employers and visa holders with post arrival obligations. It appears to employer clients of our members and to the community at large that the government's first priority should be to effectively monitor and where necessary take compliance/enforcement action.

14.2 There will be greater understanding and respect for employer and 457 visa holder obligations if there is greater awareness that the "system" is monitored and that those deemed to have engaged in exploitation or other activities which damage the integrity of this important program are brought to account.

14.3 The MIA would argue strongly that it would be inappropriate for there to be a significant tightening of eligibility requirements. That would damage industry's ability to quickly recruit skilled staff from overseas, and would not resolve concerns about integrity and exploitation.

14.4 Abuse at the hands of a few will continue to occur and it is through monitoring and compliance/enforcement action that progress can be made in addressing such matters. In visitor visa policy for example, there has also been a move to electronic visas and ease of access to visit visas accompanied by significant application of DIAC resources to compliance and enforcement where overstayers and those detected working illegally are concerned. We submit that the approach for temporary entry should be consistent with the approach for visit visas, and that means building more resources and effort on the monitoring side.

14.5 Monitoring and compliance activity for any type of visa category is resource intensive and costly. That is a fact of life. Government and the community it represents must understand that to overcome instances of abuse or exploitation in a particular policy area involves a real cost. However there would be a much greater, longer term cost to employers, the economy and ultimately the community should there be a move to tighten eligibility requirements to the extent that labour market bottlenecks are brought upon Australian employers through short term skill shortages.

15 ENFORCEMENT

15.1 The MIA would support policy and/or procedural initiatives, which increase the level of integrity of this important visa program and reduce the risk of exploitation.

15.2 Genuine employers with reputations for being good corporate citizens will have no difficulty with stronger sanctions on employers who behave without integrity or who deliberately exploit 457 visa holders. Such sanctions should be aimed at employers who are clearly in breach of stated requirements, and the nature of sanctions applied need to be appropriate to the breach involved. For example, an employer found to be deliberately in breach of requirements in a sustained way over a long period should incur something more than a $100 fine. On the other hand a sanctions system should be flexible enough to ensure that where an employer new to the 457 visa system was found to be in relatively "innocent" breach, a sanction in the way of mandatory attendance at DIAC office to be counselled on the correct manner in which to utilise the 457 system would be more appropriate.

15.3 The MIA recommends differentiation in sanctions between “exploitive” breaches (eg non payment or payment under the minimum gazetted figure, added work hours without pay) and “administrative” breaches (eg failure to notify DIAC of termination of an employee within 5 days). “Exploitive” breaches should be subject to cancellations, suspension or barring options with ‘administrative” breaches handled by way of fines.

15.4 Information about the available sanctions should be clearly and regularly communicated to employers. We are aware that many of our members who are significantly involved in 457 processing for employer clients assist those clients in understanding the need for compliance with the eligibility requirements and post arrival monitoring obligations.

15.5 Any changes in this area must continue to be sympathetic to the needs of bona-fide Australian employers accessing this visa system to assist in meeting skilled worker needs. There should be a substantial information campaign to alert employers should employer sanctions be increased.

15.6 Recent enforcement action concerning visit visa holders working illegally appears to have raised community and employer awareness of the issue. Current sanctions for employers found to be in breach of their 457 sponsorship and employee obligations are not sufficient in our view in seriously deterring those few who intend to deliberately exploit 457 visa holders.

15.7 Adequate enforcement procedures for employees holding 457 visas are already in place and are similar to, and consistent with, enforcement procedures for visit visa holders.

16 REPORTING

16.1 Reporting requirements should be able to be completed quickly and readily by employers. Many of our members assist their employer clients with preparation and presentation of these reports, and carry out follow up liaison with DIAC on the employer’s behalf. We see several important areas where reporting requirements may be improved and made more realistic.

16.2 Firstly, a new (12 month old) small business employing one 457 visa holder among say 5 employees will not have a business history and available documentation to facilitate reporting to DIAC, compared with a 20 year old business employing 100 people (including six 457 visa holders). The small business will find some aspects of the reporting requirement quite onerous because they simply do not have the results, track record and training arrangements in place compared with an older, larger business.

16.3 For example, it would be quite common and otherwise well understood in Australian commercial life that a small business in its first year of operation may be worried more about survival and short term success than putting employee training programs in place. Nevertheless that 457 visa holder in their company may be critical to its short term viability.

16.4 These small businesses that are an essential part of Australia's economy, and out of which comes the potential for major businesses to develop. As such they deserve more flexibility and understanding in the overall reporting and monitoring process.

16.5 Secondly, there may be a remedy in addressing employer exploitation of 457 visa holding employees in the reporting process. A simple adjustment to the monitoring form, requiring the visa holder to also sign the final monitoring report and in doing so identify themselves, would assist in causing those few employers lacking in integrity to think again before engaging in exploitative behaviour. Such a step may also feed useful information into the monitoring process for this visa program.

16.6 Thirdly, there is no such thing as a "standard" or "normal" business. Every business is intrinsically different with different management styles, structures and modus operandi. There is a natural tendency for businesses to regard their business records as private and confidential and seriously so. It is well known that many business owners do not trust governments with information they may be required to provide. It is also well known that some business information must be carefully guarded in relation to the risk of it falling into the hands of competitors and risking the collapse of an otherwise successful and long established business enterprise.

16.7 In this regard it is of the utmost importance that those DIAC officers dealing with these types of issues be properly trained and sensitive to day-to-day business operating environments and issues. The "sledgehammer" approach of saying a document **must** be provided within 14 days does not sit well, even with business management that is well meaning and wanting to be responsive. For example, Chartered Accountants are commonly at least a year behind in producing their clients' financial statements and returns. Such statements are usually an essential document accompanying an application from an employer to sponsor an employee from overseas.

17 STAFFING RESOURCES

17.1 The MIA recognises that there has been a sharp increase in applications for the Business Long-Stay programme. We also understand that the Department needs to have adequate time to train staff to an acceptable level to process applications. We do not feel that this increase in demand has been adequately resourced despite the application fees involved increasing the amount of revenue collected, nor does it appear that this area is being given adequate priority.

17.2 A more recent development of particular interest, needing urgent attention is the current slowdown in processing times, both for electronically lodged sponsorship, nomination, and visa application packages, and those manually lodged. In the last 2 years we have seen processing times deteriorate significantly. Electronically lodged packages in DIAC Melbourne, Brisbane, Perth and Sydney have gone out on average from 2 weeks processing time to

up to 8 weeks over the past 2 years. Manually lodged packages have gone out from 4 weeks on average to a minimum of 3 months.

17.3 A deterioration of Temporary Resident 457 sponsorship and visa processing times is unacceptable and causing damage to employers who need skills urgently that for labour shortage or product specific reasons are not available locally.

17.4 We understand from our regular liaison with DIAC at state and national level that the delays have been caused variously and collectively over the past 2 years by staff shortages, insufficient training effort and software and information technology problems. Fixing these problems is of vital importance.

17.5 The MIA is concerned at the apparent inconsistency in the allocation of appropriate resources. For example DIAC has spent many millions of dollars overseas to promote Australia as a destination for skilled workers – both permanent and temporary – but resourcing of those who process the applications has not been to the same level.

18 OVERSEAS INTEGRITY CHECKING

18.1 While members understand that there is a requirement for integrity checking of documents, especially where there is a high incidence of fraud, we feel that there are many areas where integrity checking can be improved.

18.2 Applications lodged where 'in-country' integrity checking is required has increased from six weeks, to a minimum of three months and in some cases up to eight months. Member feedback indicate that the resources to undertake this level of checking is inadequate. We have also been informed that the level of integrity checking also has a number of issues, one of which is unanswered telephone calls. If an officer tries to call an overseas employer and has no answer, then this comes back as 'unverifiable'. The overseas post sends the Assessing Officer notification, who in turn sends a 'Natural Justice' letter requesting further proof. This is obtained, sent back to the Assessing Officer, then to the overseas post, where it 'joins the queue' and is not resolved for a further three months.

18.3 We recommend that situations as listed above be accorded 'priority processing' as they have already waited a substantial amount of time. The current approach can lead to a disproportionate impact on an Australian employer simply because a telephone was not answered.

19 ELECTRONIC LODGEMENT ARRANGEMENTS

19.1 This system was introduced some 3 years ago and while it seemed to work well for a short period in its infancy, it has been fraught with problems, delays and downtime overall and there is no sign of this situation improving in the foreseeable future.

19.2 We believe this has arisen because insufficient funds and staff resources have been invested to ensure its success. We cannot understand why it possible for DIAC to introduce highly successful electronic lodgement facilities for visit visas, working holiday visas and citizenship applications. Yetet, where such facilities would be of major benefit to employers who are key players in the Australian economic system, there is a constant litany of outages and faults in the system. Coupled with insufficient training of DIAC staff working in the e-lodgement in 457 processing, it is little wonder the delays occur to which we referred earlier in this submission.

19.3 This is not the fault of the individual staff concerned, or their supervisors. It is more a question of broader decision making and priority setting to apply the right level of resources overall, and how consideration is given to determine priorities in applying funds and resources in the best interests of the community. We submit that the all-important employers who operate businesses employing millions of Australians needing to urgently recruit from overseas are getting a raw deal.

19.4 The “band aid” approach we have seen in trying to repair and resource 457 electronic processing of 457 cases should be ceased. There is no need to conduct yet another review of the electronic lodgement system. It just needs to be fixed and urgently so.

20 CONCLUSION

20.1 The Business Long Stay Visa has been an excellent solution to many issues faced through strong economic growth and skills shortages. Employers have seen the benefit and this is evident in the increased numbers of employers taking advantage of this programme.

20.2 Australia’s temporary resident policies are of vital interest to members of the MIA and their employer clients. Collectively we have a wealth of practical experience in dealing with temporary resident visa applications (including 457) on a day-to-day basis both with our employer clients and with DIAC.

20.3 The various suggestions and recommendations contained in this report are intended as practical achievable means of improving the current eligibility and post arrival requirements without major change. Some suggestions clearly do not come without cost and to some extent a resetting of financial and other investment priorities for DIAC and the Government is needed `to improve service delivery to employers in this vital area.

20.4 We are pleased to have the opportunity to present this submission on behalf of our members. We are concerned to see continued stability with this policy.

20.5 We remain available for further discussions on these matters and would welcome the opportunity to appear before this inquiry if that is helpful.