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BY: MIG

CAIRNS  
CHAMBER  
OF COMMERCE

Level 2, 51 The Esplanade  
PO Box 2336  
Cairns Qld 4870 Australia  
Ph: 07 40311838  
Fax: 07 40310883  
info@cairnschamber.com.au

## Inquiry into eligibility requirements and monitoring, enforcement and reporting arrangement for temporary business visas

### Submission to the Joint Standing Committee on Migration February 2007

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## **1. Background**

### **1.1. Cairns Chamber of Commerce**

The Cairns Chamber of Commerce was formed in 1909 and is the largest Chamber of Commerce in Queensland with 650 businesses as members. The Chamber takes on a wide range of activities including international trade missions, business networking, provision of information, lobbying and an array of support services for its members. Our charter is to support and enhance the business environment and lobby on behalf of our members and the business community of Cairns and Far North Queensland.

To assist the business community of Cairns and Tropical North Queensland, the Chamber took on the role as a Regional Certifying Body, some 10 years ago. Our roles as a Chamber of Commerce and as a Regional Certifying Body provide a unique insight into the needs of the business community in relation to Temporary Business Visas.

In our role as the Regional Certifying Body we do not distinguish between members and non-members but utilise our membership network to confirm information provided to us by members and non-members.

For clarification on any matters please contact:

Mr Sandy Whyte  
Executive Officer  
Cairns Chamber of Commerce  
PO Box 2336, Cairns Qld 4870  
Ph 07 4031 1838 Email: [sandy@cairnshamber.com.au](mailto:sandy@cairnshamber.com.au)

### **1.2. Regional Migration**

Over the past six years we have seen an increase in the use of both the Regional Sponsored Migration Scheme and the 457 program. Tropical North Queensland has predominately micro and small businesses, many are owner operators. There is a great deal of export occurring across many business sectors including education, agriculture, engineering, business services and tourism. Coupled with the high number of international tourists to the region, many employers actively seek employees with international experience and higher levels of cultural awareness and language skills.

The region is currently experiencing high levels of economic and population growth. The City of Cairns is experiencing population growth of 2 – 3 % per annum. The construction and tourism sectors in particular are going through a very strong period of growth. Tourism is a highly competitive global business, as are some of our other export sectors. There is limited scope for high salary levels to attract skilled workers from other parts of Australia, which are also experiencing high levels of growth and skills shortages.

We believe that the skilled migration, and in particular the regional migration programs will continue to provide regional employers with a viable option in this current period of skill shortages.

## 2. Perceptions

### 2.1. Business perceptions

Overall, we believe the Temporary Business (Long Stay) Visa is adequately providing one solution for business in meeting skills shortages. We will refer to this visa as the 457 visa program throughout this submission as the full title is ambiguous and causes confusion for both employers and employees. This confusion is highlighted in the difficulty individuals have in locating information on the Department of Immigration website.

From the point of view of an employer, they are looking for a program that will allow them to overcome their skill shortage by employing staff from overseas. While the program is seen as a temporary solution by the Department of Immigration, employers see this as filling permanent (that is full-time) positions. The wording used by DIAC is not consistent with that used by DEWR or by business in general.

It is difficult to grab the attention of business when promoting this program when the title does little to adequately reflect its purpose.

Recommendation
That the Temporary Business (Long Stay) Visa be rebranded to reflect the requirements of the businesses that utilise the program. We would suggest a title such as "Employment Visa – Temporary Residency". The Regional 457 visa could then be known as the "Regional Employment Visa – Temporary Residency. This would then allow programs such as the Regional Sponsored Migration Scheme also be rebranded as "Regional Employment Visa – Permanent Residency"

### 2.2. Public perceptions

During the past 18 months there has been an increase in negative publicity surrounding the 457 visa. We have endeavoured to present the program in a positive light. We continue to receive positive feedback from employers and employees utilising the program. We are of a strong belief that those found guilty of abusing the program should be punished. However, it must be noted that many employers are not familiar with the program and whilst it is their intention to comply with the requirements, they may inadvertently make mistakes. In our experience, the Department of Immigration has generally dealt with these situations in a fair manner and allowed businesses to rectify their mistakes.

There is a need for real data on the numbers of cases of abuse of the 457 visa program to put it into perspective. It is our belief that only a small number of employers wilfully abuse the system. The public perception however, based on media reports, is that a large number of employers abuse the system.

Recommendation
That DIAC release data on the number of cases of wilful abuse of the 457 visa program.
That DIAC undertakes a media campaign based on business success stories from users of the 457 visa program.

### 3. Eligibility requirements - Temporary Business Visa

#### 3.1. Minimum Salary Level

In 2006 significant changes were made to the Regional waiver for Minimum Salary Level. Staying within an award based assessment process the minimum salary became \$41,850 with the ability to obtain a regional concession to this MSL down to \$37,665, with the conditions of the visa based on when the applicant's visa was approved. Both these changes had an immediate impact on those businesses using the 457 program in the Far North Qld area. Many businesses with staff already on Regional 457 visas had to standardise wages, or increase duties of new visa holders to ensure that existing staff did not feel disadvantaged. We are in fact seeing a 2 tiered wage structure starting to exist with overseas workers being paid more then their Australian counterparts.

The change to the conditions being applied at the point of the applicant's visa being approved had a shorter term impact, primarily on those applicants in the system, or about to be lodged. This condition will again cause problems when the next increase in the Minimum Salary Level occurs. This change generates a considerable amount of additional work for DIAC Staff, RCBs, migration agents and employers. It also places employers in a difficult position of having offered a position and potentially not being able to afford the increased amount.

Based on the figures that DIAC use to calculate the Minimum Salary Level, it is expected this will increase to approximately \$43,500 around March 2007, with the regional variation moving to approximately \$39,150.

There still exists a significant shortfall in the skilled and unskilled labour markets. Employers have resisted the urge to significantly increase wages to attract staff as they firstly can not afford to do so and secondly feel that there are not enough skilled workers available.

A Skills in Demand Survey has just been completed (November 2006) by the Department of Employment & Workplace Relations. A summary of the results survey are shown below.

- o 758 employers were surveyed from 9 industry sectors in Far North Qld.
- o 56% have recruited in the past 12 months with 9% of vacancies remaining unfilled
- o 61% of recruiting companies had difficulty filling vacancies
- o Reason for recruitment difficulty was mainly a lack of skill/training, a tight labour market and the nature of the work not well perceived
- o In the Cairns City area (387 employers) the above figures were similar. On average for employers finding it difficult to fill positions they would receive 2.8 applications per position and then found that only 0.9 of applicants were suitable for the position. In some sectors these numbers were much worse. In the trades area they received 1.6 applications per position with only 0.6 of applicants being consider suitable.

The positions most difficult to fill in Cairns were:

#### Professionals & Associates

- Chefs
- Health Professionals
- Civil Engineers
- Education Professionals
- Business and Information Professionals

#### Tradespersons & Labourers

- Cleaners
- Miscellaneous labourers & related workers
- Electricians
- Motor Mechanics
- Metal Fitters & Machinists

#### Clerical, Sales & Service Workers

- Hospitality Workers
- Sales Assistants
- Intermediate Clerical Workers
- Miscellaneous
- Sheet Metal Tradespersons
- Other Automotive Tradespersons
- Construction Tradesperson
- Intermediate Service Workers

- Survey results suggest continuing demand for staff. 40% of employers surveyed will be employing additional staff in the next 12 months.
- 60% of employers surveyed would employ apprentices or trainees.
- Demand is being caused by continuing employment growth generally, resources sector & cyclone reconstruction
- Available labour supply is regarded as unsuitable or unwilling to work
- Difficulties exist in attracting workers to the region

We believe that the current 457 minimum salary level is adequate for metropolitan locations and positions in the 1 – 4 ASCO levels. We feel that the regional variance of 90% does not adequately reflect wages in most regional locations, particularly in the 5, 6 & 7 ASCO levels. We are also concerned that the next review of the minimum salary level will place the 457 program out of the reach of regional employers.

<b>Recommendation</b>
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Widen the RCB discretion to 75% of the presently gazetted minimum salary level for positions in the 5, 6 & 7 ASCO codes and 80% for positions in the 1 -4 ASCO codes.
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### **3.2. English Testing**

The possible introduction of English language testing is our major concern in this submission. The aim of the 457 Visa program is to allow on a temporary basis, skilled individuals to be employed. The primary concern of the employer is that they have necessary skills to undertake the work required. Any employer who sponsors an employee without the adequate skill level is doing himself a disservice. By the same token an employer sponsoring an employee without the adequate level of English to be able to effectively communicate in the workplace is doing himself a further disservice and could be liable for legal action should any workplace accident occur due to this lack of English.

The risk in these cases sits firmly with the employer, as it does in the case of health related expenses. It is up to the employer to mitigate against this risk. By imposing English language testing it will become increasingly difficult for employers to source staff, become more expensive and possibly may take the program out of the reach of employers.

In a global economy we see staff coming from all corners of the world. Business, particularly small businesses with an export focus may concentrate on a handful of countries and therefore need staff with an understanding of the culture and language from these countries. We believe the introduction of English language testing would make it difficult to source staff from non-English speaking countries.

As an example, a Greek restaurant sponsors a Greek chef. Other staff members also speak Greek and can communicate with the chef quite easily. The chef has little engagement with patrons of the restaurant.

At present there is only one location in Cairns where IELTS test can be administered, Cairns International School. Those applying for a RSMS or any kind of visa requiring tests have to face a waiting list of between two and three months. If testing is introduced for 457 visa applicants the waiting list would be too long. In the case of some offshore applicants they may not be close to an IELTS testing centre. This places an added burden on employers, which is not the purpose of this program.

Those applicants who wish to apply for permanent residency are required to undertake English language testing. We believe that this practice should continue and provides sufficient safeguards in the permanent residency area that are not required in the temporary residency area.

<b>Recommendation</b>
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Option 1 (preferred option): That English language testing not be introduced for the 457 visa program.
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Option 2: That if English language testing is introduced for the 457 program that a regional waiver option be introduced. The Regional Certifying Body would assess if English language testing is required.
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Option 3: That if English language testing is introduced for the 457 program that it is assessed after 2 years of employment and that the level be 4.5, rather than 5.5. Results of the testing would be submitted as part of the monitoring process.
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### **3.3. Description of positions**

As previously mentioned, employers in our region are generally small and micro level businesses. Staff are required to undertake a range of roles. This multi-skilling if you like is not well suited to the ASCO definitions and the limitation in using only one code for a position. We find that some occupations are not covered at all within ASCO and the skill level for positions not adequately reflecting the current situation.

We would suggest that in the case of a position covering different levels of a position that 80 percent of the position must comply with the minimum standards of the 457 or regional 457 requirements. For example a position that consists of an ASCO code 3 for 40% of the time, an ASCO code 4 for 40% of the time and an ASCO code 5 for 20% of the time be considered as being a position at an ASCO 4 level. This would assist in the monitoring process as we would see positions more realistically described and therefore able to be assessed.

<b>Recommendation</b>
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That multiple ASCO codes be permitted to be used along with estimates of the percentage of time each code comprises a position.
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### **3.4. Labour Hire Companies**

As previously mentioned, businesses in our region tend to be small. This often leads to positions that are not of a full-time nature or are only required in the short-term (days or weeks). It is extremely expensive and time consuming for these employers to utilise the 457 visa program to fill this need. However, through the use of a labour hire company they can usually address this shortage. In the current climate, labour hire companies are also experiencing difficulties in securing staff to fill these positions. They are also excluded from using the Regional 457 visa program, even though the positions they seek to fill are eligible positions.

We believe that if a labour hire company meets the requirements of an employer, that is remunerates the employee on a full-time basis they should be permitted to sponsor under the Regional 457 program. We see the current situation that a service station sponsors a mechanic. While this is a full-time position, there may be periods of time when the mechanic is not fully occupied; however the employer is paying them a full time wage/salary.

<b>Recommendation</b>
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That labour hire companies be permitted to sponsor employees under the Regional 457 program, provided they meet their sponsorship obligations, including remunerating the employee on a full-time basis.
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### **3.5. Training**

There is increasing pressure on employers to demonstrate they have undertaken training of staff as part of their application and monitoring process. We find in smaller businesses that training is not well documented and in some cases not necessary as all staff and owners are already proficient in their current roles and limited opportunities for career advancement exist.

For those companies unable to demonstrate adequate levels of training we wish to propose an alternative, that for each sponsored employee, employers make a contribution to a regional training fund, aimed at providing training in the areas where skill shortages exist. The amount of the contribution and the assessment of whether they have provided adequate training is an exercise that will require further consideration. We do not intend to detail this further, but flag it as an area for the inquiry to consider and commission further research into.

<b>Recommendation</b>
That a regional waiver of training be introduced that is assessed by the Regional Certifying Body. If the RCB deems that there is no requirement for training, then a financial contribution be made to a regional training fund by the employer.
That a consideration be given to the formation of a regional training fund, supported by businesses unable to meet training requirements.

## **4. Monitoring - Temporary Business Visa**

Monitoring is greatly resented by the vast majority of Sponsors. They see it as an invasion of their freedom to conduct their businesses as they see fit. The resentment is not related to monitoring the salary levels or superannuation payments. It is related to the imposition of proof of expenditure on 'training'. The vast majority of businesses conduct their own in-house training. Their operations are usually too small to allow for external training. Presently DIAC requires strict proof of in house training, i.e. diary notes or minutes of the actual training undertaken. This is viewed as a burden as most business owners train their staff, in their words, 'continuously'. Initial induction training is given in the course of the first week or weeks of employment. Further training usually occurs immediately after its need arises. For example immediately after an unusual situation (i.e. a shoplifter, a problem customer, a complaint or similar instances) has arisen.

<b>Recommendation</b>
Leave the monitoring program as is; however lessen the burden of proof of training, particularly in-house training.

## **5. Reporting arrangements - Temporary Business Visa**

### **5.1. Business Checklist**

In many cases we see businesses using the 457 program for the first time and not fully understanding their obligations. During the application phase they are focusing on bring in a staff member to fill their vacancy. We would see a valuable tool in reinforcing their obligations would be standardised letter, accompanied with a checklist for them to go through, sign and return to DIAC the first step in the monitoring process.

<b>Recommendation</b>
That a checklist be sent to employers a month after the applicant's visa is approved. The checklist would highlight their obligations and require them to check each area, sign the document and return it to DIAC.

## 6. Procedural Improvements

### 6.1. *Improvement of procedures*

Unlike the e457 process out of Brisbane, Melbourne is falling way behind with decisions being made after months instead of weeks. DIAC needs to spread the work load throughout its offices. Processing out of Brisbane is fast and most of the officers are efficient and helpful.

The introduction of electronic 457 applications and centralization of applications was to expedite processing. There appears to be a lot of reliance upon computer generated pro-forma emails. They may be viewed by DIAC as a tool to expedite applications but the contrary happens. For example: It is the practise of DIAC to send pro-forma emails seeking further documents or clarification. The email is written in such a way that it requires considerable time to sift through and get to the information that is being requested. Sometimes the whole process is a complete waste of time since the information was contained in attached documents in PDF or WORD format (the case officer had simply overlooked them or not opened them at all). Processing would be far more efficient if the case officer were to send a very simple email stating what document or information is missing (after a physical check of the file).

Recommendation
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That a more tailored email response process be adopted for requesting additional information.
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### 6.2. *Acknowledgement of Receipt*

After the scanning and attaching of documents to a sponsorship or visa application DIAC needs to have a process where it acknowledges receipt.

### 6.3. *Definition of salary versus wage*

The 457 visa program documentation uses terms such as "minimum salary level" and "gross annual salary". The amounts associated with these terms are tied to a 38 hour working week. From a business perspective, salary earners do not fit the 38 working week. In most instances they are required to undertake a minimum of 38 hours, but are expected and indeed it is often written into contracts that they are required to undertake additional hours to ensure the work is completed. Wage earners are remunerated for additional hours, some at the same rate of pay, others at a higher, overtime rate.

The use of the term salary does not adequately reflect the type of employment we usually see on 457 applications. Employers also see this annual amount as often including superannuation and other payments. By entering a gross hourly amount, this will lead to less confusion and opportunity for mistakes to be made by employers.

Recommendation
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That the Form 1196 includes the option of entering an annual salary or an hourly rate of pay amount and that future gazettal notices include the annual salary and hourly rate of pay amounts for both the Minimum Salary Level and Regional Minimum Salary Level.
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#### **6.4. Future Review**

Whilst we believe the 457 visa program is adequately providing one solution for business in meeting skills shortages, we also feel that the 457 visa program should be reviewed on a regular basis to keep pace with changes in the labour market, business environment and the expectation of the community as a whole. We have therefore welcomed this enquiry and the opportunity to have input into the review process.

<b>Recommendation</b>
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That a regular review process (possibly every 2 years) be put in place to ensure the 457 visa program remains a useful tool for the business community.
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