

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 22 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(95) Output 1.1: Migration and Temporary Entry

Senator Carr asked:

1. How would you characterise the specifications and advice of the Procedures Advice Manual under which Regional Certifying Bodies operate with respect to 457 visas?
2. Would you say the Manual was prescriptive, or that it allowed these bodies some leeway in making their judgments?
3. For example, how would you view the advice in the Manual that the RCBs were to decide whether, in a case of a particular position with a certain employer applicant, *“the position cannot be reasonably be filled locally”*?
4. What is meant by “the position” here? Here, are we talking of a position that is offered at the going rate and under the usual terms and conditions as similar ones available locally? Or are we talking about essentially a new type of position – a job that’s offered at less, in terms of wages and/or conditions, than the usual ones offered locally? After all, this same section of the manual says only that the job can’t be offered at less than the prevailing legislation and awards.
5. Of course, as we have seen, a different paragraph of your manual says that offering an award salary that is considerably below prevailing local market rates: *“is a factor in assessing whether the position could reasonably be filled locally, if competitive pay rates were being offered.”* What is meant by “is a factor in assessing”?
6. Doesn’t this guideline leave these RCBs without precise direction? Why do they need flexibility on this score?
7. And where the RCBs are in fact Chambers of Commerce or similar bodies, entirely made up of or dominated by private employers, would you agree that it was reasonable to say that these loose and “flexible” prescriptions lay them open to accusations of conflict of interest? Could it reasonably be said that you were placing the people on these Bodies in an invidious position?
8. Has this matter ever been raised with you? By whom and when?
9. And, in the case of local councils acting as RCBs, wouldn’t you say that, due to the size of local government areas and other factors, they may also be placed in an invidious position, if for example one of the largest private employers in the area came to them requesting nomination for some jobs that were being offered for less than the going rate?
10. Do you have any proposals to tighten the procedures prescribed and advised in your manual, in order to avoid these potential problems?

Answer:

1. The Procedures Advice Manual (PAM) provides guidance to DIMA officers on the application of Regulations. Regional Certifying Bodies (RCBs) are not bound by PAM guidelines.
2. The PAM provides policy guidelines for DIMA decision making officers. RCB officers would be aware of the contents of PAM. However, they are not restricted operationally by these guidelines.
3. RCBs use their local knowledge of the labour market in their region to determine whether a position cannot be reasonably filled locally because they are best placed to determine this aspect of the process. RCBs can call on a range of information to form their views on this matter.
4. It is ultimately up to each RCB to decide what factors they use to determine whether a position cannot be filled locally. In determining this, it is possible that an RCB may compare the going rate being offered by local employers for similar positions to the salary being offered by a sponsor to gauge the likelihood of finding someone locally for the position. The reference to awards, and since 1 July 2006 to the new gazetted regional Minimum Salary Level (MSL), reflect the minimum salary that can be paid, which is either the relevant gazetted MSL or the award rate if it is higher than the MSL.
5. Where an employer approaches an RCB to seek certification to fill a position in regional Australia using the regional skill and salary concessions, the RCB should take into account the extent to which the salary being offered may be below local market rates. If the salary being offered is significantly below local market rates, then all other things being equal, the RCB should decline certification. The potential for this arising has been reduced to a large extent because of the introduction from 1 July 2006 of a MSL for regional Australia.
6. With their established regional networks RCBs are best placed to determine local needs with regard to the local labour market and have been Gazetted as representatives of State/Territory governments or State government endorsed organisations for this specific purpose. Introduction of a regional MSL reduces the level of flexibility.
7. RCBs are either an arm of State/Territory governments or have been endorsed by State/Territory governments as being best placed to provide judgement on local business conditions and needs. Other than very recently, no concerns about conflict of interest have been raised by State/Territory governments regarding chambers of commerce. DIMA's experience has largely been that chambers of commerce operate objectively in the best interests of their local regional community. The role of RCBs particularly those that are chambers of commerce are being considered in the forthcoming report to COAG by the Commonwealth/State Working Party on Skilled Migration.
8. We have been unable to locate any record of this being formally raised with the Department other than via recent Parliamentary debates.

9. Local councils have a very good understanding of local circumstances and are well able to weigh up the range of issues involved without being intimidated. From 1 July 2006, regional employers must offer a regional minimum salary, set at 90% of the general MSL.

10. Commencing 1 July 2006, all employers seeking to fill a position under the regional subclass 457 programme have to show that they are offering a salary of at least \$37,665 based on a 38 hour working week. The legislation makes it clear that this must be the base salary and cannot include any packaged items such as accommodation, board, upkeep, superannuation or health care costs. Workers working more than 38 hours per week must be paid for their extra hours in accordance with approved industrial award or Australian fair pay and conditions standards. The role of RCBs, which has been narrowed as a result of introducing a regional MSL, is being considered by the Commonwealth/State Working Party set up by COAG to examine a range of issues relating to subclass 457 visas.