

QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES HEARING: 30 October 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(155) Output 1.1: Migration and Temporary Entry

Senator Ludwig asked:

The *Destiny Queen* is an aquaculture vessel (growing out abalone) moored off the SA coast in the Spencers Gulf. On 21 September 2004, the operator of the *Destiny Queen* made the Australian crew redundant, and replaced them with foreign crew imported under 457 visas.

1. DIMA approved a company SOAE Pty Ltd as a 457 visa sponsor to recruit overseas workers in November 2004. Could DIMA confirm that the employer of seafarers on the *Destiny Queen* is in fact SOAE Pty Ltd, and if it is not, what company or organisation is the employer of seafarers?
2. Is that company operating in Australia as defined in the Migration Act?
3. Could DIMA advise what factors determine that the employer of foreign seafarers on the *Destiny Queen* is an Australian business and not an overseas business?
4. Has DIMA carried out any audit on the SA Regional Certifying Body (SA RCB) to assure DIMA that the SA RCB undertook appropriate checks on:
 - (i) whether the employer ie SOAE Pty Ltd, is lawfully operating a business that is actively engaged in business activities, particularly as this is a foreign owned company and the alleged business activity is being carried out in waters off the SA coast;
 - (ii) that the foreign crew for whom 457 visas were being sought hold the appropriate marine skills and qualifications to operate a vessel to International Maritime Organisation standards;
 - (iii) that the positions for which visas were being sought fall within the list of approved occupations as specified by DIMA;
 - (iv) that the employer had a good training record;
 - (v) market testing to ascertain whether the positions could be filled by Australian employees?
5. If DIMA has not carried out an audit on the SA RCB, on what basis has DIMA reached the conclusion that the advice it received from the SA RCB was sound enough for it to make statutory decisions in accordance with the Migration Act?
6. Can DIMA confirm that the SA Minister for Economic Development, Mr Kevin Foley, asked the Commonwealth, some time in mid 2005, that 457 visas not be issued to foreign seafarers on the basis that the employer had not provided the SA RCB with all appropriate information to enable the SA RCB to make a decision based on all available facts?
 - a. If confirmed, could DIMA advise if the Commonwealth complied with that request?

7. Can DIMA confirm that all the current marine crew on the *Destiny Queen* hold an STCW95 qualification? If they do not hold such a qualification, what qualifications does each crew member hold?

8. Could DIMA advise what analysis or checks were undertaken to satisfy DIMA that the employment of overseas workers in this case provided a benefit to Australia?

a. Could DIMA advise what those benefits are?

9. Could DIMA provide a list of all the positions or occupations advised by the sponsor on its nomination application, which identifies the skill level specified by the employer for each of those positions or occupations?

10. Could DIMA advise on the reasons why it approved the granting of visas to all foreign workers (seafarers on the *Destiny Queen*) when not all the occupations in which they are working are on the Government's list of approved occupations that are eligible to be nominated for entry under a 457 visa?

11. Could DIMA advise how it satisfies itself that the employer is paying the wages due to employees directly to a personal bank account of each of the foreign crew?

12. Could DIMA advise on what basis, and using what facts, it reached the conclusion that the *Destiny Queen* is operating within the Migration Zone as defined in the Migration Act?

Answer:

1. SAOE Pty Ltd was, following certification by the SA Government, approved to sponsor up to 25 Subclass 457 positions. 22 Subclass 457 visas were granted to skilled overseas workers in positions of seafarer, ship's officer and ship's engineer for the period 17/12/2004 to 17/12/2006. For those *Destiny Queen* crew who held Subclass 457 visas, SAOE (Aust) Pty Ltd is shown as the employer. At the time of approval of the Subclass 457 sponsorship it was understood that the *Destiny Queen* sometimes entered proclaimed ports, which are part of the migration zone.

Advice now is that only tender vessels associated with the *Destiny Queen* bring crew into the migration zone periodically. It should be noted that the tender vessels are small boats that do not require land assistance for mooring or unmooring, so no local labour is required. Since the expiry of the sponsorship under Subclass 457, the Subclass 456 Business (Short Stay) visa has been determined to be a more suitable visa as foreign crew do not work whilst in port but are transiting to and from the ship.

Subclass 456 visa holders, while in the Migration Zone, can work only in very limited circumstances such as emergency, short-term and highly specialised tasks. The migration agent acting on behalf of the company has advised that the crew holding Subclass 456 visas are complying with these conditions. DIAC has strongly counselled the migration agent and the DIAC Hong Kong post will counsel the business owner/employer to reinforce the conditions of the Subclass 456 visa. The case continues to be monitored closely and if there is evidence of the Subclass 456 visa holders undertaking work within the migration zone, then the visas will be subject to cancellation.

The more recent crew members, holding Subclass 456 Business (Short Stay) visas, are employed by Destiny Shipping (Hong Kong).—

2. SAOE Pty Ltd is a company operating in Australia. Destiny Shipping (Hong Kong) is not operating in Australia.

3. To use the Subclass 457 programme, a business must be actively and lawfully operating in Australia. To determine whether a business is lawfully operating as an Australian Business or Overseas Business, the Department looks at the business registration and/or company status. SAOE Pty Ltd has been registered by the Australian Securities and Investment Commission (ASIC) as a proprietary company, with an Australian Company Number (ACN). They are also registered with the Australian Tax Office (ATO) and have been issued an Australian Business Number (ABN). This indicates they are an Australian business for sponsoring purposes.

4. The Department has not sought to audit the operations of the South Australian Government, which is the only Regional Certifying Body operating in South Australia.

5. Regional Certifying Bodies (RCBs) are involved in the regional Subclass 457 immigration process as they can bring specialist local knowledge in reaching their decisions. The Department places substantial weight on the judgement of RCBs. There was no information available to DIAC at time of sponsorship approval to question the decision made by the SA Government. The South Australian Department of Primary Industries and Resources granted the *Destiny Queen* its aquaculture licence.

6. The Department did receive a letter from Deputy Premier Mr Foley dated 27 June 2005. The approval of Subclass 457 sponsorship and nominations for SAOE Pty Ltd was lawfully made based on certification by the SA government. Once certified, there is no provision to subsequently revoke, cancel or re-visit the nomination decisions during the life of the sponsorship. The sponsorship can only be cancelled if there is evidence that sponsorship undertakings have been breached.

7. For Subclass 457 visa holders, copies of seafarer travel documents (Seaman's passport) were provided with individual applications and these were accepted by DIAC as meeting crew skill requirements. The seaman's passport includes a listing of vessels worked on, evidencing work history, courses attended, qualifications attained & international classification rating. In regard to the Master, Engineer and other officers additional certificates evidencing classification and courses completed were received.

8. Certification of the Subclass 457 sponsorship by the SA Government required them to be satisfied, inter alia, that "a position cannot reasonably be filled locally". In addition, DIAC was advised that the venture would provide the introduction of new or improved technology, through the changed fit-out and 'Ocean Growing System' (OGS) defined on the Destiny Abalone Group website as the production of abalone with superior growth and reduced mortalities, as well as the creation and maintenance of employment through the purchases made from the established local abalone farms.

9. There was a range of qualifications listed in the Subclass 457 nomination depending on the role of the nominee e.g. Master's Certificate (Second Mate), Certificated Second Engineer, Certificated Third Engineer, Certificated Class 1 Engineer, Certificated Class 1

Chief Engineer, Deck Seaman (Seaman's book, certificates), Seafarer/Production Crew (Seaman's book, certificates), Cook/Steward (Seaman's book), Bosun, Bosun's Licence, Ships Mate, Deck Officer Class 3.

10. The occupations of the persons granted Subclass 457 visas were eligible under regional certification. Refer to Question 1 for the occupations of the persons granted Subclass 457 visas.

11. As part of the normal monitoring process, DIAC can be satisfied that an employer is paying wages into a personal bank account by seeking evidence of pay slips that are provided to the employees. Pay schedules were sought in December 2004 and June 2005. These were received from the migration agent acting on behalf of the Sponsor on 26 July 2005, in the form of foreign crew payment schedules, for the months of December 2004 and June 2005.

12. The *Destiny Queen* operates outside of the migration zone in 'territory' waters. The Migration Zone is defined in the Migration Act as the land that is part of a State or Territory at mean low water; and sea within the limits of both a State or a Territory and a proclaimed port; and piers, or similar structures, any part of which is connected to such land or to ground under such sea; but does not include sea within the limits of a State or a Territory but not in a proclaimed port. DIAC is in contact with Adelaide Port Authorities, so that we can be alerted if the *Destiny Queen* comes into port and therefore into the Migration Zone.