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AUSTRALIA

Tourism & Transport Forum

## TTF AUSTRALIA & INFRASTRUCTURE PARTNERSHIPS AUSTRALIA

Supplementary Commentary to Original Submission previously submitted to the Joint Standing Committee on Migration Inquiry into Temporary Business Visas on 5 February 2007

26<sup>th</sup> February 2007

### Introduction

Following our submission in early February, it has been possible for TTF Australia (Tourism and Transport Forum) and Infrastructure Partnerships Australia (IPA) to meet with a number of Members who have significant expertise in the area of "temporary and permanent entry requirements as it relates to skilled labour shortages". Some of these Members have over 18 years experience working in partnership with Australian leading migration service providers.

TTF and IPA believe it would be of benefit to the Committee to receive the views and recommendations of these Members to consider as part of the Inquiry evaluation.

### General overview and limitations of the "457" Visa

The Temporary business (Long Stay) 457 Visa has been in place for approximately 10 years, following the release of a report titled Business Temporary Entry – Future Directions, in 1995. Many of its recommendations were implemented in 1996. The report was consciously radical in trying to help to invigorate the economy and the Committee responsible for the report recognised that its proposals constituted a "wide ranging and substantial shift in policy direction and process".

Whilst the visa conditions have not altered, albeit for changes in the DEWR "Skills" list, industry conditions in Australia have. There have been indicators that the system is not as effective now as it could be. For almost ten years visa processing was relatively speedy and Australian policy was internationally competitive. This was consistent with the Roach Committee recommendations dating back to 1996. From our Members' views (and consistent with responses from TTF Australia's previous survey), this is no longer the case. Specifically:

- The policy is being challenged by those of other countries;
- Processing and legal requirements are likely to become more complicated; and
- Processing delays are now the norm.

During 2006, criticisms of abuses related to subclass 457 Visas attracted considerable media attention and a number of stories featured in the print and electronic media. The allegations of irregularities by sponsoring businesses and assignees regarding 457 visas appear to relate primarily to the manufacturing, building, and hospitality industries.

The level of criticism has thrown a blanket of unfavourable comment upon businesses that, in our experience, have been making every effort to comply with existing law. In the face of criticism, the Department of Immigration and Citizenship (DIAC) has tried hard to identify weaknesses in existing systems to prevent abuses and blunt attacks of the government.

Key concerns for major companies in Australia currently include:

- There is no migratory recourse for "semi-skilled"<sup>1</sup> labour.
- There is no migratory recourse for "base-line"<sup>2</sup> labour.
- Countries around the world are suffering from labour shortages e.g. the USA will be short of 10 million workers by 2015; hence competition for migratory labour is becoming increasingly competitive.
- Some "developing" countries are targeting Australia as emerging markets for their labour supply e.g. the Philippines.
- The USA has introduced a Visa E3 category under the Free Trade Agreement, but Australia did not insist on a reciprocal labour trade agreement allowing free trade of USA citizens/green card holders to Australia.
- The current scheme is outdated for 21st century business labour-supply reality.

#### Changes to the existing scheme

The pressures being experienced by businesses that employ foreign nationals suggests to TTF Australia that too much is being asked of the subclass 457 visa. Where a temporary resident needs to enter Australia on assignment, in almost all cases it is the one visa option available, regardless of their background or potential risk to the labour market. This visa category therefore aims to meet the needs of senior executives of multi national organisations, as well as for people who recently finished an apprenticeship in a trade.

The emphasis of recent policy changes has been to target problems in areas of the market where:

- the occupations are trades-related or at lower skill levels;
- where OH&S issues are important; and/or
- where the scope for employer misfeasance is considered high.

At least two alternative options exist to combat problems. The first is to have separate sets of rules for employment categories. This means that one visa category or set of criteria could exist for people from certain "higher" Australian Standard Classification of Occupations (ASCO) and another category or set of criteria for "lower" ASCO codes. In this way, the occupations that have attracted the greatest media attention and compliance activity could be asked to fit into the criteria the current proposals would seek to impose.

The second option would be to allow slightly streamlined rules for intra-company transfers, where the employee has been with the one employer (or its off-shore affiliate or parent) for at least 12 months. The USA has such a system. The screening of the business at the time of sponsorship would be used to identify if the employer was of

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<sup>1</sup> Definition of "semi-skilled" as applied by TTF and IPA is "a person who can work without day-to-day supervision".

<sup>2</sup> Definition of "base-line" as applied by TTF and IPA is "a person who needs constant supervision".

sufficient standing to allow the streamlined processing that this separate stream could offer. Both suggestions could be implemented.

Further, private companies could be willing to undertake some form of "election" and "audit" process to become "employers of choice" for the Temporary Business Visa scheme. This would enable a company, with assistance from an immigration agent registered with the Migration Agents Registration Authority, to receive an annual quota of visas which they would apply themselves.

These "visa-providing" organisations would potentially arrange for professionals to work for their companies direct, but utilise immigration agents to continue to source trade positions. They could be subject to annual audit by the government to ensure they were following all procedures.

This amendment would enable the government to focus on setting the policy agenda and the private sector to manage the administration of the schemes (processing migrants to work in Australia).

This suggested change to administration of the scheme would allow for improved processing for individual applicants (within approved government framework); motivating companies who require visa-holders to be in the country and working immediately to action applications quickly.

#### New Business Visa Classes

There are situations where businesses will require specialists to enter Australia for a short-term to undertake work and return to their own country. The period of visit may be less than 3 months. Increasingly the tendency of the Department under existing policy would be to state that any work would require the use of a 457 visa. This can present a major problem where the workers may be contractors or employed by off-shore entities, and who could thus not become employees of the Australian entity, as required under 457 rules.

This issue was touched upon in Business Entry in a Global Economy, which was a report by the Business Advisory Panel appointed by Mr Ruddock, who was the responsible Minister at the time. The report was published in 1999. It recommended a visa that allowed for a six month period of stay and allowed work be introduced. The visa would be available for "key" personnel only and would involve a number of checks.

On the other hand the visa processing period would be streamlined and facilitate movement. In this way it would be possible to clarify the use of the business visitor visa (in its different forms) and also ensure that the use of the 457 Visa was in order. TTF and IPA strongly recommend that this option be revisited.

Currently, the only option for "semi-skilled" and "base-line" workers to apply for entry into Australia is via the family migration system. TTF and IPA appreciate that historically unions and other organisations may have been nervous that encouraging migration from "semi-skilled" and "base-line" migrants could effect jobs for Australians and reduce salaries. However, Australia is now facing a growing shortage of labour in many industries and without filling gaps, inflationary pressures from wage increases may arise.

In addition, and in-line with TTF and IPA's opening statement, the current visa scheme is outdated. Utilising a "classification list" which must be prepared by a government department is overly structured for the 21<sup>st</sup> century labour migration market.

There are a number of concepts which could be introduced to assist in reducing the current cumbersome list process, whilst maintaining the security of Australian residents' positions. These include:

- Job shortages could be classified by state or region
- Job shortages could be classified by award occupation e.g. rigger, fitter etc. (TTF and IPA acknowledge that long term this may not be effective, as awards are phased out with new IR changes]
- Migratory scheme options would only become available once an organisation could satisfactorily prove that significant advertising for role(s) had failed to secure an Australian resident for the position

#### Minimum Salary arrangements

The current structure for business visa salaries requires review.

Currently, Australian employers must provide 9% superannuation to temporary visa-holders as part of an individual's employment conditions. However, unlike Australian residents, if the temporary visa-holder chooses to leave the country, they may apply for their superannuation to be paid out to them (whilst Australians must wait until on average, 65 years of age). Some form of transitional arrangement must be considered.

In addition, employers must pay for temporary visa-holders medical expenses incurred through the public health system, whereas Australian residents must contribute to the Medicare levy via the taxation system.

Packaging of salaries is more appropriate for many temporary business visa holders; their net disposal income is, in many cases, sent back to their home country. It has been acknowledged that in many instances, this net disposal income allows the temporary visa-holder an opportunity to retire significantly faster than an Australian resident. Therefore, consideration should be given to a "packaging arrangement" when preparing the Minimum Salary Levels Schedule to the Act; rather than the current approach of "wage minimum plus all other package as add-ons" in regard to base-prescribed wage rates.

#### Conclusion

TTF and IPA make the following recommendations, on behalf of our Members, from our comments above.

1. Material change, not merely a review, is needed for a business visa migration scheme which has been in place for 10+ years.
2. There are currently no adequate visa arrangements to fill the existing "semi-skilled" and "base-line" skills shortages, such arrangements should be introduced.
3. Time and efficiency of processing should be improved by introducing "employers of choice".
4. The onus of managing the procedure and identifying skill shortages should be placed back on to the employer.
5. Acknowledge that transfers between class 456 and class 457 are occurring; simplify the mechanism that allows this to occur.

6. Consider scrapping the "occupations" list and instead, utilise proof of advertising for specific positions as criteria for applying for visas. Alternatively, retain the skilled occupations list, but give companies the ability to test the local labour market for unskilled labour needs and if unsuccessful utilise the 457 or other new visa class provisions.
7. Maintain the quota system on any new visa scheme which may be considered.
8. Re-evaluate the minimum salary costs provisions, giving consideration to a "packaging" arrangement.

TTF and IPA are willing to assist the Committee during its deliberations of the Inquiry and would be pleased to present in person, together with a representative(s) from our Membership, to further elaborate the arguments outlined in this submission.

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