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January 16, 2006

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Re: Inquiry into the provisions of the Australian Citizenship Bill 2005 and the Australian Citizenship (Transitionals and Consequentials) Bill 2005

Dear Sir/Madam

Our firm specialises in assisting businesses with their immigration requirements and we form part of Fragomen Global, the world's largest firm specialising in immigration services. Our firm employs about 1,000 staff in 25 offices in 10 countries, and we represent around 60% of the Fortune 500 global firms.

In Australia, we have offices in Sydney, Melbourne, Brisbane and Perth. In total we have around 70 members of staff of whom some 30 would be registered migration agents. I mention these figures to emphasise that we deal with a broad range of large and smaller businesses that have staff undertaking assignments in Australia. The following comments are thus based on our experience in dealing with businesses and their assignees and to offer a means to encourage highly skilled people to aim to remain in Australia.

The committee would be aware that each year roughly 50,000 people enter Australia on Temporary Business Entry (Long Stay) subclass 457 visas. The population of these assignees exceeds 60,000 in Australia. In some cases these people are sponsored to remain permanently in Australia through the Employer Nomination Scheme (ENS). This visa category is most commonly used by employers to enable their staff to remain permanently.

With changes introduced in April 2005, it is likely that most assignees seeking to become Australian permanent residents will be obliged to remain in the country for two years before their employer nominates them to remain permanently. We believe that this requirement was introduced to ensure that people sponsored to remain permanently have

a demonstrated capacity to work and live in this economy and pose little or no settlement risk.

It is also the case that in announcements made over the last several months, the government sees the role of business as being vital in increasing the skilled immigration component of the annual immigration intake. This is at a time when there are criticisms that the General Skilled Migration stream of immigration is not working very well because studies indicate that immigrants are not finding employment matching their skills and experience. The value of the ENS is that is ensures a good outcome for the assignee and the economy.

Concerns about immigration intake are occurring in a general context of concern about the sources of skilled immigrants and international competition for skills. There is a commonly held view that skills shortages across various industries and occupations will continue both because of international demands for those skills and also because of ageing populations in various countries, which is restricting the numbers of graduates entering the labour market.

If projections about competition for jobs are correct, it will remain in Australia's interest to remain competitive in attracting people with the right skills and experience, and encouraging the desire to remain in and/or return to Australia. In our view the existing temporary entry policies governing movement to Australia are internationally competitive and sensibly aim to balance the economy's demands for skills with the need to ensure local business recruits and develops existing Australian residents.

A feature of the Citizenship Bill is the introduction of the three-year residential requirement as a criterion to qualify for citizenship (cf. Clause 22). Based on discussions with a number of senior staff in corporations, we believe that this change could result in a smaller uptake of citizenship. The reason is that by the time some executives and highly qualified technical staff satisfy the residential requirement or approach satisfying the residential requirement, their employer may require them to travel to another country for a period of time. To date, the acquisition of Australian citizenship by a number of these people has encouraged them to return to Australia, despite the fact they would have taken additional assignments outside the country.

It has been our experience that in the past, some executives will have come to Australia and decided that they would like to remain permanently in Australia or at least to regard it as their long-term ambition to remain here. They would then go through the ENS process to become permanent residents, after which they would qualify for citizenship, after meeting the two-year residential period. This would normally involve at least three to four years of living in Australia.

The new ENS rules and the projected citizenship criteria would mean that in most cases it would be necessary for a person to remain in Australia for at least five to six years. We believe that this would effectively discourage some people from actively deciding to plan to qualify for Australian citizenship because the time frame would be too great.

By applying for a permanent resident visa, the committee should also note that some applicants forego tax benefits if they are recipients of Living Away From Home Allowance entitlements. It is possible that if people see qualification for citizenship as being too remote, it may be less desirable to qualify for permanent resident status and thus forego any tax benefits.

The increased residential period is designed to strengthen the integrity of the citizenship process by enabling more time for new arrivals to become familiar with the Australian way of life and the values which they will need to commit to as Australian citizens; and the identification of people who may represent a security risk to Australia (cf. Explanatory Memorandum). Our contention is that people resident in Australia on assignments have already satisfied this policy intention.

We have no way of quantifying the number of assignees sponsored by business who may choose not to aim for citizenship as a result of the new provisions, but we suggest there will be some impact. A solution would be possible if periods of residence on a temporary resident visa could be counted towards satisfying the residential component of citizenship, to a maximum of twelve months, along the lines made possible in Clause 22, subsection 7.

The current Bill allows some concessions where people may have resided in Australia as a temporary resident, if there has been a benefit to Australia. Under the existing application of concessionary provisions of the Citizenship Act, concessions based on "benefit to Australia" are normally interpreted narrowly, commonly based on the activities of the applicant directly benefiting the Commonwealth. Our recommendation modifies that approach. We would argue that the concession should encourage assignees on temporary visas already in Australia to making a commitment to remaining here, first by applying for a permanent visa and ultimately to qualify for Australian citizenship. To give effect to this, all assignees who have resided here for a period of time, eg 2 years, could be granted a concession whereby at least one year as a temporary resident could be counted towards the three year residential component, to qualify for Australian citizenship.

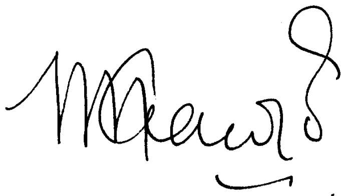
These people would have demonstrated their capacity to be economic contributors and their profile, we would argue, would indicate that they pose little or no threat against public interest criteria. Associated criteria could be based on the extent of their connection to Australia and its level of benefit to Australia. Similar criteria exist for applicants for a Resident Return Visa.

In our experience, people who forego the LAFHA benefits to become residents and aim to become citizens do have a long-term commitment to Australia. It is also true that many are obliged to travel to other countries for employment and that they may be out of Australia for some time, sometimes for years. But we also know that many of these people return and in our experience are financially well established and genuinely committed to our country. The globally mobile business specialist and executive, is a growing phenomenon and Australia is competing with an increasing number of countries to attract, retain or entice back these people. This small amendment to the Bill will, in our view, improve our attractiveness to this desirable market.

We recognise that such a concession could be construed as giving a benefit to "wealthy people" or those employed by "the big end of town." We see no diminution in the value of citizenship by introducing this concession and it will encourage highly skilled people to regard Australia as their base. We contend that this will play an additional role in attracting people to remain or to return to Australia in the years ahead.

In our view, to give effect to the change we are supporting, it would be necessary to amend the Bill, probably by broadening the scope of Clause 22 subsection 7. If the committee is interested in pursuing this issue further we would be available to offer further comment.

Yours faithfully



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