Queensland Government submission: Migration Amendment (Sponsorship Obligations) Bill 2007

Discussion

The Temporary (Long Stay) Visa subclass 457 scheme introduced in 1996 to address emerging skill shortages has been a useful mechanism for Australian employers to address local skills shortages, particularly in regional Australia and key occupational groups.

The effectiveness, fairness and integrity of the 457 visa scheme is a matter in which Queensland has a significant interest but no legislative or investigative responsibilities. These responsibilities reside solely with the Commonwealth through the Department of Immigration and Citizenship which oversights the entry of non-Australian citizens into Australia through a range of permanent and temporary mechanisms.

The Queensland Government has regularly raised concerns regarding weaknesses of the subclass 457 program. These were of sufficient concern that in July 2006 the Council of Australian Governments (COAG) asked the Ministerial Council on Immigration and Multicultural Affairs (MCIMA) to identify and implement cooperative measures to ensure the effectiveness, fairness and integrity of the temporary skilled migration arrangements, including appropriate and consistent minimum standards. MCIMA subsequently established a working party comprising representatives from the Commonwealth, the States and the Territories (the working party) to strengthen the subclass 457 visa system.

The Queensland Government is participating cooperatively with the working party and is keen for the work of this group to be completed and reported back to MCIMA and COAG.

The proposed *Migration Amendment (Employer Sponsorship) Bill 2007* cuts across the work of the working party and the Queensland Government is concerned that the Bill will in effect subvert the process established by COAG and MCIMA. State governments sponsor a significant number of skilled workers on subclass 457 visas and, in some cases, are the sole regional certifying body. Consequently, the Commonwealth Government should commit to participating in good faith in the collaborative process established by MCIMA, and requested by COAG.

The work of the MCIMA working party on skilled migration is yet to reach its conclusion, and despite recent amendments to the subclass 457 visa program, the effectiveness, fairness and integrity of this program remains an ongoing concern for the Queensland Government.

Outlined below are the Queensland Government's concerns with the proposed *Migration Amendment (Employer Sponsorship) Bill 2007.*

Overview of the changes

The key proposed changes to the *Migration Act 1958* proposed in the *Migration Amendment (Sponsorship Obligations) Bill 2007* include:

- the creation of a distinction between 'obligations' and 'undertakings'. Obligations are enforced by the *Migration Act 1958* or the associated regulations, whereas undertakings are only listed in the associated regulations and do not carry civil penalties;
- a list of eight new obligations, with additional obligations to be made by regulation;
- new investigative powers to be carried out by specially trained inspectors to monitor the compliance of sponsors with their sponsorship obligations;
- the introduction of civil penalties for breaches of sponsorship obligations;
- provision for the supply of personal information (on both sponsored employees and business sponsors) to either party or the Commonwealth or State/Territory governments.

The eight sponsorship obligations set out in the Bill are:

1. payment of a minimum salary;
2. employment at the skill level applied for (or higher);
3. covering the cost of travel for the sponsored person and his/her family for travel back to the sponsored person's home country;
4. covering the cost of prescribed medical costs for the sponsored person and their family (this may involve the employer taking out insurance on their behalf);
5. paying the cost of locating, detaining and removing sponsored persons – up to a maximum prescribed amount;
6. paying the cost of other fees including licences, registration, membership, recruitment and migration agents;
7. keeping adequate records of compliance with the obligations; and
8. provision of information when requested.

Queensland Government concerns

Obligation to pay at least minimum salary level

Section 140IC(2) of the Bill gives the Minister very broad scope to specify different minimum salary levels (MSLs) for different groups of workers or different industries or geographical areas. This will lead to intense lobbying from all categories of employer who want to use 457 visas and want a low MSL to apply. These provisions:

(a) are inconsistent with what was understood to be a shared assumption between the Commonwealth, the States and the Territories that the MSL would be set according to a transparent formula and deliberative process with stakeholders and not by Ministerial decree;

(b) are inconsistent with what was understood to be a shared assumption that there would be a single, regional MSL set at 90 per cent of the MSL (the Bill does not require the Minister to set a single, regional MSL);

(c) do not require the MSL to be indexed annually according to average weekly ordinary time earnings, as recommended by the Working Party; and

(d) do not require sponsored persons to be paid the MSL or the amount in the relevant industrial instrument, whichever is the higher. If the MSL can be set below the amount in the relevant industrial instrument, it paves the way for

457 visa workers to be used to undermine negotiated award and agreement terms.

Obligation to pay certain other fees and costs

The Queensland Government notes that section 140IG of the Bill outlines the proposed obligations on sponsoring employers to meet the costs of other fees including mandatory registration and licensing, membership, recruitment and migration agents.

While the costs associated with migration agents and recruitment agents have been the subject of ongoing discussion by the working party on skilled migration, the Federal Minister for Immigration and Citizenship unilaterally decided to include an obligation for sponsoring employers to meet the mandatory registration and licensing and membership costs in the draft recommendations on the working party. This inclusion is now reflected in the Bill.

The Queensland Government understands that it is common practice for visa holders to be responsible for the payment of mandatory registration, licensing and membership fees. In some cases the payment of these fees can be negotiated between the sponsoring employer and the visa holder. Consequently, the Queensland Government recommends the removal of this obligation from the Bill.

Obligation to pay costs of locating, detaining and removing etc. sponsored person

Section 140IL of the Bill places an obligation on sponsoring employers to pay the costs of locating, detaining and removing the holder of a subclass 457 visa in the event the holder absconds.

With responsibility for immigration matters residing solely with the Commonwealth, it is the Commonwealth's responsibility to perform the relevant checks prior to a visa holder being granted temporary visa status and if required, to detain and remove any person found in breach of visa conditions. These costs should not be shifted from the Commonwealth Government onto sponsoring employers. This obligation will adversely impact on the willingness of employers, particularly small to medium-sized enterprises to utilise the subclass 457 visa program to address local skills shortages.

The Queensland Government recommends this obligation be removed from the Bill.

Information exchange

The increasing numbers of 457 visa holders and their families, especially those who have low English proficiency, have created additional demand for general services including education, health and housing, and have impacted on community relations particularly in some regional areas that have little cultural diversity.

The Queensland Government considers the confidential provision to jurisdictions by the Commonwealth Government of the names and locations of employers accessing subclass 457 visas and labour agreements is essential for the planning of State delivered services and infrastructure.

The Bill allows regulations to be made to enable sharing of information between the Commonwealth and the States and Territories. The Queensland Government supports these aspects of the Bill as the Commonwealth has previously been non-

committal in relation to information sharing with the States. It is hoped that regulations will be made to ensure information sharing occurs.

Other comments on the Bill

- *Clause 48 – Effects of amendments on undertakings made before commencement*: This clause of the Bill appears to waive any requirement that existing sponsors comply with their existing sponsorship undertakings. Section 48 essentially provides that any undertakings made by sponsors prior to the commencement of the Bill are not enforceable after the Bill commences. The existing sponsorship undertakings are listed Reg.1.20CB of the Migration Regulations 1994. They cover a wide range of issues that are not covered in the Bill, including:

  b. not to employ a person who would be in breach of the immigration laws as a result of being employed;

  c. to notify Immigration of any change in circumstances that may affect the business' capacity to honour its undertakings;

  d. to notify Immigration within five working days after a sponsored person ceases to be in the applicant's employment.

- *Extent of regulation* - It is noted that the Bill allows for regulation-making in many key areas. Consequently the detail of what is being proposed in the Bill is not known at this stage. The Queensland Government would welcome an opportunity to be involved in the development of the regulations to support the Bill.