

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS



ISSUE | **WORKER PROTECTION BILL 2008**

QUESTIONS TAKEN ON NOTICE BY THE ACEA | **31 OCTOBER 2008**

Question 1. Are any of the ACEA's previous recommendations (from the ACEA submission to the Business (Long Stay) Subclass 457 and Related Temporary Visa Reforms July 2008 Discussion Paper) included in the Worker Protection Bill 2008?

The ACEA believes that in their current form, sponsorship obligations are too onerous for employers. The cost and time it takes to manage 457 visa holders in comparison to other employees is a burden on Australian Consulting firms. For example we view that having to pay health care costs, public school fees (in some Australian States), and the potential for having to pay location, detention and deportation costs should the 457 visa holder abscond is not an appropriate level of burden on employers.

The new legislation does not outline sponsorship obligations specifically, rather alludes to examples of the kinds of sponsorship obligations that might be prescribed by the regulations. Due to the absence of prescribed regulations it is unclear as to whether the Department of Immigration and Citizenship (the Department) has considered recommendations the ACEA submitted within our recent Submission to the Department on the Business (Long Stay) Subclass 457 and Related Temporary Visa Reforms July 2008 (Attachment 2 in ACEA's Submission to the Senate Legal and Legal Constitutional Committee).

The ACEA view that the Worker Protection Bill 2008 (The Bill) may in fact be proposing a framework for more onerous sponsorship obligations to be inserted. This is concerning to the ACEA and we contend that the regulations should in fact be released along with the Bill. This will allow more comprehensive industry consultation as the regulations could be read and understood in conjunction with the Bill.

One of the ACEA's opening remarks in our submission to the Senate Legal and Constitutional Affairs Committee stated that many breaches that occur involving 457 visa holders are in fact Industrial Relations breaches and should be dealt with through the appropriate mechanisms. For example we notice that in Section 140ZJ - Unclaimed money, the Bill outlines that the Department will hold funds that the employer may have needed to pay to the 457 visa holder. The employer should not be required to provide funds to the Commonwealth if they are unable to locate the 457 visa holder. If the temporary visa holder absconds, and returns some time later requesting funds they believe are owed to them, this is a matter for the Court system; we do not believe this falls within the scope of the Department.

Question 2. What are the ACEA's views on the proposed legislative changes around information sharing?

The ACEA views that information sharing could be more robust between Government Departments in some areas. For example; the Department could request directly from the Australian Tax Office (ATO) payments made to the 457 visa holders to ensure compliance with Minimum Salary Level (MSL) rather than requesting this information directly from employers.

The ACEA encourages information sharing between the Department and the employer. This however must be managed effectively as to not disrupt business practices. For example in situations where the Department would like to inspect a workplace, this should be conducted in such a way that is swift and non-disruptive to the office/workplace.

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In cases where information is requested from the employer, this information should not be requested in such a form that requires the employer to have to adapt the information to 'overly strict' Departmental standards. This will ensure that the time it takes to compile the information is not overly lengthy or disruptive to business practices and this will also aid employers in adhering to the Department's timeframes.

Commercially sensitive information must not be requested by the Department under information sharing clauses in the Bill. The gathering of information must always be for the purposes of ensuring the 457 visa holder is being employed in accordance with Australian law, and Department regulations.

Inspectors should then only be disclosing information to the Department and the Minister's office as required. There is also some limited scope, as mentioned previously, for certain types of information to be shared with or obtained from other Government entities, such as the ATO.