



CCIQ SUBMISSION

Independent Review of Integrity on the Subclass 457 Visa Programme

CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

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Introduction

1. CCIQ's consultation with and feedback from small and medium businesses is that they *want* to hire Australian workers. However, skills shortages, particularly in certain Queensland regions and industries, have precluded businesses from using local workers to fully meet their staffing requirements in the short to medium term. This has meant that employers need to consider engaging a skilled foreign worker through temporary skilled migration.
2. CCIQ therefore supports the continued availability of skilled migration pathways into Australia as a means of combatting skills shortages and 457 visas are a key part of this. The regulatory framework needs to provide greater consistency and stability to enable employers to have certainty and confidence in accessing 457 visas. Rather than tightening the regulatory framework around 457 visas and therefore punishing those employers who have genuine skills shortages and participate in the program in good faith, there is a need for better and more effective monitoring.
3. CCIQ's submission highlights key areas of small and medium business concerns with the 457 visa framework and provides recommendations where appropriate.

Compliance by sponsors

4. CCIQ firmly believes that the July 2013 changes were unnecessary. The changes were based on misconceptions about the level of non-compliance and perceived overuse of the scheme. There is little evidence demonstrating an over-reliance on temporary skilled workers in Queensland. In the year to end of March 2014 there were 11,730 applications granted of 457 visas that nominated Queensland as their location of work, which represents only 0.5 per cent of the total number of people (2,335,000) employed in Queensland.¹
5. Queensland employers have told CCIQ that they are eager to hire local (Australian) workers: it is quicker and generally more cost effective to hire from the local workforce (particularly given the extremely rigorous, expensive and time-consuming process that businesses must go through to become a sponsor under the 457 program). Moreover, doing so enables them to make a significant contribution to their local community, which is important to small and medium business owners.
6. Our feedback suggests that small and medium businesses are becoming increasingly frustrated, confused and apprehensive about sponsoring an employee on a 457 visa. Businesses consider becoming a sponsor, or continuing to sponsor foreign workers, as too difficult and too risky. Importantly, this does not appear to have led to them hiring more local workers, despite being legitimately affected by skills shortages. Consequently, they are left without the staff that they require, and their businesses tend to stagnate and shrink.
7. Prior to the July 2013 changes, employer sponsors already had a number of stringent requirements under their sponsorship obligations, including:
 - a. Ensuring overseas workers receive terms and conditions of employment no less favourable than those for an Australian citizen or permanent resident carrying out the same position in the employer's workplace at the same location;

¹ Department of Immigration and Border Protection Subclass 457 Quarterly Report, March 2014 (<https://www.immi.gov.au/media/statistics/pdf/457-quarterly-report-2014-03-31.pdf>) and ABS Labour Force, March 2014.

- b. Ensuring that sponsored workers only work in approved occupations – that is, at the time that the 457 visa is granted, the occupation in which the visa holder must work is specified and this role must be occupied for the term of the visa, unless an application is made to change this;
 - c. An obligations to keep records of compliance with employers sponsorship obligations, that generally go beyond the records that must be kept under general laws;
 - d. An obligation to provide information to the Department of Immigration and Border Protection (DIBP) on certain events occurring. This includes change of company name, change of the company or business address and the appointment of new directors; and
 - e. An obligation to cooperate with DIBP’s inspectors, and
 - f. Training benchmarks (as discussed below).
8. In addition to these obligations, new sponsors must go through a very demanding process in order to become a business sponsor and provide extensive, detailed information to DIBP in order to meet the requirements that:
- a. The business is a lawfully operating business;
 - b. Has no adverse information about it or any of its directors; and
 - c. Meets DIBP’s training requirements.
9. Depending on the structure of the business, and whether it is a new or existing business, this requires the provision of financial reports and statements, tax returns, leases, business activity statements and bank statements. Not only is this a time-consuming process, but it is an expensive one as it is difficult to go through the application process without the advice of a migration lawyer or agent. Employers have told CCIQ that they began the process for becoming a sponsor, but changed their mind once they became aware of what was involved.
10. The July 2013 changes introduced a genuineness criterion in the assessment process. CCIQ considers this inhibits the ability of businesses to expand into new fields of operation that may in turn prevent that business from accessing skilled labour because it is not considered a ‘genuine’ fit for the company at that point in time.
11. There is now a 12-month restriction on the sponsorship period for start-up businesses. CCIQ considers this unreasonable as it limits the capacity of these businesses to recruit and does not provide sufficient time for the owner to establish and build that business.
12. Amendments have also made the application process more onerous. This includes employers now having to demonstrate commitment to employing local labour as well as non-discriminatory recruitment practices. There is also a restriction on the number of 457 visa workers that a business can sponsor to the number approved at the time of application. This imposes delays for businesses experiencing rapid growth and may lead to overestimates of skilled labour need, which in turn could compromise the assessment process.
13. The effect of the July 2013 changes has been to create a strong feeling of uncertainty among small and medium businesses, and undermined the role of 457 visas as an important mechanism for helping them address short-term skills shortages. The Federal Government must be cautious when it is announcing further changes that in doing so it does not unnecessarily impact the stability and consistency of the system, or result in ‘regulatory churn’ for business.

Recommendation 1: The July 2013 legislative changes be repealed.

Regulatory framework

Labour market testing for small and medium business

14. The key value of the subclass 457 visa program, prior to the introduction of labour market testing, was its responsiveness to business need as an uncapped, demand-driven and flexible program. The changes remove many of the inherent benefits of the program and effectively stop businesses from accessing skilled labour in a timely manner when local workers cannot otherwise be found. The labour market testing changes significantly disadvantage small and medium businesses in regional and remote locations, which generally lack the resources of their larger metropolitan counterparts.
15. CCIQ considers that labour market testing is ineffective, time-consuming and of little suitability with respect to small and medium employers, and is really only a practical requirement for large employers. This is because:
 - a. Insisting that employers advertise for certain positions and show evidence of having done so (for example, allowing a certain period of time to elapse to allow applicants to apply, conduct interviews, etc) is frustrating for employers urgently seeking to fill a position and are familiar with the challenges of the local employment market;
 - i. Businesses in remote and rural areas, including from towns such as Charleville and Mareeba, have told CCIQ that they have experienced staff turnover of up to 100 per cent in a six month period. Other workforce issues have been raised by employers in tourist locations, including the Gold Coast and Cairns, to the effect that they have difficulty finding staff who want to consistently work a five-day week.
 - b. Regional small and medium employers are generally limited to a localised job market, as they are unable to offer the fly-in, fly-out (FIFO) or drive-in, drive-out (DIDO) arrangements that have been a feature of the resources industry and which have been used to counter longstanding labour mobility problems in Queensland. Small and medium businesses in regional areas cannot afford to employ workers on this basis. The cost of their flights and accommodation would be prohibitively expensive. CCIQ certainly does not believe that FIFO/DIDO agreements should become 'mainstream' for businesses of all sizes, and that measures need to be taken by government to improve labour mobility.
16. CCIQ considers that mandatory labour market testing is not necessary because it is far more cost effective for employers to source skilled workers locally, if they are able to, rather than go through the process of becoming a sponsor and employing subclass 457 visa holders. The fact that businesses *do* seek to sponsor overseas skilled workers is, of itself, an indication of the shortages of suitable applicants in their local area. Therefore, requiring businesses to advertise for a certain period will not work for such employers, and will only add to the already significant bureaucratic burden of small and medium business by piling further time and cost on to the recruitment process. Advertising is not inexpensive, particularly where doing so does not yield the intended result of finding an appropriately qualified applicant.
17. CCIQ acknowledges that labour market testing is already a standard requirement for Labour Agreements, Enterprise Migration Agreements and Regional Migration Agreements. However, our view is that these skilled migration pathways are designed to facilitate large scale migration to Australia where there are endemic skills shortages within a particular region or industry. Further, the costs involved in meeting requirements with respect to these agreements are spread over a number of stakeholders on the basis that they will operate to a fill a significant number of positions. By contrast, the benefit of the subclass 457 visa program, prior to the labour market testing changes, was that it was accessible for small and medium employers only seeking to fill a small number of vacancies in their business.
18. CCIQ has previously suggested that Regional Certifying Bodies (RCBs) play an analogous role with respect to employer nominations under the subclass 457 visa program as they do under the Regional Sponsored Migration Scheme, that is, by attesting to the need for skilled migrant workers in a given area. This arrangement has

operated successfully for some time, and is a more measured approach to addressing the issue of the veracity of an employer's stated need for skilled migrant workers.

19. CCIQ also believes that there is a good case for the reintroduction of regional concessions for business sponsors of 457 visa holders, particularly with respect to minimum salary and skill level requirements.

Recommendation 2: *Requirements for labour market testing should be removed for businesses in regional areas and for businesses with less than 20 employees.*

Recommendation 3: *RCBs should be given a designated role in attesting to the existence of skills shortages in respect of a business sponsorship application.*

Recommendation 4: *The Federal Government should consult with small and medium businesses and industry groups over the reintroduction of regional concessions for 457 visas.*

Consolidated Sponsored Occupations List (CSOL)

20. The methodology applied in determining occupations of inclusion in the CSOL is an area of significant concern for small and medium businesses in Queensland.

- a. CCIQ questions whether the CSOL adequately reflects the skills needs of Queensland's small to medium sized businesses, particularly those in regional and remote areas. Current methodologies appear to be hinged on a judgment of the relative value of particular occupations and skills to the Australian economy, which is a highly subjective process that is made even more complex by the diverse nature of Australian industry.
- b. CCIQ does not wish to see an outcome where small and medium businesses are disadvantaged because the skills they require are not classified as being of 'high economic value' to Australia. This is particularly relevant in Queensland, where, while fulfilling the skills and labour needs of the resources industry is important, a singular focus on those needs has meant that those of other industries (including those that compete with the mining sector for staff) have been overlooked.

21. Notably, the CSOL omits many professional 'business' skill areas such as entrepreneurship, small business management and commerce. Encouraging people with these skills to come to Australia is vitally important to the growth of the Queensland and Australian economies as they are more likely to start a business, or become involved in the management of a business, that will employ and train locals.

22. While the Labour Agreement pathway does, to some extent, allow employers to access to semi-skilled labour through the 457 visa, CCIQ notes the application process remains prohibitive. CCIQ suggests more consultation with small and medium businesses, relevant industry bodies and RCBs is necessary, as they are well-placed to advise on the professions that are sought after, but which have not been identified by the Federal Government as 'priority'.

Recommendation 5: *The Federal Government should review its processes for developing the CSOL, and consult more closely with small and medium businesses, industry bodies and professional bodies over its content.*

Recommendation 6: *The CSOL should include small business skills areas such as entrepreneurship, management and commerce.*

Recommendation 7: *The Federal Government should consider creating a semi-skilled visa category, particularly for use by regional businesses, or review the Seasonal Worker visa program with a view to broadening it to include a greater number of industries.*

Training benchmarks

23. It is often incorrectly asserted that when employers sponsor employees on 457 visas, they will no longer hire or train Australians, but instead fill the majority of staffing needs through skilled migrant workers. These claims have little veracity for two reasons:

- a. Businesses make use of 457 visas where they have positions to fill, are unable to find appropriate staff and/or Australian workers cannot be trained up to the appropriate level in the short-term.
- b. In order for businesses to gain eligibility to be a sponsor under the 457 program, they must demonstrate their contribution to the training of Australian workers and must provide evidence that they have met certain training benchmarks. These benchmarks may be met by:
 - i. recent expenditure of at least two percent of the payroll of a business in payments to an industry training fund that operates in the same industry as the business; or
 - ii. recent expenditure of at least one per cent of payroll in the provision of training to employees of the business who are Australian citizens or residents.

24. Businesses must also show a commitment to maintain this level of expenditure in each fiscal year for the term of approval as a sponsor, and are unable to offer employees on a 457 visa a permanent position via the Employer Nomination Scheme (subclass 186 visa – Temporary Residence Transition stream) unless they have met the prescribed benchmark for the training of Australian citizens or Australian permanent residents.

25. One of the most effective ways that a business can meet the training benchmark is to take on an apprentice or trainee, as 100 percent of their salary may be counted as part of the required expenditure on training. The relevant training contract (which in any case must be lodged with the Queensland Department of Education, Training and Employment) may be presented as evidence of expenditure on training.

- a. Unfortunately, small and medium businesses that are seeking to sponsor an employee through a 457 visa holder are often in areas that are affected by skills shortages (such as regional areas of Queensland). They often have extreme difficulties finding an apprentice or trainee, or, as is the case in regional areas where mining has a major presence (such as Central and Central Western Queensland), they are not confident that they will not leave on completion of their training for a (more highly paid) job in the resources sector.
- b. It should also be noted that a multitude of other factors (such as changes to employer incentives, the location and quality of training institutions, and workplace relations issues) have contributed to the decrease in apprenticeship commencement numbers.

Recommendation 8: *CCIQ recommends that DIBP work with employers and industry groups to ensure employers are aware of both the training benchmark requirements that apply to businesses sponsoring 457 visa holders, and the various ways in which they can meet those requirements.*

English language requirements

26. CCIQ has consistently expressed concerns over the formal English language requirements for skilled migration visa applicants, as we consider that the high standard imposed operates to partially compromise the flexibility and capacity of the program to attract skilled migrants. We also consider that these requirements impose unnecessary red tape on both businesses and workers, given that the requirements can exclude otherwise excellent visa candidates or delay their entry into Australia.

27. Queensland businesses recognise the need for English language capabilities in the workplace, particularly for workplace health and safety reasons. However, we note that many businesses encourage and/or offer assistance for intensive English language classes for their workers as a matter of course.
28. CCIQ strongly recommends that DIBP should conduct broad consultation with small and medium businesses, industry groups, professional and certifying bodies and other stakeholders over appropriate English language requirements.

Recommendation 9: *The Federal Government should ensure that it reassesses English language requirements following a thorough consultation process with relevant stakeholders.*

Monitoring and enforcement processes

29. DIBP already has sufficient regulatory powers to prevent misuse of the 457 visas by employers. The focus should be on ensuring DIBP is adequately resourced to carry out effective monitoring, rather than implementing more regulation. There are cost-effective monitoring methods already available, including requiring employers to provide payslips, letters from accountants, internal payroll records and performance agreements and reports to verify that employees remain in the employment of their sponsor. Further, if DIBP was active in pursuing prosecutions of employers who breached their sponsorship obligations, and publicised the fact that it was doing so, this would serve as a strong deterrent to those doing (or contemplating doing) the wrong thing.
30. Improved monitoring of the adherence or otherwise by employers to their obligations would provide the government with better data on the incidence of breaches. This would in turn ensure that targeted measures could be taken toward certain businesses rather than implementing broad-scale regulatory change that unnecessarily impacts all businesses.
31. Those businesses that do breach their current obligations as sponsors should be penalised and the existing sanctions are satisfactory. There are significant penalties involved for employer breaches, including sponsorship approval being cancelled, sponsors being barred from obtaining sponsorship status, issuing of infringement notices and application for civil penalties under the *Migration Act*. There are also measures available to a range of other authorities responsible for the workplace rights of employees, including Workplace Health and Safety Queensland and the Fair Work Commission.
32. CCIQ strongly believes that employers do not seek out skilled migrants because they believe that they can provide them with a lower level of workplace conditions or to reduce or remove workplace rights that they would otherwise provide Australian workers. CCIQ notes that there has been insufficient evidence raised to support claims by union groups that there has been abuse by business in this respect. Indeed, 70.3 per cent of 457 visas granted in the 2013-14 year to March 2014 were to Managers and Professionals, that is, educated people who tend to have a greater awareness of their work rights under their visa.²
33. This issue highlights, once again, the importance of adequately resourcing DIBP to investigate breaches of sponsor obligations. CCIQ reiterates that we do not believe that there is a strong case for making the entire 457 program more stringent to the detriment of the majority of employer sponsors doing the right thing by their employees on 457 visas, especially when there is little evidence to support such action.

² Department of Immigration and Border Protection Subclass 457 Quarterly Report, March 2014
(<https://www.immi.gov.au/media/statistics/pdf/457-quarterly-report-2014-03-31.pdf>)

Recommendation 10: *The Federal Government must ensure that DIBP is appropriately resourced to carry out its monitoring and enforcement functions under the 457 program, rather than implementing additional regulation.*

Recommendation 11: *The Federal Government should ensure that extensive records of employer breaches and prosecutions are maintained and that details of prosecutions be made public to create deterrent effect.*

Conclusion

34. CCIQ believes that it is important to maintain a broad-based skilled visa program that is accessible, responsive and fit for purpose: it must allow businesses that are genuinely unable to fill positions with local staff to employ temporary foreign workers without unnecessary complexity or expense.
35. The function of skilled migration channels into Australia should not be a political issue at the expense of the regulatory stability and certainty that employers, particularly in small and medium businesses, so desire. However, the July 2013 changes to the 457 visa program appear to be part of political efforts to be 'tough' on foreign workers and protecting Australian jobs, rather than because of any evidence giving rise to a need to further regulate the system.
36. CCIQ believes that deliberate breaches of sponsor obligations should attract penalties. Maintaining the integrity of the program requires action being taken against employers who abuse the skilled migration system. However, as we have highlighted in this submission, DIBP already has the legislative and regulatory tools to do so. It is therefore the task of the Federal Government to ensure that it is able to carry out its role in this respect, rather than imposing any new measures at the expense of the vast majority of employers who adhere to their sponsor obligations in good faith.