



17 June 2013

**Open letter to members of the federal parliament regarding the Migration Amendment (Temporary Sponsored Visas) Bill 2013**

We are writing to ask for your support in opposing the Migration Amendment (Temporary Sponsored Visas) Bill 2013 in full when it is introduced into the parliament this week.

We are greatly concerned by the lack of supporting evidence, damaging rhetoric and poor process associated with the proposed changes to the 457 visa scheme, along with the considerable risks posed for investment, job creation and economic growth.

Furthermore, there has been minimal consultation with industry about these changes.

The legislation risks undermining the capacity to fill identified skills gaps in a timely way without a proper assessment of whether there is a genuine problem to be solved.

What is so concerning is that the government is seeking to rush these changes through the final session of parliament before the election without subjecting its claims about alleged scheme abuses and inadequacies to the rigor of its own Regulatory Impact Statement (RIS) process.

The RIS exemption for the new labour market testing requirements in the Bill cites 'exceptional circumstances'. It is unclear what these circumstances are, given that the minister's department has provided no hard evidence of a systemic problem with the scheme.

The government's primary argument for a systemic problem rests on a misleading interpretation of an ambiguous survey finding in a recent Migration Council Australia report. This is not an adequate foundation for introducing costly new regulation.

A Regulatory Impact Statement, with full consultation with industry, is the appropriate way to assess whether a problem exists with the 457 visa scheme and the costs and benefits of solving any purported problems through specific actions, including regulation.

Unwarranted additional regulation of the 457 visa scheme risks penalising all employers and their employees, and undermining investment, skills transfer and development and broader job creation, to address a relatively small number of instances that may be better dealt with through other means.

We are therefore asking all MPs to reject the Bill unless:

- the government provides hard evidence to back up its claims of widespread problems with the 457 program, and furthermore, shows why the few individual cases that have been identified cannot be managed within the scheme's existing safeguards
- the government subjects any proposed changes to the 457 visa scheme to a rigorous and transparent Regulatory Impact Statement before putting forward a legislative response.

The most damaging initiative in the Bill is a return to labour market testing, which was abandoned following a major 2001 departmental review that found it was costly, ineffective and inferior to the system we have today (see the report titled *In Australia's Interest: A Review of the Temporary Residence Program*).

The fundamental tenets of Australia's current approach – a government-determined list of eligible occupations coupled with a requirement to pay market salary rates – are effective in striking the right balance between filling skill shortages quickly and safeguarding job opportunities for Australian workers.

It makes no sense to suggest employers would seek to use the 457 visa scheme to avoid hiring Australians because it is cheaper and faster to hire local labour when it is available.

This Bill would place unnecessary and onerous requirements on employers through detailed reporting requirements of attempts they have made to hire locally within the previous six months. The new regulations will reduce flexibility and waste time and resources for no discernible benefit.

The labour market testing requirement will be largely targeted at jobs in trades and technicians categories, estimated to be 40 per cent of all 457 visa applications. The government has not explained why it is targeting these occupations when they have an unemployment rate of around half the national rate and in areas where Australia's skills shortages remain acute.

The Bill also enshrines a number of other changes to the 457 visa scheme announced over the past few months that have not been properly tested and which risk imposing costly red tape on all employers, which will only serve to work against business investment and economic growth.

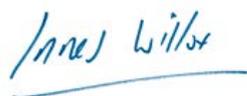
While no scheme is perfect, any individual cases of employers doing the wrong thing should be dealt with through scheme enforcement. Labour market testing would not have avoided the specific cases identified in the media recently.

The government's claims about excessive growth are also contradicted by official data showing the number of primary 457 visas granted in the first 10 months of 2012–13 is only 1.7 per cent higher than for the same period last year. That is, just 940 more visas have been granted this year than at the same time last year.

The acceptable elements of the Bill include the provisions for extending a 457 visa holder's period without employment from 28 to 90 days, and enabling Fair Work Commission inspectors to investigate compliance and uncover breaches. However, we would suggest that those changes can be enacted through an alternative legislative instrument and do not need to be tied with the other highly damaging provisions in the Bill.

The unsubstantiated assertions and unhelpful and damaging rhetoric associated with the 457 scheme and this Bill are unwarranted and have been harmful to Australia's international reputation and to business confidence. At a time when Australia ought to be pulling out all stops to ensure the economy is firing strongly on all fronts – which means being able to fill critical skills needs in a timely and efficient way – we should not be rushed into major labour market changes which risk discouraging investment, job creation and economic growth.

Yours sincerely



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