

Business
Council of
Australia



Submission to Senate Legal and
Constitutional Affairs Committee on
Migration Amendment (Temporary
Sponsored Visas) Bill 2013

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The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

About this submission

This submission by the Business Council of Australia calls for all parliamentarians to oppose the Migration Amendment (Temporary Sponsored Visas) Bill 2013.

Key points

The 457 visa scheme is a very important part of Australia's economic policy settings. It allows for growing businesses to fill skills shortages which generates economic activity, supports innovation and job creation and makes Australia more competitive.

This Bill will introduce costly new regulation of the 457 visa scheme for no discernible benefit. It should be opposed due to the lack of supporting evidence, damaging rhetoric and poor regulatory process along with the considerable risks posed for investment, job creation and economic growth.

The government has provided no hard evidence to back up its claims of widespread problems with the 457 visa program and has failed to subject the proposed changes to the 457 visa scheme to a rigorous and transparent Regulatory Impact Statement.

Labour market testing, the new regulatory impost that is the centrepiece of the Bill, has been found by a departmental review to be costly, ineffective and inferior to the current system. It will put the brakes on investment and job creation in growing businesses.

It makes no sense to suggest employers would use the 457 visa scheme to avoid hiring Australians under the current scheme because it is cheaper and faster to hire local labour when it is available. Individual cases of employers doing the wrong thing, described by the department as 'rare', should be dealt with through scheme enforcement, not onerous new rules that apply to all.

The facts are that there are only 108,810 primary 457 visa holders in Australia, less than one per cent of the total workforce, and that visas granted under the scheme are only 1.7 per cent higher so far in the first 10 months of this financial year. This is not a scheme out of control.

The more effective way to increase employment opportunities for Australians is to reduce the cost of regulatory burdens on business activity that are harming our competitiveness.

Summary Checklist for New Regulation

This checklist is based on the Business Council of Australia Standards for Rule Making.

Principle	Status
<p>1. The problem to be solved is well understood</p> <p>Before government seeks to regulate, it must understand the problem or policy priority in depth and test the case for regulation, along with the risks and consequences of not regulating a particular activity.</p>	Fail
<p>2. New regulation is subject to cost-benefit analysis</p> <p>The costs of new regulation are thoroughly assessed and tested with the community through cost-benefit analysis, which includes an explicit understanding of the costs to the community including business.</p>	Fail
<p>3. Regulation achieves its objectives at least cost</p> <p>Regulation is carefully targeted to achieve its stated objectives and minimise the cost impacts on the community including business.</p>	Fail

Key recommendations

Oppose the Migration Amendment (Temporary Sponsored Visas) Bill 2013 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.

Comment on the Bill

The 457 visa scheme has become a very important part of Australia's economic policy settings and is undoubtedly a major success. The scheme allows for people with world-class skills and high levels of entrepreneurship to work in Australia's economy where there are skills shortages, which generates economic activity that supports innovation and makes Australia more competitive.

By growing economic activity, the 457 visa scheme boosts employment opportunities for Australians and creates better and higher paying jobs for local workers. A 2010 National Bureau of Economic Research paper found that the effect of net migration on Australian wages has been clearly positive – around 1.5 per cent – with the biggest positive impact being to boost the wages of lower-skilled workers by four per cent.

Foreign workers in Australia on 457 visas bring new skills and knowledge which, either through direct training and skills transfer or indirectly through on-the-job interaction, help to lift the skills of Australian apprentices and other workers. This demonstrates the complementary rather than substitutional impact of the 457 visa scheme on the domestic workforce. Temporary Work 457 visa holders also create critical relationships and links with the rest of the global economy that facilitate future trade and investment.

Beginning in February, the government has seen fit to begin making unsubstantiated claims about widespread problems and excessive growth in 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. In fact the report finds high levels of satisfaction and low levels of problems with the scheme. Further, on 3 February 2013 the Department of Immigration and Citizenship issued a media release titled '457 Visa Program Responds Well to Economic Needs', which observed that a downward trend in visa applications demonstrated the program's responsiveness to the changing needs of the Australian economy. Over the past three years, sanctions against employers have fallen from 164 in 2009–10 to 125 in 2011–12.
- The government's claims about excessive growth are 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 government's claim of a 20 per cent increase refers to the total number of 457 visa holders, not the rate of growth in the scheme. It is not surprising the total number of 457 visa holders has grown in recent years as the resources boom has created many areas of skills shortage that have needed to be filled to support growth. These workers are on four year visas, so they presently remain in the system. The trend data for new 457 visa grants suggests this effect is now moderating in line with the economy.

What is so concerning is that the government is now seeking to rush changes to the 457 visa scheme 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.

As the Minister for Immigration himself has confirmed, 457 visas are important for giving business confidence to make long-term investments knowing that genuine skills shortages in Australia can be overcome with temporary skilled migrants. It is totally counterproductive for long-term

confidence and investment certainty for there to be constant tinkering with a system that the minister's own department has said is performing well.

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*).

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.

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. Employers already incur higher costs when employing a foreign worker compared to local workers. In making the decision that a skills shortage can only be met by hiring a 457 visa holder, business needs to factor in additional costs arising from:

- funding assistance to help with relocation and repatriation – these costs vary and are generally higher for professionals
- on-costs associated with worker top-up training, providing health insurance cover, funding and/or subsidising visa and residency applications
- program compliance costs, e.g. demonstrating payment at the market rate, demonstrating that training requirements are being met, monitoring and reporting obligations.

Furthermore, it is becoming more difficult to attract the very best people to Australia due to more competitive approaches being taken by other countries towards attracting skilled migrants and with Australia's cities and regions viewed as expensive places in which to buy housing and to live.

We should be making the 457 visa system more flexible and lower-cost to employers and employees – not erecting new regulatory barriers.

The RIS exemption for the new labour market testing requirements in the Bill cites 'exceptional circumstances'. No reason has been given for this exemption and the minister's department has provided no hard evidence of a systemic problem with the scheme.

This is not an adequate foundation for introducing costly new regulation.

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.

The labour market testing requirement will be largely targeted at jobs in trades and technicians categories, estimated by the government to cover around 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. It is not clear why these changes need to be legislated.

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.

Reforms to the scheme that are worth further consideration, including considerations for better enforcement and provisions to extend a 457 visa holder's period without employment from 28 to 90

days, should be able to be enacted through alternative instruments and do not need to be tied with the other highly damaging provisions in the Bill.

We suggest consideration be given to assessing the adequacy of resources in the Department of Immigration and Citizenship (DIAC) to assess and prosecute individual cases of employers doing the wrong thing. Should it be found that DIAC is not adequately resourced the government should reallocate resources to address this shortfall.

BCA position on the Bill

The BCA opposes this Bill and we are asking all parliamentarians 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.

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.

By exempting this Bill from the Regulatory Impact Statement process the government is failing to apply its own standards for good rule making to this Bill. It has not explained the 'exceptional circumstances' that justify the exemption.

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.

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.

BUSINESS COUNCIL OF AUSTRALIA

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