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Mr John Azarias
Chair
Independent Review of Integrity in the subclass 457 program
By Email

Dear John,

Thank you for this opportunity to make this submission and to add to the discussions we have already had with your panel.

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries. The businesses we represent employ more than 1 million people.

We have a long history of support for Australia's immigration program as an important driver of growth. While we always stress that training our own workforce should be of paramount importance for both government and business, skill shortages persist. For the foreseeable future, these skill shortages will need support from both the permanent and temporary migration programs including 457 visas which are the subject of your inquiry.

Skill shortages and economic context

Skill shortages in key growth industries including mining services, engineering, education and health services are exacerbated by Australia's relatively low unemployment rates and the deepening impacts of our ageing workforce. Around 10% of all Australian employees are now aged 60 or over and 18% are aged 55 or over. And the current population 'bulge' in these age brackets means there are fewer young people ready for these professional roles as the baby boomers retire.

At the younger end of the age scale, rising education participation and changing industry skill demands have seen a declining share of employment going to young workers, with less than 6% of the workforce aged 15 to 19 years old and around 10% aged 20 to 24 years old. Participation rates for these younger age groups is also in long-term decline, with a sharper rate of decline evident over the past five years as participation in formal tertiary education has risen. For 20-24 year olds, labour force participation has fallen from a recent peak of 82.2% in 2008 to 78.5% in 2014. For 15 to 19 year olds, labour force participation has fallen from a recent peak of 60% in 2008 to 54% in 2014. For those that are in work, the majority of younger workers are in services sectors such as retail and hospitality and work part-time only (72% of 15-19 year old workers and 37% of 20 to 24 year old workers), to fit in with their studies.

The workforce effects of the ageing population are becoming increasingly evident in Australia's falling labour force participation rates. In particular, the proportion of adult men (aged 15 years and over) in the labour force (working or seeking work) fell to an all-time low of 71% in 2014. This is the equivalent of 140,000 fewer adult men actively engaged in the labour force, compared with the last 'peak' male participation rate in 2010 (72.6%). For women, the fall in labour force participation has been less pronounced, with the fall in the female participation rate implying around 32,000 fewer adult women actively participating in the labour force in 2014 (58.6%), compared with the last 'peak' female participation rate in 2011 (58.9%). Reflecting these drops in participation, the employment to population ratio fell to 60.9% in 2014, its lowest level since February 2005 (ABS trend data).

A welcome upturn in house building activity is now under way in most cities across Australia. Forward planning and finance approvals indicate that residential and commercial construction activity will pick up significantly through 2014-15. These sectors are labour intensive and skill intensive so this upturn will exacerbate existing shortages of skilled building trades. Skilled immigration is needed to help fill this gap. In many locations, this gap is being aggravated by the ongoing flow of construction workers into the mining sector, which is now experiencing strong growth in output volumes and exports after rapidly expanding its physical capacity in recent years. This outflow of experienced workers has coincided with a reduced ability among residential and commercial builders to offer trades apprenticeships in recent years, due to the downturn in activity and profitability in their sectors of activity.

These skills shortages and labour hire difficulties in the key construction sectors are evident in recent Ai Group construction outlook surveys. During the six months to September 2013, 67.7% of respondents reported either major or moderate difficulty in the recruitment of skilled labour (up from 65.7% six months ago). The sourcing of sub-contractors was also a dominant supply constraint with 47.1% citing major or moderate difficulty (up from 43.8%).

The Australian Industry Group also compiles performance indices for the manufacturing, services and construction sectors each month. These national indices are compiled from surveys of companies conducted on a representative national basis. They are seasonally adjusted and calculated from a weighted mix of key indicators including sales, production, new orders, supplier deliveries and employment. All three performance indices continue to show relatively high wages growth in 2014, despite mixed levels of labour demand. This relative strength in wages suggests continuing pockets of skill shortages. All three surveys strengthened in the last quarter of 2013, with our Australian PMI® and Australian PCI® surveys both showing an overall expansion in industry activity for the first time in several years. While activity growth has tapered off again in 2014, forward orders remain solid, suggesting stronger activity and labour demand to come in 2014-15.

The skill shortages situation is even more serious in relation to occupations requiring Science, Technology, Engineering and mathematics (STEM) skills. The occupations where there are shortages due to low STEM levels, as illustrated by a recent Ai Group report¹, are: technicians and trade workers (41%), professional (26.6%) and managers (26.3%). This is deeply concerning considering the Office of the Chief Scientist recently reported that 75% of the fastest growing occupations require STEM skills and knowledge.

The Australian Workforce and Productivity Agency has estimated that Australia will be 2.8 million short of the number of higher-skilled qualifications that industry will need by 2025. To be able to meet this need domestically, Australia will need to increase the provision of higher-skilled qualifications by 3% every year until 2025.

We simply do not have the right people, with the right skills in the right places to do the jobs that our industry needs.

ICT Industry and skill shortages - example

The ICT industry is a good example of where our training system has failed us. There is an acute ICT skills shortage in Australia which is unrelated to immigration issues. The main reason is that

¹ Lifting our Science, Technology, Engineering and Mathematics (STEM) Skills Ai Group report, 2014

the number of Australian students studying ICT subjects has declined dramatically over the past decade at both secondary and tertiary levels.

- o Domestic commencements in tertiary ICT courses declined from 17, 436 in 2001 to 9,263 in 2011, hitting a low of 7,470 in 2008.
- o Completions of ICT tertiary courses by domestic students decreased by 58% from 2001 to 2011, from 8,268 down to 4,855.

There are other issues contributing to ICT skills shortages, for example, the lack of female participation in STEM subjects, including ICT, and the changing nature of ICT roles as the emphasis shifts to workers with advanced skills in areas such as data analytics and optimisation. Lower skilled in-house ICT roles are likely to decline as ICT users shift to cloud-based shared services models. The dynamic and complex nature of ICT work means there will always be areas of specialisation that cannot be accommodated by domestically trained workers alone.

These IT sector issues need to be addressed and these problems require long-term solutions. There is much that can be done, starting with measures to increase participation rates in ICT subjects in the school system, improving industry and education sector links, and developing a coherent vision for Australia's skill needs in the digital economy including both ICT skills needs and the needs of the broader workforce.

This demonstrates that the decline in ICT skills is clearly unrelated to the 457 program. The scheme is instead having a positive impact both in helping the industry cope with skill shortages not of its own making and bringing in highly skilled workers who, incidentally, can also contribute to up-skilling our own ICT workforce.

It is essential that governments working with industry improve our education and training outcomes and address the mismatch that is clearly evident between the skills we need and the skills we produce. In the meantime, a larger skilled migration program will be necessary to manage this situation and to assist in smoothing the path to future growth across the economy.

Terms of Reference

In regard to the issues raised in your Terms of Reference - which go to the issues of integrity, costs and compliance - the current debate over the program has unfairly focused on the relatively few employers who do not meet their obligations. In our view, those employers should face whatever sanctions are available. However, no evidence has been presented which points to widespread or systemic abuse and we strongly object to the tone of the public debate which has had the effect of vilifying both employers and those who themselves hold 457 visas.

From our experience, the level of non-compliance is extremely low. We are yet to see evidence from the increased monitoring that there is a greater level of non-compliance than the low levels we have assumed.

Legislation introduced last year to toughen criteria for employers was rushed with no evidence provided to support the claims that were behind it. Specifically, our concerns (which were shared by the Business Council of Australia and the Migration Council) were that:

- There was a lack of supporting evidence underpinning the proposed and unnecessary changes to the 457 visa program;
- Consultation across business and the community to build the case for such changes was minimal;
- The absence of a supporting Regulatory Impact Statement for the new costly and ineffective labour market testing requirements in last year's Bill was unacceptable; and
- 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 people who use these visas work:

- in our regional hospitals which are desperate to obtain doctors and nurses;
- on regional construction projects often allowing major resource projects to proceed in areas where skill shortages are intense or which cannot attract the local skilled workers they need from other regions;
- in skilled technical and engineering roles which we need to source overseas because of our failure to train our own workforce and give them the science, technology, engineering and maths skills that our economy needs; and
- in our global and globally connected companies in roles ranging from sophisticated ICT positions which transfer their skills to Australians; and to CEOs on 457 visas themselves.

They successfully operate in these roles with extremely rare cases of abuse reported. Partly, this is because the 457 system itself is extremely flexible and workers on those visas can easily find alternative work and alternative sponsors which results in losses for the original employer. The ability of an employee on a 457 visa to move another employer in the rare cases of mistreatment is an important safety valve which keeps the levels of abuse very low.

The Legislation also includes a number of other changes to the 457 visa scheme announced last year that have not been properly tested.

We have no problem with some elements of the Legislation including the provisions for extending a 457 visa holder's period to find a new employer from 28 to 90 days, and enabling Fair Work Commission inspectors to investigate compliance and uncover breaches. It has long been our view that if employers do the wrong thing that they should be dealt with but that the instances of abuse are marginal.

The excessively defensive arguments against the temporary inflow of skilled labour are reminiscent of the arguments made against imported goods and non-British migrants for most of the last century. These attitudes on immigration resonate with these discredited protectionist sentiments which have no part in our globalised economy.

Labour Market Testing

Sourcing skilled labour via 457 visas attracts a significant premium over hiring locally and this ensures that in the vast majority of cases employers will only go down the 457 path when they have exhausted local options. In this way, employers themselves test the market thoroughly before choosing to hire through the 457 program. The visas are also available only for skills which are demonstrated to be in demand. Stringent testing will simply add more unnecessary bureaucracy.

For example, advertising in a period of time before applying can be costly when a business may know from past experience that their chances of sourcing labour locally are non-existent. Delays caused by such testing could prevent a business from meeting urgent commercial needs.

In terms of Labour Agreements (LAs) and Enterprise Migration Agreements (EMAs), both LAs and EMAs require significant demonstration that the proposed positions cannot be filled from the local labour market. Similarly EMAs require:

- a) Evidence that there are genuine skills shortages in the local area, and
- b) Evidence of efforts to use Australian workers first.

This is sufficient testing given the broader scope of these Agreements over standard 457s. As the Department of Immigration and Citizenship web site itself states in reference to LAs:

The labour market testing for 457 is not explicitly included in criteria – it is a demand driven visa. Employers/sponsors may conduct a labour market test for the purpose of establishing the market salary rate but not necessarily to respond to any other specific criteria. Criteria like TSMIT and Training Commitments (and to some extent

the Sponsor obligations) effectively prompt the employers to consider local labour market first.²

Employers are already “effectively prompted” to test the market. Adding any further administrative burdens to the visa program will make the visa less accessible and less able to meet the economic need for which it was designed. A declaration by an employer that they have tested the market and have not found suitable applicants should be sufficient. Exemptions from labour market testing for employers with a proven positive track record of engagement with the immigration program should also be expanded.

The temporary skilled worker program provides enormous benefits across the economy in terms of giving companies the flexibility to respond to economic needs through the ability to source otherwise scarce skilled labour. As mentioned earlier, for a company already under significant economic pressure, including, for many, from the still high dollar, failure to be able to source skilled labour could mean the difference between their survival and continuing operations.

For some, without access to such a program, the pressure to move their operations off-shore may become compelling to the detriment of its employees in its domestic operations.

All data has shown that 457 visas are extremely responsive to economic conditions and that their use falls dramatically during economic downturns as was the case in 2007.

We are in a global marketplace for people as we are in global market places for investment, goods and services.

This submission makes clear a number of points – the primary one being that despite pockets of very high unemployment and announcements of industry closures and redundancies, especially in manufacturing – we still have skill shortages in Australia and we need temporary and permanent skilled migrants to fill that skills gap – now and for the foreseeable future.

Thank you for the opportunity to make this submission. Some further brief comments on individual questions raised in your terms of reference are also included below.

Yours sincerely

Innes Willox

Chief Executive
Australian Industry Group

² Labour Agreement Booklet – DIAC website

**Additional comments on Terms of Reference
457 Visa Integrity Review
Australian Industry Group Comments**

1. *Are there any aspects of the sponsorship framework or nomination process that could be made to work more efficiently or effectively?*
 - The language requirements are such that they reduce significantly the pool of global talent that can be accessed under the visa program. This is a particular issue for skilled trades. Language requirements should be significantly reduced and take into account the fact that many Australian workplaces are multilingual. Arguments that Workplace Health and Safety issues require higher language requirements do not take into account the effective practices already in place in these multilingual workplaces.
2. *Are fees and associated costs appropriate for this programme and who should be responsible for paying fees?*
 - While fees are higher than they have been in the past, they still make up a relatively small proportion of the high costs associated with accessing the program.
3. *Are the requirements of labour market testing suitable, including the current scope for exemptions and protected occupations?*
 - Labour Market Testing is unnecessary and could be replaced by employer attestations. Further exemptions to the existing scheme should recognise past positive engagement with the scheme.
4. *Are the current training benchmarks appropriate and/or adequate for ensuring that employers provide training opportunities to Australians?*
 - Employers will invariably train locally where possible and training benchmarks are for the vast majority of cases unnecessary bureaucracy.
5. *How effective is the market rates framework for ensuring that 457 visa holders are provided with Australian terms and conditions of employment and how should the market rate be determined and assessed?*
 - Employers are generally satisfied with the market rates framework. In some cases where employers need to pay 457 visa workers more than their local counterparts this can cause difficulties.
6. *Is the application of a Temporary Skilled Migration Income Threshold (TSMIT) appropriate and is it set at the appropriate level? If so, how should it be indexed?*
 - The TSMIT is satisfactory and should remain unchanged. Very few 457 visa holders would be paid at the threshold in any case as wages are at market rates and the average paid to 457 visa holders is much higher than the TSMIT.
7. *Is the Consolidated Sponsored Occupations List (CSOL) an appropriate source for occupations relevant to the 457 visa?*
 - Yes it is appropriate if subject to regular review.
8. *Would providing improved support and information to employers and visa holders on their rights and obligations help to improve the integrity of the 457 visa programme? If yes, how might this be implemented?*
 - Yes. Email communication would be most appropriate and perhaps on-line training/information options. The department should be able to have better systems in

place to be able to remain in touch with 457 visa holders and ensure contacts are updated to facilitate communication on such issues.

9. *Are Department of Immigration and Border Protection outreach officers utilised effectively by stakeholders in providing information on the 457 visa programme?*
 - Yes. This is an extremely valuable program which should continue. Many members use the program to easily access information and assistance on the broader immigration program.
10. *What impact do labour agreements have in terms of managing non-compliance or fraud in the 457 programme?*
 - Labour agreements are useful for large users of the program but applications are extremely time consuming and overly bureaucratic to access. As a compliance tool they can be effective but only used for such purposes on rare occasions. Routine fraud and compliance programs properly carried out would be more effective and apply a lesser regulatory burden.
11. *In what way can the potential for non-compliance or fraud in the 457 visa programme be more effectively managed?*
 - The increased monitoring and fraud measures introduced in 2013 are more than adequate and their effectiveness should be given time to be proven before any further measures are contemplated. The incidences of fraud are extremely uncommon and can be dealt with with effective monitoring through existing means.
12. *Could the system be improved to reward employers with a history of strong compliance? If so, how might this be implemented?*
 - Yes. This could be applied through granting such employers exemptions to various conditions such as Labour Market Testing and training benchmarks.
13. *Are the existing range of sanctions and administrative actions (such as cancelling a sponsorship or barring a sponsor) satisfactory, and how effectively are they being applied?*
 - Yes. Satisfactory.
14. *Are the range of civil penalty provisions (infringement notices and civil action) and criminal sanctions satisfactory, and how effectively are they being applied? Are there any further actions that could be considered to enhance integrity?*
 - Sanctions are at a high level. Integrity of the system is well protected.
15. *Has the inclusion of powers to the Fair Work Ombudsman been useful in improving compliance?*
 - We have had no complaints about the operation of this approach.
16. *Is information about workers' rights and responsibilities under Australian law readily accessible to 457 visa holders in appropriate formats?*
 - Information on workers' rights and responsibilities is readily available in many languages and 457 visa holders are frequent users of the protections and support the Fair Work Commission provides. As mentioned earlier, improved communication between the department and visa holders during the time of their stay in Australia would be beneficial to both the department and the visa holder.
17. *Should the provision of such information by the employer form part of the sponsorship obligations under the 457 visa programme?*

- No. The department providing a full information pack to 457 visa holders on arrival is more than adequate. It would be unworkable to require an employer to provide such information.