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Submission to the Senate Education and Employment Legislation Commission regarding the Migration Amendment (Skilling Australians Fund) Bill 2017 [SAF Bill] and Migration (Skilling Australians Fund) Charges Bill 2017 [Charges Bill]

15 December 2017

Australian
Chamber of Commerce
and Industry

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Chamber of Commerce
and Industry

WORKING FOR BUSINESS.
WORKING FOR AUSTRALIA
Telephone 02 6270 8000
Email info@acci.asn.au
Website www.acci.asn.au

CANBERRA OFFICE
Commerce House
Level 3, 24 Brisbane Avenue
Barton ACT 2600 PO BOX 6005
Kingston ACT 2604

MELBOURNE OFFICE
Level 2, 150 Collins Street
Melbourne VIC 3000
PO BOX 18008
Collins Street East
Melbourne VIC 8003

SYDNEY OFFICE
Level 15, 140 Arthur Street
North Sydney NSW 2060
Locked Bag 938
North Sydney NSW 2059

ABN 85 008 391 795

Australian Chamber of Commerce and Industry

Migration Training Levies:

Submission to the Senate Education and Employment Legislation Commission regarding the Migration Amendment (Skilling Australians Fund) Bill 2017 [SAF Bill] and Migration (Skilling Australians Fund) Charges Bill 2017 [Charges Bill]

Summary of recommendations

The changes to the migration programme announced in April 2017 and the subsequent announcement of the training levies to be imposed on businesses using the program have been very concerning to business. The proposed quantum of the levies is excessive and the Senate Committee is urged to recommend that they be reduced.

This submission has also presented strong argument that not only should the increased powers for Labour Market Testing not be introduced, the heavy burden of labour market testing be removed entirely.

Recommendation 1: Migration Training Levies should be halved

Proposed training levies should be halved so that the fees would be $600 per year for small businesses and $900 for large businesses for each sponsored temporary migrant, and $1500 for small and $2500 for large businesses sponsoring under ENS.

Recommendation 2: The Nomination Training Contribution Charge limit should be reduced.

The nomination training contribution charge limit in the Charges Bill (s9(1)) should be $3600 for a temporary visa and $2500 for permanent visa. There should be no 10 percent differential between the proposed levies and the charge limit noting that the Bill already provides for indexation of the limit.

Recommendation 3: Training Levies should be waived for additional apprenticeship employment

Employers seeking to employ a temporary or permanent skilled worker should have their training levies waived if they can demonstrate that they have employed an additional apprentice for each visa applicant sponsored.

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Recommendation 4: Labour market testing for the temporary skilled migration program should be abolished.

Based on the lack of evidence of its effectiveness and due to the high regulatory burden, rather than powers to the Minister being enhanced to broaden its reach, labour market testing in the Temporary Skilled migration (457/TSS) visa program should be abolished

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Australian Chamber of Commerce and Industry

1 Introduction

The Australian Chamber of Commerce and Industry (Australian Chamber) is a strong advocate for a robust workforce development strategy that encompasses the skills development of Australian workers supplemented by a flexible and responsive migration system. The SAF Bill and Charges Bill impose significant burdens on employer sponsors seeking to use the skilled migration system to meet their workforce needs and have the potential to severely constrict business growth. To ensure skilled migration remains accessible, it is recommended that Parliament consider imposing substantially lower training levies and remove the requirement for labour market testing.

2 Context

In April 2017, the Federal Government announced changes to the migration programme that impacted temporary skilled migration as well as employer nominated permanent migration. Although, as indicated in the Regulation Impact Statement[1], the Australian Chamber supported the replacement of the 457 visa as an opportunity to "reset" the programme and restore public confidence, what the RIS does not refer to is that we said at the time, that the business community needed to work with the Government to ensure that it remains "a valuable and accessible tool to fill short-term gaps through responsiveness and sensible regulation".[2] The changes announced in April were a significant constriction to the program, with changes to the occupation lists having the most significant negative impact on many businesses. Although there was some change in the July 2017 review of occupations, many businesses are still denied the skills they need as their occupations remain ineligible or highly skilled overseas workers are indicating that they are not attracted to a two year visa with no prospect of staying beyond four years. These restrictions have also been exacerbated by a significant lengthening of processing times which has made a mockery of the idea that a 2 year visa is meant to satisfy short term needs.

Although it is not the subject of the current Bills before the Senate, it is important to state that the comments in the RIS (for example, p 26) that indicate that part of the justification of the changes to the occupation lists arose out of the 2014 457 Integrity Review. What the RIS does not say is that, contrary to what was announced in April 2017, the Review Panel recommended against the underpinning list for employer nominated skilled migration (at that stage called the Consolidated Skilled Occupation List or CSOL) becoming a list of shortages, as it was a contradiction to the very need for the temporary skilled migration to be responsive to needs of a business that cannot fill its skill needs from the local labour market. Although labour market analysis can be useful in identifying trends and serious issues of overuse, no analysis on a national scale can validate (or invalidate) a problem obtaining a skilled worker by a particular business at a particular point in time.

As the dust was still settling on the April announcements, in the May 2017 Federal Budget, a new levy on skilled migration was announced with proceeds going to the Skilling Australians Fund (SAF). The SAF is intended as a vehicle for a new partnership agreement with the

[1] DIBP, Abolition and replacement of 457 visas, RIS (OBPR ID: 21946) August 2017, p 59.
[2] Australian Chamber, *Migration changes will help make system sustainable*, 18 April 2017.

State/Territories and is in line with the recommendation made in March 2017 by the Australian Chamber alongside AiG and BCA for a new agreement to be focused on apprenticeships.

However, the mechanism of collecting monies for the SAF was an unwelcome budget "surprise", as although a levy had been recommended by the Integrity Review into the 457 Visa programme in 2014, the amounts announced in May 2017 ($1200 per year for small businesses and $1800 per year for large businesses) were well in excess of the Review's recommendation of $400 per visa holder per annum. In addition, it was subsequently announced that these temporary skilled migration annual training levies would be paid upfront for the whole term of the visa, which was also against the recommendation of the Integrity Review which had recommended annual invoicing. The Budget also announced a training levy for employers using the permanent Employer Nomination Scheme visa of $3000 (small) to $5000 (large business) paid at commencement.

The new levies were to replace the training benchmarks that previously applied to both the 457 Visa program and the ENS visa and in doing so removed the opportunity for employers to demonstrate their commitment to training by proving that they spent 1% or more on training. Interestingly the RIS (page 52) indicated that the removal of these training benchmarks is a regulatory cost saving of $9.4 million per annum which is suggested to outweigh the regulatory cost to business of the other changes made to the temporary skilled migration programme. The Australian Chamber is very sceptical of these figures.

3 Nomination Training Contribution Charge

The SAF Bill gives effect to this Budget announcement by legislating a Nomination Training Contribution charge. The Charges Bill defines the limit of the Charge which is set at 10% higher than the proposed training levies. The quantum of the proposed levies is unreasonable and excessive, and setting the limit at 10 percent above the proposed levies is unnecessary. Although some employers who were paying 2 percent of their payroll through one of the previous training benchmarks may pay less through the proposed levies (depending on the number of visa holders they are sponsoring and the size of business), the real cost of the proposed levy is borne by those businesses that were able to previously demonstrate they were already spending money on training. As an example, a small business employing 20 people on average weekly earnings[3] would have a payroll of around $1.6 million. The direct employment of one apprentice would more than satisfy the 1% requirement. Under the new system, the business would have to pay a training levy of $4800 for a worker eligible for a four year visa regardless of whether they kept on their apprentice.

Adding to the serious concerns about the quantum of these fees on employers of temporary skilled migrants, it was revealed to migration stakeholders that the training levies would not be fully or partly refundable even if the application was unsuccessful or if the visa holder returned home during the term of the visa. Clearly, this is unfair and an unjustifiable burden on business. Although it is noted that the SAF Bill allows for refunds and the Minister in his second reading speech indicates that refunds will be made where an application is refused, it is important that the

[3] ABS, Average Weekly Earnings $1543 per week, May 2017.

Government affirms this commitment in materials provided to stakeholders and that it further affirms that in the event of an early departure of the migrant within the term of their visa, that a partial refund will be available.

It is clear that the policies in relation to the quantum of the levy, the limit (being 10% above the proposal), the decision to charge the levy up front and the lack of clarity around refunds stem from the direct nexus created between the levy and the commitment to spend close to $1.5 billion over four years on apprenticeships through a new partnership agreement with the States and Territories. All but $260 million of the $1.5 billion SAF was to be raised by the training levy and the Government made it clear that the SAF would not be supplemented through other revenue sources except for in the first year. This mechanism is constricting policy decisions about the levy, and the nexus has to be removed.

Although not directly relevant to these Bills, the nexus is also creating issues in relation to finalising the apprenticeship arrangements. Given there is no guarantee that the SAF will receive the amount of monies that are projected to be raised through migration programme use, this has created uncertainty in the negotiations with the states/territories. Not only is this uncertainty an issue, the approach taken by the Federal Government has sent a strong negative signal about their commitment to vocational training, which has now been defined as luke-warm at best, with the investment only coming at the expense of a new tax on employers. The Australian Chamber strongly advocates an investment in vocational training is justified on its merits.

Given this context, it is recommended that:

- The proposed training levies are halved on the basis that they are excessive and present a strong barrier to accessing the skills the economy needs. Under this recommendation, the fees would be $600 per year for small businesses and $900 for large businesses for each sponsored temporary migrant, and $1500 for small and $2500 for large businesses sponsoring under ENS.
- The full $1.5 billion over four years should be allocated to an apprenticeship partnership agreement with the difference between what is projected to be raised by a (lower) training levy and the $375 million per annum be allocated in all years in budget forward estimates, thus providing a guaranteed amount to deliver certainty in the partnership agreement.
- Businesses who can demonstrate that they will employ an additional apprentice to commence on or immediately after the commencement of a temporary or permanent employer-nominated migrant worker should have their training levy waived.

Training levies paid by sponsoring employers of migrants be refunded if the application is unsuccessful, and refunded on a pro rata basis if the visa holder resigns within the term of a temporary skilled migration visa. Alternatively, the Government should recommit to the initial recommendation of the Integrity Review Panel that the training levy be billed annually.

Recommendation 1: Migration Training Levies should be halved

Proposed training levies should be halved so that the fees would be $600 per year for small businesses and $900 for large businesses for each sponsored temporary migrant, and $1500 for small and $2500 for large businesses sponsoring under ENS.

Recommendation 2: The Nomination Training Contribution Charge limit should be reduced.

The nomination training contribution charge limit in the Charges Bill (s9(1)) should be $3600 for a temporary visa and $2500 for permanent visa. There should be no 10 percent differential between the proposed levies and the charge limit noting that the Bill already provides for indexation of the limit.

Recommendation 3: Training Levies should be waived for additional apprenticeship employment

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4 Labour Market Testing

The SAF Bill includes amendments that provide more detail (s140GBA(6)) on what is included in labour market testing (LMT) and significantly broadens the power for the Minister by legislative instrument to determine the manner and the kinds of evidence for LMT (ss140GBA (5), ((6A), (6B) and (6C)).

Increasing the powers and requirements for LMT is based on the premise that LMT is effective in protecting local jobs. But LMT is ineffective in achieving this aim. It adds significantly to the regulatory burden for employers without ensuring locals are recruited ahead of foreign workers. This is because no regulation can be designed to stipulate which advertising and recruitment approach best fits each situation, and no regulation can force employers to recruit one worker over another.

LMT is akin to asking employers to walk through wet cement – it is time consuming through the requirement (i) to advertise even when the employer knows through past experience there is no skilled worker suitable to meet their business need, and (ii) by creating an administrative process of describing advertising recruitment practices and outcomes. This regulatory burden will discourage

some employers from using the migration programme which is not good policy as it does not allow the program to respond to need.

457 Visa (TSS visa) sponsors are obliged to commit to employing Australians first in the program, regardless of whether LMT is in place. This obligation exists for occupations that are exempt from LMT and existed before LMT was reintroduced in July 2013.

The ineffectiveness of LMT is best explained by example:

> Assume there are four motor mechanic businesses in a large regional town, and employers have long found it hard to attract mechanics to live and work there. Most employ apprentices but they are at various stages of their training. If a mechanic leaves suddenly for personal reasons, their employer knows it will be difficult to replace them and their business and customers will suffer if someone is not found quickly. LMT imposes a regulatory barrier between the need for and delivery of skills. Although it is more costly for the business to hire someone from overseas (another barrier to employing a 457-visa holder) they need to do it to keep their business growing and delivering.
>
> Let us turn this example around for the sake of illustration. Say there is usually no problem sourcing mechanics in this regional town, but a skilled mechanic on a working holiday maker visa picked up a short-term job with a mechanic shop during a busy period, and when the other mechanic leaves suddenly, the working holiday maker is offered that job under a sponsored TSS visa as the business likes their work and they have fitted into the team effectively.
>
> No amount of LMT requirements would prevent that outcome. The business would advertise, and demonstrate in their application that they advertised and considered applicants but they were found unsuitable. If an employer is determined to employ a particular person, it is hard to design regulation that would prevent that outcome. So LMT would not help in achieving compliance with the objective of employing Australian workers when available.

What does help for most genuine employers, and exists without LMT, is the threshold obligation, as those employers will be confronted with needing to be dishonest when they attest that they employ Australians first. Further, the incentive to advertise is not created by LMT provisions, but in the costly and regulatory mechanisms of the programme itself. In almost all cases, the cost in money and resources in applying to sponsor a skilled migrant is a sufficient incentive to seek to employ Australians first, including advertising to fill positions. But Australia is a large country, where mobility of labour is often limited, and obtaining a skilled worker in a particular business, in a specified location at a particular point in time is a challenge for any business, and especially for regional businesses. Australia should not deny the opportunity for that business to survive and grow by erecting further barriers to satisfy workforce needs.

Finally, in relation to LMT, the experience of the use of the temporary skilled migration programme by Chinese workers provides a good case study. In 2013, LMT was re-introduced for the 457 programme (particularly tradespersons, nurses and engineers). Despite a huge negative campaign, LMT for Chinese workers was largely removed by ChAFTA in 2015. If LMT had been a key influence on migration outcomes, you would expect to see a substantial fall in numbers after

2013, and rise in numbers after LMT was abolished. As figure 1 shows, the reverse has been the case:

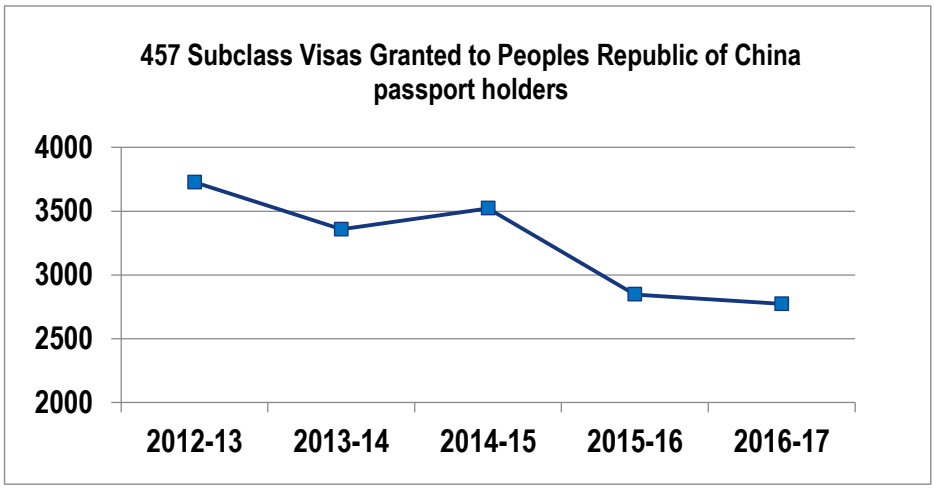

Figure 1: 457 Subclass Visas Granted to Chinese passport holders[4]

In summary, the Australian Chamber concurs with the recommendation of the 457 Integrity (Azarias) Review 2014 that LMT should be removed from the temporary skilled migration program for the reasons outlined here and in the Integrity Review final report. Given that core position, it does not support an expansion of the powers for LMT or a broadening of its reach.

5 Summary

The changes to the migration programme announced in April 2015 and the subsequent announcement of the training levies to be imposed on businesses using the program have been very concerning to business. The proposed quantum of the levies is excessive and the Senate Committee is urged to recommend that they be reduced.

This submission has also presented strong argument that not only should the increased powers for LMT not be introduced, the heavy burden of labour market testing be remove entirely.

[4] DIBP Temporary Work (Skilled) visa (subclass 457) Programme: BP0014 Temporary Work (Skilled) Visas Granted Dataset

Australian
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6 About the Australian Chamber

The Australian Chamber of Commerce and Industry is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

Australian Chamber of Commerce and Industry

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