



MASTER BUILDERS
AUSTRALIA

**Submission to the
Independent Review of the Integrity
of the Subclass 457 Visa Program**

30 April 2014

Master Builders Australia Limited ABN 68 137 130 182

building australia



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1. INTRODUCTION

- 1.1 This submission is made by Master Builders Australia Ltd ('Master Builders') in response to the Commonwealth Government's *Independent Review of the Integrity of the Subclass 457 Visa Program*, announced in February 2014.
- 1.2 Master Builders is Australia's peak building and construction industry association, federated on a national basis since 1890. The association represents over 30,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry body that represents all of the residential building, commercial building and civil construction sectors.
- 1.3 The building and construction industry is Australia's third largest employer with over one million employees. It is the largest employer of skilled tradespeople and a significant employer of engineers and professional managers. Both skilled trades and professional positions have exhibited long term patterns of skills shortage, which necessitate employers making use of Temporary Skilled (457) Visas to fill roles in a timely way. Construction is unusual among big users of 457 Visas as it draws in both professional workers and tradespeople in substantial numbers.
- 1.4 Master Builders' policy priority remains to train and employ Australians first, and in this respect the industry remains the largest employer of traditional trade apprentices. However, a return to industry growth and the difficulty of retaining skilled workers in physically demanding roles mean that efficient access to migration is re-emerging a major issue for employers. The 457 Visa is necessarily on the front line of employer access to skilled migration, as most permanent migrants initially come through the temporary skilled migration pathway.
- 1.5 Master Builders welcomed the opportunity to meet with the Review Panel, headed by Mr John Azarias, on 16 April 2014, to have a wide-ranging discussion of the role of 457 Visas and some challenges with current operation of the 457 Visa Program. This submission sets out and amplifies the issues raised in that meeting.

2. SUMMARY OF KEY PRIORITIES

- 2.1 Master Builders' key priorities for the *Independent Review of the Integrity of the Subclass 457 Visa Program* are:
 - Reduce the minimum English language test result from five in each of the four areas if the IELTS test to an average score of four, which represents a level of functional English appropriate to most work roles in construction.

- Further streamline the process for moving from a 457 Visa to a permanent employer sponsored Visa, particularly for candidates over 50 years of age who currently experience significant barriers to permanent residency.
- Remove the requirement for Labour Market Testing of positions prior to a sponsorship application for a 457 Visa.
- Increase the transparency of the Temporary Skilled Migration Income Threshold and minimum salary requirements, which make it difficult for employers of tradespeople in some locations to utilise 457 Visas.
- Allocate additional resources to process decision-ready 457 Visas within 10 working days, and further streamline document lodgement and other paperwork requirements for employers with an established record of ethical engagement with the temporary migration system.
- Introduce a new temporary skilled visa category for short-term project work of up to 12 months, with lighter touch regulatory requirements and faster processing than the current 457 Visa.
- Increase the flexibility of occupational categories permitted to be sponsored for a 457 Visa to include selected occupations currently classified as semi-skilled (e.g. plant operators) that have a demonstrated undersupply of workers.
- Establish a standing industry consultative council on skilled migration to provide advice to the Immigration Minister on issues such as eligible occupations for migration purposes, English language requirements and minimum salary levels.

3. BUILDING AND CONSTRUCTION AND THE MIGRATION PROGRAM

3.1 Employment in building and construction totalled 1,021,900 in November 2013, or nine per cent of total employment.¹ Twenty seven per cent of those were business owners or self-employed. According to the Department of Employment, despite some short-term uncertainty in the engineering and commercial construction sectors, “construction industry employment is projected to grow by 83,500 (or 8.0 per cent) over the five years to November 2018...against the backdrop of a strong

¹ Australian Bureau of Statistics, *Labour Force: Detailed, Quarterly (6291.0.55.003)*, November 2013.

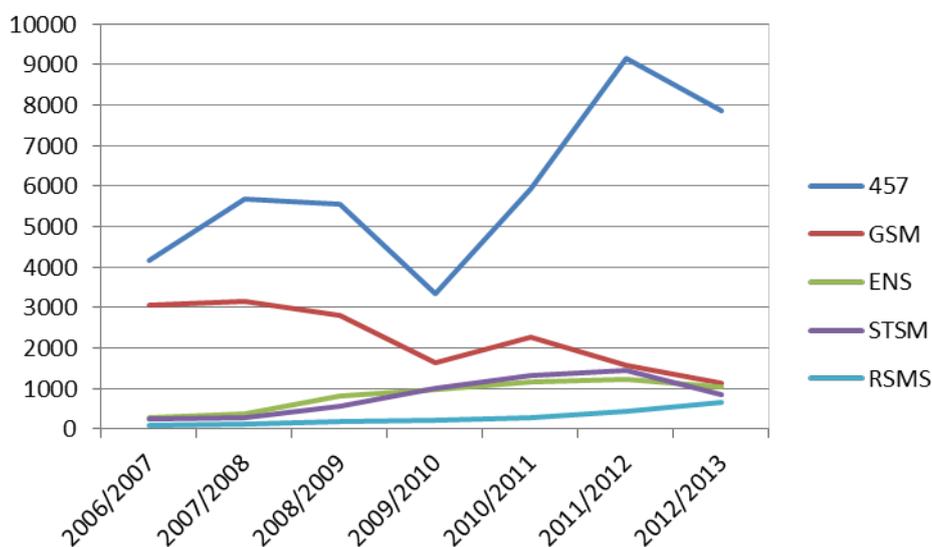
rise in building approvals during 2013 and historically low interest rates which are likely to support growth into the period ahead.”²

- 3.2 At the same time, Master Builders estimates 30,000 skilled construction workers leave the industry each year and so the intake of new skilled workers must replace this number and provide for the projected industry growth. This is particularly concerning as only 11,000 construction trades apprentices completed their studies in the last year. The ‘gap’ is met by a combination of upskilling existing workers (e.g. through recognition of prior learning and gap training), temporary and permanent migration, attracting workers from other industries through higher wages, and to some extent through substituting unskilled for skilled labour.
- 3.3 Finding and retaining suitably skilled and qualified staff is a long-standing challenge for the building and construction sector. Master Builders is currently undertaking a major review of the apprenticeship system in our industry and we are working closely with the Commonwealth Government and other stakeholders to increase apprentice completions. Our highly successful national Construction Apprenticeship Mentoring Scheme is an example of our commitment in this area. We also work with bodies such as Professions Australia to enhance the pipeline of engineers and other professionals coming into the industry.
- 3.4 Taking account of these initiatives, the simple demographics still mean it is likely building and construction employers will remain for the foreseeable future significant users of both temporary and permanent sponsored visa arrangements. Figure 1 overleaf shows the primary visa outcomes for the main visa categories for a ‘basket’ of 32 construction-related occupations. Numbers for both the Employer Nomination Scheme (ENS) and Regional Sponsored Migration Scheme (RSMS) have increased substantially over previous years, albeit from a low base. General Skilled Migration (GSM) is in decline owing partly to a government policy of targeting high-end skills and English language levels in this migration category. Labour Agreements are rarely used in the building and construction industry.
- 3.5 In relation to 457 Visas, where Figure 1 shows primary visas in the Construction industry, this subclass has exhibited a degree of volatility that can be expected from a demand-driven program; however the current coincidence of strengthening industry conditions and falling visa demand is unusual and concerning. The most

² Department of Employment, *Industry Employment Projections Report*, March 2014, p. 2.

recent 457 Visa numbers show a 54 per cent decline in applications over the same period last financial year, at a time when the Master Builders National Survey shows a strong return to industry sales growth and profitability.³ This suggests that employers are increasingly experiencing impediments to engaging with the temporary skilled migration program. A number of these impediments and potential remedies are discussed below.

Figure 1: Primary Visas Granted in the Construction Industry by Subclass



Source: Department of Immigration and Border Protection

3.6 Master Builders continues to support appropriate compliance activities to ensure that employers are meeting their requirements under the 457 Visa Program. This includes minimum salary requirements and employment in the occupation specified on the visa. Where employers do not meet these requirements, they should properly be exposed to penalties as set out in law. At the same time, Master Builders reiterates that there is no evidence of systemic or widespread breaches of visa conditions (as claimed by the previous Government) that would warrant the imposition of additional compliance burdens on visa sponsors.

³ Department of Immigration and Border Protection, *Subclass 457 Quarterly Report*, December Quarter 2013, p. 4; Master Builders, *National Survey of Building and Construction*, March Quarter 2014.

4. ENGLISH LANGUAGE REQUIREMENTS

- 4.3 Master Builders strongly believes greater flexibility should be introduced into English language requirements for 457 Visa applicants. We have received consistent feedback from employers that trades workers with reasonable communication skills can struggle to obtain the IELTS 5 standard across all four test areas, even though they have the ability to communicate effectively in English in the construction workplace.
- 4.4 The reality is that many trades workers, whether or not English is their first language, struggle with the finer details of grammar and comprehension. Within Australia, less than 50% of construction workers have adequate literacy, the lowest level of any industry.⁴ The IELTS test was designed as an indicator of likely success in an academic context and there is little substance to the idea that an IELTS score of five is needed for effective workplace communication or to participate more broadly in Australian life.
- 4.5 The 457 Visa program worked effectively at the previous level of four point five and no substantial evidence was presented that this caused problems with workplace safety or other issues. Increasing the test means highly skilled carpenters and other tradespeople who would be willing to migrate from countries like Italy, Spain, Portugal, Croatia, Finland and the Philippines cannot pass the new language requirements. This issue particularly affects construction as, unlike other industries using 457 Visas, it sponsors a relatively high number of tradespeople, who typically have lower level English than those with professional qualifications.
- 4.6 Master Builders supports a functional English standard for skilled migrants consistent with the ability to read and understand workplace instructions, safety requirements and job entitlements (e.g. payslips). In our view, an average IELTS test score of four (or the OET equivalent) would be appropriate to most work roles in construction. Master Builders believes that some stakeholders have overstated the extent to which a lack of more advanced English skills impedes the ability of migrants to participate effectively in work and society. Australia should not be denied the contribution that migrant tradespeople can make in skill shortage areas because they cannot obtain an unrealistic academically-oriented test result.

⁴ Australian Bureau of Statistics, *Programme for the International Assessment of Adult Competencies* (4228.0), October 2013.

5. TRANSITIONS FROM TEMPORARY TO PERMANENT MIGRATION

- 5.1 In construction, the overwhelming majority of permanent employer-sponsored migration applications are 'onshore' and come for the most part from current 457 visa holders. This practice, where employers and employees 'try before they buy', can help ensure better outcomes for everyone involved. However, employers currently report that the process of moving from a temporary to a permanent employer-sponsored visa is not sufficiently streamlined and on the contrary can be a significant deterrent from undertaking such transitions.
- 5.2 Master Builders contends that employees who have successfully worked in Australia for a number of years on a 457 visa, and whom an employer wishes to engage on a permanent basis, have proved their worth and do not require another exhaustive process that may be more relevant to offshore applicants. Processing times of over a year for permanent employer-sponsored visas should not be the norm. Particular challenges apply to applicants for permanent residency over the age of 50, and most especially those with dependent children over the age of 18.
- 5.3 Noting that the information required for a permanent visa overlaps substantially with the information collected through the initial 457 visa application, a 'short form' should be possible for visa transitions that minimises paperwork for both the applicant and the Department. Providing there have been no issues with a 457 visa holder or their employer(s), background checks could also be minimised rather than starting the process again (e.g. exemption from IELTS testing for onshore applicants converting from a 457 Visa).
- 5.4 A couple of small changes would also make a significant difference in the case of over-50 visa holders. Currently, those applying under the ENS/RSMS Temporary Residence Transition stream that are 50+ years of age need to have been employed with their sponsor for the last four years on a salary at least equivalent to the Fair Work High Income Threshold. In practice this usually requires a second 457 Visa application, as the employee only becomes eligible for the transition stream at the end of the full first visa period
- 5.5 Master Builders proposes that the requirements for applicants over 50 years of age be amended so that applicants can apply for permanent residency after holding a 457 Visa for three and a half years as opposed to four years. In addition, the 457 Visa holder should be able to make an application for permanent residency if they have worked for the current sponsoring employer for at least two years prior to the application being made, as opposed to four years at present.

- 5.6 A greater leeway should also be offered where the holder of a 457 Visa has children who were under 18 at the time of the initial application, but who are over 18 at the time of a second 457 Visa application or a permanent residency application, and who may have difficulty proving dependency. Visa applicants will generally prefer to return to their home country if the alternative is breaking up the family unit. This creates unnecessary dislocation as well as the loss of skilled workers with a proven track record.

6. VISA APPLICATIONS AND PROCESSING

- 6.1 Master Builders recognises the difficulty of balancing the policy objectives of Australia's migration program and providing services to a diverse and geographically spread client group. At the same time, employers in the building and construction industry have often found their interactions with the immigration system to be drawn-out and frustrating and to have generated considerable uncertainty in the area of human resource management.
- 6.2 Master Builders appreciates that incomplete information from visa applicants is often the cause of processing delays. We use the excellent Outreach Officer Program and a range of other channels to help inform our members of correct visa requirements. Nonetheless, there is further scope for better informing employers and other stakeholders of the requirements of the current system, for example by making the Departmental website more user-friendly.
- 6.3 Master Builders also recognises the useful steps taken to accelerate the processing of 457 Visas, for example the use of centralised processing hubs. However, there appears to have been some slippage from the ideal two week processing time to closer to four weeks. Master Builders argues that additional resourcing needs to be allocated to processing centres to ensure a 10 working day turnaround which is reasonably expected by business.
- 6.4 Recent sharp increases in Visas fees are another area of concern to industry. For example, under the previous government in 2013, 457 Visa application costs rose from \$455 to \$1,035 for a single (and even more for couples and families), while sponsorship costs for a business increased from \$85 to \$330. To these costs you would add agent's fees, skills recognition and IELTS testing fees, relocation expenses, plus substantial amounts for health insurance, schooling, etc. It is almost laughable that 457 Visas are accused of being 'cheap labour' when simply to bring someone out on a 457 Visa could easily cost \$20,000.

- 6.5 In addition, the benchmark minimum salary that can apply, the Temporary Skilled Migration Income Threshold (TSMIT) is currently \$53,900 plus superannuation, i.e. the 'market salary' for a position must be above this level for a visa application to proceed. Master Builders supports the use of a minimum salary for employer sponsored visas as an important safeguard against the abuse of migrant workers. However, this level should be set through a more transparent mechanism that guarantees it is a genuine minimum salary that ensures a reasonable standard of living and is not a de-facto mechanism to restrict supply. Appropriate mechanisms to set both the TSMIT and the market salary are of concern to construction as, although the average income of 457 workers in the industry is \$90,000, for some trades in some locations the 'market salary' and the TSMIT are very close.
- 6.6 While a range of factors have contributed to the current large drop in 457 Visa numbers in construction, the previous Government's ill-considered move to introduce Labour Market Testing is undoubtedly a major contributor. Although the incoming Government has sought to ease the burden in this area, the reality is that Labour Market Testing for 457 visas is unnecessary, time consuming and burdensome red tape and should be removed. If suitable Australian workers were ready to fill the available jobs they would be employed to do so, particularly where it costs \$20,000 extra to bring someone on a 457 Visa.
- 6.7 Master Builders supports the primary focus of the temporary sponsored visa stream of the migration program remaining on higher-skilled technical and professional occupations. At the same time, Master Builders submits that the division between 'skilled' and 'semi-skilled' positions is often arbitrary and provides an imperfect guide to which occupations will be difficult to fill from the local labour market. For example, concreting, structural steel work and plant operation are generally considered by the construction industry to be skilled work, but classified as semi-skilled by the Government and so are ineligible for temporary or permanent migration purposes.
- 6.8 One way to address evident frustration with the current system would be to introduce a new temporary skilled visa category for short-term project work of up to 12 months, with lighter touch regulatory requirements (e.g. around skill levels and English language requirements) and faster processing than the current 457 Visa. The construction industry is highly cyclical, and few employers can predict their labour needs three months let alone years ahead. Increasing and decreasing staff levels to accommodate changing demand is a daily reality for construction employers. Master Builders argues that a more responsive mechanism than the

457 Visa (but broader than the Subclass 400 Visa) would be an appropriate mechanism to meet short-term skills needs, with only a minimum level of background checks being necessary for this new subclass.

- 6.9 An issue that has been raised on a number of occasions is whether some form of industry association sponsored Labour Agreement could be a mechanism for getting around current challenges with 457 Visas. As noted earlier in this submission, Labour Agreements are currently little used in the building and construction industry. They are seen as cumbersome and poorly aligned with the industry's method of operation based on multiple tiers of contracting. The head contractor responsible for overall delivery employs second tier contractors to manage elements of the project, which in turn employ sub-contractors to deliver specific pieces of work, and these small sub-contractors then employ tradespeople (who are often themselves individual contractors).
- 6.10 At this point, Master Builders has not worked through the detail of the merits or otherwise of an industry-wide Labour Agreement approach. There are potential benefits but also potential concerns over who would bear responsibility for any breaches of Visa rules, reputational risk to the industry association, apportionment of costs, etc. In the first instance, Master Builders would see a greater return from working through the various kinks in the current 457 Visa system as described in this submission, in order to make the program as employer friendly as possible while maintaining system integrity.
- 6.11 To help work through these matters, Master Builders submits that there should be a standing industry consultative council on skilled migration established following on from the Review Panel's deliberations – similar to advisory groups already existing in some other areas of the immigration portfolio. It would provide advice to the Immigration Minister on issues such as eligible occupations, English language requirements and minimum salary levels. This would help ensure the best industry intelligence was available to the Minister while promoting transparency and stakeholder buy-in to the migration program.

7. CONCLUSION

- 7.1 Properly targeted immigration is a vital policy lever that brings a range of social and economic benefits to Australia. Immigration has historically played an important role in the economic well-being of the building and construction industry

and should continue to do so into the future through effective and accessible temporary employer-sponsored migration arrangements.

- 7.2 Master Builders has argued in this submission for a number of enhancements to current arrangements. These would increase the flexibility of English language requirements, reduce processing times and red tape, make salary requirements more transparent, open up the range of occupations available for sponsorship, and create a new short-term temporary sponsored visa category (for up to 12 months).
- 7.3 Master Builders would welcome the opportunity to discuss any of the issues raised in this submission further. Please contact the National Training Director, Dr Alex Maroya, on 02 6202 8888 or email amaroya@masterbuilders.com.au.