



SUBMISSION TO SENATE INQUIRY

**INQUIRY INTO THE FRAMEWORK AND OPERATION OF
SUBCLASS 457 VISAS, ENTERPRISE MIGRATION AGREEMENTS
AND REGIONAL MIGRATION AGREEMENTS**

Submission to Senate inquiry

Framework and operation of subclass 457 visas



Driving Business Success for Consulting Firms in the Built and Natural Environment

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About us

Consult Australia is the leading not-for-profit association that represents the business interests of consulting firms operating in the built and natural environment.

Our member firms' services include, but are not limited to: design; architecture; technology; engineering; surveying; legal; and management solutions.

We represent an industry comprising some 48,000 firms across Australia, ranging from sole practitioners through to some of Australia's top 500 firms. Collectively, our industry is estimated to employ over 240,000 people, and generate combined revenue exceeding \$40 billion a year.

Consult Australia is sought-after by policy makers across governments who recognise the vital role of professional consulting firms in the built and natural environment; their contribution to the nation's productivity, future prosperity, and standard of living.

Consult Australia's policy and advocacy is supported by long-standing, productive relationships through Federal and State Parliaments and the bureaucracy—as well as our members' substantial expertise and unique perspective on a range of issues.

Across our advocacy priorities we are not just responsive to the political agenda, but setting this agenda; helping to ensure our members' interests are heard, protected and advanced. Our leadership helps to improve our member firms' operating environment and advance better public policy.

Our member firms include:



Consult Australia is a proud member of the following organisations:



Contact

Committee inquiry members are encouraged to contact Consult Australia's Senior Policy Advisor for the skills portfolio

Context of the Consult Australia submission

This submission is restricted to views on the importance of the subclass 457 visa, especially in the context of engineering skills requirements.

Workforce development issues

Of large consulting companies in the built and natural environment, 75 per cent describe themselves as providing mainly engineering design and consulting services.¹ Workforce development for the engineering profession is therefore of great concern to Consult Australia members because of the operational constraints it brings and the increased cost of doing business.

Skills shortages are often cyclical, and that has been the case for engineering. When the most recent skills shortage became evident in about 2000, many Consult Australia members were relatively unconcerned—on past evidence, it was believed that it would eventually end. However, it has become evident that new systemic issues have altered the dynamic.

There are many causes for the engineering skills supply problems. Privatisation of public services since the 1990s has led to a loss of public sector engineering expertise, which has had a negative impact on the efficiency of public sector procurement. Importantly, the transfer of training responsibility from the public sector engineering-related agencies to private sector engineering providers has not been fully acknowledged by government, nor allowed for in procurement practices. This has led to an under-development of skills over the past two decades.

The number of qualified engineers graduating from Australian universities has been static for many years, despite fast-growing demand for their skills. Fewer school students study maths and science, arguably because those subjects and the careers that rely on them have lost prestige in Australia. The skilled workforce could also be more efficiently used, with greater use of engineering technologists and associates and efforts made to retain qualified engineers in the engineering workforce. Workforce diversity, most notably with regard to gender, must also be addressed.

Employers, unions, professional associations, industry associations, educators and governments are all working together to address these issues. Consult Australia has several solutions, and these were provided in a submission to the 2012 Senate Education, Employment and Workplace Relations Committee inquiry into the nexus between the demand for infrastructure delivery and the shortage of appropriate engineering and related employment skills in Australia.²

In the meantime, robust skilled migration programs are essential to the health of engineering-based companies and the Australian economy as a whole.

Utilisation of skilled migration

Skilled migration is necessary to bolster the engineering workforce. The number of engineers of all levels of qualification (technologists, technicians and professionals) arriving on temporary visas increased threefold from 2,260 in 2003-04 to 6,940 in 2010-11.³

This data is supported by the experiences of Consult Australia member firms. Some reported that about 15 per cent of their workforces had been recruited from overseas under various visa subclasses in the 12 months to September 2011.⁴ One large member firm with over 4,000 employees reported that over eight per cent of its workforce, for example, was employed with a visa subclass 457 at that time.

Taken in isolation, these numbers would indicate that the use of temporary skilled migrants rises unchecked. Closer examination shows that the use of migrants is responsive to changes in local demand and supply of skills.

In contrast to the results described above and in response to a downturn in the market, Consult Australia's 2013 Skills Survey Report shows that in 2012 employers dramatically reduced the recruitment of migrants. For the first time, almost a fifth of respondents reported no use of migrants in the previous 12 months. The largest group of respondents, 59 per cent, used migrants for just 1-4 per cent of vacancies.⁵

Data from Engineers Australia supports the survey of Consult Australia members. The numbers of engineers of all levels arriving on temporary visas rose from 2,260 in 2003-04 to 7,490 in 2007-08, before dropping to 6,900 in 2008-09 and further to 4,460 in 2009-10, and then rising again to 6,940 in 2010-11.⁶ This is a clear reflection of how employers' use of the temporary migration program is in response to local skills needs and availability.

The useful mix of visas used by employers and their workers is worth noting and the subclass 457 visa is just one of many. There is also the subclass 400 visa for very short-term specialised work, and the Employer Nominated Scheme for securing talented people for the long term. Enterprise Migration Agreements (EMA) and Regional Migration Agreements (RMA) are unlikely to be directly utilised by Consult Australia's member firms, but the importance of these schemes for the success of large projects is noted.

Finally, business environments and client demands move fast and it is essential that the management of visa processes is simple and swift. Overall, employers are satisfied with the service standards of the Department of Immigration and Citizenship (DIAC), and governments must maintain that with continued investment in the Department and its processing teams.

A good example of the support that DIAC provides to industry is the Industry Outreach Officer (IOO) program. An IOO has been co-located with Consult Australia for several years. It is due to this direct link with the department that employers have developed a mature understanding of the migration program, how it operates, and what they must do to use and comply with conditions. Furthermore, the IOO is a conduit for information flows from the users of the migration system to the Government, and back. Because of the IOO program, a system that could be an impenetrable web is actually well understood and respected by employers.

The overarching and positive messages from Consult Australia and its members are that the temporary skilled migration program:

- is an effective and essential tool for meeting skills needs,
- is used on an 'as needs' basis, and
- is successful when employers can rely on a well funded system to facilitate swift assessment of visa applications.

Response to the inquiry terms of reference

The inquiry terms of reference explore the current framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements. This submission will refer only to the subclass 457 visa.

A: Their effectiveness in filling areas of identified skill shortages and the extent to which they may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements

The effectiveness of the subclass 457 visa to help employers fill vacancies is self-evident in the extent of its use in years of particular skills shortage, and subsequent drop-off in usage in years of poorer economic conditions. In recent times for the built environment consulting sector, this corresponds to the years of 2010-2011 and then 2012, respectively.

There is no evidence that the use of the subclass 457 results in a decline in training effort by employers. In fact, the training investment requirements placed on sponsors of temporary migrants help ensure that employers continue to invest in staff development.

The Consult Australia *2013 Skills Survey Results* show that 19 per cent of employers spend between 1-1.9 per cent of payroll expenditure on training. Most spend well above that rate, with 69 per cent spending between two and five per cent of payroll on training, and six per cent spending between 5 and 10 per cent.

Just six per cent of respondents to the survey spent less than one per cent of payroll on training. Closer examination of the results showed that these firms did not sponsor skilled migrants.⁷

B: Their accessibility and the criteria against which applications are assessed, including whether stringent labour market testing can or should be applied to the application process

Consult Australia's member firms always conduct labour market testing. Almost 100 per cent use internet job sites and newspaper advertising is still used by 44 per cent of employers. Recruitment agents are a modern fact of the job market, with 83 per cent of companies using their services. Other very common labour market testing tools include advertising in industry journals, using head hunters, providing staff introduction incentives and using careers fairs to attract graduates. Social media, especially LinkedIn, is proving increasingly popular.

Employers consistently tell Consult Australia that they prefer to recruit locally-available staff over temporary skilled migrants. The cost of employing a temporary skilled migrant is much larger than the cost of recruiting locally, especially in terms of the cost of the process and the cost of relocating a new employee and their family to Australia. Temporary skilled migrants require more support to settle into Australian business practices, and their families require support to ensure their experience is a positive one and they do not return home early.

This demonstrates that labour market testing is a normal procedure for employers in the built environment consulting sector. Placing new requirements on employers to document and report on labour market testing is not required, and will end up as unnecessary regulation.

C: The process of listing occupations on the Consolidated Sponsored Occupations List, and the monitoring of such processes and the adequacy or otherwise of departmental oversight and enforcement of agreements and undertakings entered into by sponsors

For engineering-related trades and professions, the current method for listing on the Consolidated Sponsored Occupations List (CSOL) is suitable for industry needs.

If some industries and occupations are found to have a tendency for misusing the temporary skilled migration system, such as using it for roles that do not require people with advanced skills, or for roles where there is no shortage of domestic labour, action should be taken. The proposed introduction of a genuineness criterion, under which the department may refuse a nomination if the position does not fit within the scope of the activities of the business, may help stop bogus sponsorship applications.

The government should also consider strengthening the department's ability for refusing visa applications and removing visas if it is later found that information provided to the department during the application stages was false.

D: The process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes

Employers are satisfied that the criteria against which applications are assessed are suitable. They understand the importance of submitting 'decision ready' applications. Survey data shows that DIAC usually meets its service standard with Consult Australia members.

It is important, however, that the government continues to fund the department's visa processing teams adequately. If visa processing times start to slow down, employers will not only lose faith in the system, but the consequent skills shortages will affect business performance and the Australian economy will suffer.

A good example of the support that DIAC provides to industry is the Industry Outreach Officer (IOO) program. An IOO has been co-located with Consult Australia for several years. It is due to this direct link with the department that employers have developed a mature understanding of the migration program, how it operates, and what they must do to use and comply with conditions. Furthermore, the IOO is a conduit for information flows from the users of the migration system to the Government, and back. Because of the IOO program, a system that could be an impenetrable web is actually well understood and respected by employers.

Continuing to fund the department's Industry Outreach Officer program is one example of the good work DIAC does to work with employers and improve transparency and rigour to the process.

E: The adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities

As described in response to item B above, existing labour market testing ensures that employers exhaust local options before utilising the skilled migration program.

During the most recent downturn for the built environment consulting sector in 2012, many employers were forced to reduce the size of their teams. In accordance with the intent of the subclass 457 visa, many of those who were made redundant were holders of that visa. While staff layoffs are always avoided, employers understand that holders of temporary working visas can only remain in the country if there is a need for their skills.

This is further evidence that subclass 457 visa holders are not being given opportunities above those of Australians and permanent residents.

F: The economic benefits of such agreements and the economic and social impact of such agreements

There are two main impacts of skilled worker shortages for built environment consulting companies:

- Labour costs rise and make Australia less competitive on price compared with competitor nations.
- Public and private infrastructure investment is delayed when sufficient numbers of workers cannot be found.

The temporary skilled migration program is essential for alleviating skills shortages as they occur. It has been demonstrated above that employers in the built environment consulting vary their use of skilled migrants in response to local needs and supply of skills.

If the facility to quickly and efficiently recruit temporary skilled migrants did not exist, the Australian economy would cease to function as we know it. Large infrastructure projects would be slow to

complete, and it would be impossible for private investors and developers to make planning decisions that rely on accurate workforce supply data.

G: Whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on such visas

Long-term forecasting of workforce needs is very important and goes hand-in-hand with long-term forecasting of economic development and investment in Australia.

In the built environment context, to achieve this, a clear and transparent long-term approach to the prioritisation of infrastructure delivery is essential at all levels of government. Many projects are prioritised through clear and rational assessment, but in some cases decision-making risks being misconstrued and may appear to be driven by political demands where no clear process or guidelines for assessment have been developed. When communities are competing for public dollars, clear processes are essential to assess, rank and prioritise infrastructure delivery. These must be robust and stand the test of changing political and economic circumstances.

In this sense the Government, as a driver of economic activity, has a leading role in setting up a business environment that allows workers and employers to take a long-term view of their education and training needs. The need for temporary skilled migration will not disappear, but demand for it would be more predictable, and enable the department to more easily identify industries or occupations that require closer monitoring.

H: The capacity of the system to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights

The experience of Consult Australia members is that workers on temporary visas are treated in the same way as domestic employees, and according to legal requirements.

Before developing new actions to ensure that skilled migrants are being treated fairly and correctly, the government should first determine if there is a problem that needs addressing. It could be that any breaches of workplace rights for temporary visa holders occur at the same rate as for the general population. In this case, action to protect workplace rights protections for temporary visa holders probably would be the same as for the wider workforce.

If it is found that workers on a temporary visa are at higher risk of having workplace rights abused, Consult Australia suggests that it is a matter for the Fair Work Ombudsman and the Department of Education, Employment and Workplace Relations, rather than DIAC, to address. As an issue it would also need to be treated separately to management of temporary skilled migration numbers and the systems used to manage applications.

I: The role of employment agencies involved in on-hiring subclass 457 visa holders and the contractual obligations placed on subclass 457 visa holders

Consult Australia has no comment on this matter.

J: The impact of the recent changes announced by the Government on the above points

Consult Australia and its members do not object to the reforms to the subclass 457 visa that were announced by the Government in 2013, but do strongly object to the Government's messaging that has politicised the skilled migration program. It damages domestic business confidence and damages Australia's reputation as a destination of choice for potential skilled migrants.

Consult Australia notes that the Office of Best Practice Regulation (OBPR) has assessed DIAC as non-compliant with the Australian Government's best practice regulation requirements with regard to the proposed reforms announcement.⁸ This adds weight to the Consult Australia view that the handling of the reforms was not driven by evidenced-based policy principles, but by misguided political expediency.

Politicians, unions and industry associations easily forget that the public in general, workers and business owners in particular do not see what is, to us, simply political posturing. Instead, employers have reported to Consult Australia that they are very worried about the future of the skilled migration program and unsure of whether their business plans can be realised once changes come in. The DIAC IOO (mentioned above) has been invaluable for cutting through the rhetoric so that employers are provided with sober advice on what to expect.

Australia operates in a global employment market and competes with other equally attractive countries for the skilled workers we all need. Reports in foreign media about the skilled migration program damages employers' chances of finding and recruiting the best and brightest from around the world.

The association understands that these reforms have been under development since mid-2012 and some address changes to the Australian business environment and experiences of employers. For example, market salary standards require review to ensure relevancy and Consult Australia has advised the department that, with regard to engineering professions, the realistic minimum English language standards is at the IELTS 7 level.

All other proposed changes merely reflect the fact that the government needs to pay greater attention to enforcing the rules for employing temporary skilled workers. Consult Australia members respect the need for the current rules, but do not think that they need tightening—they simply require proper risk-based and targeted enforcement by the government.

K: Any related matters

Consult Australia has no further comments to make.

Conclusion

Thank you for the opportunity to contribute to the Senate Legal and Constitutional Affairs Committee's inquiry into the framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements.

References

¹ Bills, G, *2011 Outlook: An economic forecast for consulting firms in the built and natural environment*, Consult Australia (2011), p 1.

² See the Parliament of Australia website for the Senate Standing Committees on Education, Employment and Workplace Relations at http://www.aph.gov.au/Senate/committee/eet_ctte/engineering/index.htm.

³ Kaspura, A, *The Engineering Profession: A Statistical Overview*, Ninth Edition, Engineers Australia, (2012), p 65.

⁴ Consult Australia, *The Consult Australia 2011 Skills Survey: An analysis of skills in the consulting industry for the built and natural environment*, (2011) p 11. Available at:

<http://www.consultaustralia.com.au/Home/Advocacy/Skills/SkillsSurveys.aspx>.

⁵ Consult Australia, *2013 Skills Survey Results*, (2013) p 12. Available at:

http://www.consultaustralia.com.au/Libraries/Skills/Skills_Survey_2013.sflb.ashx

⁶ Kaspura, A, *The Engineering Profession: A Statistical Overview*, Ninth Edition, Engineers Australia, (2012), p 65.

⁷ Consult Australia, *2013 Skills Survey Results*, (2013) p 15. Available at:

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⁸ Australian Government, Department of Finance and Deregulation, Office of Best Practice Regulation, *Non-compliance with the Australian Government's best practice regulation requirements – Reforms to the Temporary Work (Skilled) (Subclass 457) Visa Program– Department of Immigration and Citizenship*, 15 March 2013, available at: <http://ris.finance.gov.au/2013/03/15/non-compliance-requirements-subclass-457-visa/>