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AUSTRALIA'S TEMPORARY BUSINESS ENTRY ARRANGEMENTS

by

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Abstract: The world-wide trend towards the globalization of economies has changed not only the Australian economy but also its business and government activities. As trade and investment becomes increasingly international, there is growing pressure to facilitate the international movement of skilled personnel. The Australian Government recognizes that there is a need for the country to import certain skills in much the same way as it is developing skills for export. This paper will outline Australia's strategy for meeting the demands of business for the streamlined entry of skilled personnel while at the same time maintaining the integrity of its entry systems and ensuring the development of the domestic labour market. This paper will also examine the outcomes of Australia's policies for the temporary entry of skilled personnel since 1996 and look at future policy directions.

Key Words: Australia, globalization, international migration, skilled workers, temporary entry

Business Dynamics

Over the past decade, Australian business, as elsewhere, has had to adjust to profound changes in its environment to maintain and enhance its competitiveness both domestically and internationally. Such changes are largely a result of the globalization of economies and include:

- ◆ the deregulation of financial sectors;
- ◆ new technologies;
- ◆ travel and communications networks;
- ◆ labour market deregulation;
- ◆ reductions in tariffs and quotas; and
- ◆ growth in multinational and national businesses.

Globalization has also seen increasing competition for business, technology, knowledge and skilled personnel. The demand for new skills and knowledge has created a growing international pool of skilled people and more complex international movements such as intra-company transfers of executives and senior managers within multinational business structures.

Australian business is increasingly turning to skilled temporary residents to supplement critical skill shortages in industries where local recruitment and training efforts are insufficient to meet demand. This is a shift from the historical reliance on permanent entry and largely reflects the rapid pace of change within many industry sectors. Enhanced training and education efforts will continue to be a priority across Australian industry; however, the demand for leading-edge skills and knowledge by Australian companies is expected to continue and to be met increasingly by temporary business entry, as distinct from permanent entry.

The number of (long-stay) temporary business entry visas issued has grown rapidly from 22, 635 visas (including dependants) in 1996/97 to 33,165 visas in 1998/99. The skills and knowledge provided by these workers are essential in many expanding and dynamic industry sectors underpinning Australia's economic prosperity.

Consistent with Australian industry growth trends, the major sector users of temporary business entry include:

- ◆ telecommunications and IT industries (20%);
- ◆ business, property, consultancy and scientific and technical services (17%);
- ◆ manufacturing (12%); and
- ◆ hospitality and tourism (8%).

The occupations of greatest sponsorship include:

- ◆ Professionals (46%)
 - More than half are business and information professionals;
- ◆ Managers and Administrators (29%)
 - Some two thirds are specialist managers;
- ◆ Associate Professionals (12%); and
- ◆ Tradespersons (7%).

In addition to the flow of skilled people to Australia, Australian and multinational companies are increasingly moving Australian residents offshore to impart (and enhance) their skills and knowledge. Many are intra-company transfers. It is expected that the range of professions and number of business people involved in international temporary entry movements will continue to rise.

Review of Temporary Business Entry (Roach Reforms) 1995

It was in this dynamic business environment that the current streamlined temporary business entry arrangements were introduced by the Australian Government on 1 August 1996, following a review of the existing policy regime by a government-appointed Committee of Inquiry. In recognition of the business imperative, the committee, chaired by Neville Roach, Managing Director of Fujitsu Pty. Ltd, recommended simpler procedures and streamlined entry to be able to quickly move key personnel in order to maintain competitiveness.

Key objectives of the reforms included:

- ◆ increasing Australia's attractiveness to trade and investment;

- ◆ increased international competitiveness and trading links ;
- ◆ greater employment, training and economic activity;
- ◆ transfer of skills, knowledge and new technologies into Australia;
- ◆ greater use of Australia's multicultural workforce by offshore interests; and
- ◆ greater integration into the global economy and locally, within the Asia Pacific region.

The fundamental principle underlying the arrangements was that there must be *benefit to Australia* resulting from any business sponsorship activity. Benefit may be in terms of employment creation; increased competitiveness; increased exports; enhanced international trading links; and introduction of new skills, knowledge or technology.

The temporary business entry arrangements represent a balance between giving business more flexibility to build up its international competitiveness by bringing in skilled people, while at the same time safeguarding employment and training opportunities for Australian citizens and residents. The overriding program objective is to maximize benefit to Australia from the entry of temporary residents while maintaining the integrity of the policy.

The previous regime was characterized by the need to labour market test for key positions including managerial and specialist occupations; the requirement for the employer to be assessed against sponsorship criteria each time they nominated a person; skills assessment for most occupations; and full immigration medical checks were required. These processes often resulted in costly delays for business and were seen as an impediment to business competitiveness.

The current temporary business entry arrangements provide quick, streamlined entry to key business people. Australia's business visitor and temporary residence system caters for:

- short-stay temporary business visitors (visa subclass 456); and
- long-stay temporary business entrants (visa subclass 457).

Short-stay temporary business entry is available for a stay of up to three months at a time to business visitors for purposes such as pursuing investment opportunities and attending to business interests and negotiations. Visa validity options include single entry only or multiple entry for up to five years (or life of passport to a maximum of ten years). The visa

is also available in electronic form (Electronic Travel Authority) to eligible passport holders of 31 countries and locations with more than 55 airlines and 22,500 travel agents worldwide participating in the system.

Long-stay temporary business entry is available for a stay of up to 4 years and caters to skilled personnel:

- for companies operating in Australia;
- from offshore companies seeking to establish a branch of the company in Australia; participate in joint ventures; or to fulfil a contract awarded to an offshore company;
- independent entrepreneurs seeking to establish new businesses or joining existing businesses in Australia;
- coming under a Labour Agreement or Regional Headquarters Agreement; and
- entering as ‘service sellers’ (special category under General Agreement on Trade in Services [GATS]).

Key reforms of long-stay temporary business entry:

- ◆ acknowledgment that the proposed employment activity in Australia is integral to the business decision-making process;
- ◆ employer sponsorship status which recognizes the credentials of employers providing benefit to Australia. Sponsors do not have to re-establish their business credentials each time they nominate, and sponsors with ‘Pre-qualified Business Sponsor’ status are approved sponsors for two years with ongoing renewals available;
- ◆ streamlined processing of applications with waiver of labour market testing and normally no skills assessment for key activity personnel (executives, senior managers, highly skilled specialists and intra-company transfers); and
- ◆ simpler and faster health assessment (normally x-ray only for stays of longer than 12 months).

Additional features of the arrangements include:

- ◆ visas may be issued for up to four years and any number of further applications may be made;

- ◆ spouses and dependants have automatic unrestricted work rights; and
- ◆ there is no numerical cap on the number of skilled temporary residents granted visas to Australia.

The streamlined procedures represent a ‘light touch’ at the front end of processing to ensure businesses are able to get the ‘right people’ here quickly. To ensure that the broader interests of the Australian community are maintained, particularly in relation to employment and training opportunities, sponsors are required to comply with certain financial, employment, training and immigration undertakings. A monitoring system provides the ‘control balance’ to the streamlined arrangements and is designed to ensure that sponsors comply with undertakings and to assist ongoing assessment of labour market impacts.

In addition to the above reforms, consistent with the Roach Committee recommendations, the Government established Business Centres in all onshore offices of the Department of Immigration and Multicultural Affairs (DIMA) in 1997 with the primary objectives being to:

- ◆ provide a clearer DIMA focus on business entry arrangements and associated client service standards;
- ◆ respond appropriately to legitimate business needs;
- ◆ deliver DIMA’s business services in the most efficient and cost-effective way;
- ◆ ensure staff are well-equipped to meet the needs of business in a professional, efficient and consistent manner;
- ◆ pursue innovative ways of working with business clients (best practice); and
- ◆ ensure the integrity of DIMA’s business programs.

In 1998-99, to further enhance DIMA’s performance in providing timely service to its clients, service standards specifying processing time frames under each business entry stream were implemented nationally and overseas. Service standards ensure immigration processing is efficient and continues to compare favourably with our competitors.

Review of Temporary Business Entry Arrangements 1998-99

To assist in maintaining 'best practice' business immigration arrangements, a Business Advisory Panel (BAP) was established in 1997 to advise the Minister for Immigration and Multicultural Affairs on the needs of Australian business. The BAP is a government-appointed body of prominent business people, chaired by Neville Roach, who previously chaired the 1995 Committee of Inquiry into temporary business entry.

In April 1998, the Minister requested that the BAP undertake a review of all permanent and temporary business entry programs. The focus was “. . . to examine the scope for adjusting current policy settings and procedures to achieve better outcomes in attracting good quality people, without compromising the integrity of the current processes. . .” The BAP report, titled 'Business Entry in a Global Economy – Maximizing the Benefits, Business Advisory Panel, August 1999,' has been submitted to the government for consideration. The report was publicly launched on 23 November 1999.

Business Response - Future Directions

The BAP considers that the current objectives of temporary business entry policy 'to maximize benefit to Australia of temporary residents without compromising integrity' remain appropriate although continuing changes within the business environment necessitate ongoing monitoring to ensure that the policy settings remain supportive of business.

The BAP indicates that feedback from the business community to the existing temporary business entry arrangements is 'very positive' with respect to the policy reforms, underlying principles and procedures. The Business Centres initiative is also viewed positively and is seen to be a key factor in improving service standards to business.

Some of business' concerns with respect to temporary business entry include:

- ◆ the need to ensure fast track processing of key personnel for short periods of employment up to six months;
- ◆ faster processing of applications at overseas missions; and
- ◆ a need for greater clarity with respect to sponsor undertakings.

In addition to recommendations regarding these concerns, the BAP has recommended that:

- ◆ Business Centres take greater responsibility for processing — including of visa applications offshore — to further improve service levels;
- ◆ The role of recruitment agencies be clarified to ensure that industry training effort is maintained;
- ◆ stronger links by DIMA with key business organizations be developed to raise awareness of the availability of existing business entry mechanisms; and
- ◆ various refinements to regulations to enhance assessments relating largely to integrity issues be implemented.

Other Reviews

In addition to the BAP review, research was commissioned in 1998 by the Committee for Economic Development of Australia (CEDA) to examine business reaction to the Roach reforms. CEDA has recently published its report, 'Temporary Business Entry to Australia: Views of Companies and Migration Agents,' CEDA Information Paper No. 63, August 1999.

The report found that the business community, particularly larger businesses, were positive about the current arrangements. Business' concerns included the need for more timely processing at overseas missions; additional resources to manage overseas 'hotspots'; greater awareness of the policy and requirements among stakeholders; and additional training effort to ensure consistency in decision making.

Overall, both reviews found that the temporary business entry arrangements were working well and meeting business needs. Some fine-tuning is recommended to further enhance service standards, aid decision-making and to maintain integrity.

APEC

Australia's temporary business entry arrangements are of particular interest to other economies, including in the APEC Business Mobility Forum, where the Australian entry arrangements are held as a model for member economies. This has resulted in considerable reform to APEC business visitor movements including through the introduction of the APEC

Business Travel Card, which allows streamlined entry to nationals of participating economies. More recently, the Australian temporary skilled entry arrangements have been used as a model to reach agreement on streamlined movement of executives and senior managers involved in intra-company transfers. Australia chairs the APEC Business Mobility Experts' Group and is the prime driver within this forum of progress in streamlining temporary business entry arrangements.

Current Procedural Requirements

❖ *Sponsored temporary business entry (personnel for Australian or overseas based companies)*

The basic procedure is:

- the prospective employer lodges a *sponsorship* application (and any prescribed fee) specifying the type of sponsorship status preferred and the required number of activities to be filled by non-residents. The sponsor gives an undertaking to meet certain responsibilities with respect to each temporary business employee and any dependants (described below under *Obligations to the Commonwealth*);
- the employer may lodge nominations (and the prescribed fee) with, or separate from, the sponsorship application. The nomination describes the activity (position) to be filled;
- Visa applications (with the prescribed fee) will be considered once sponsorship and nominations have been approved.

Sponsorship

Australian employers seeking to sponsor the temporary entry of an overseas person must apply for either Pre-qualified Business Sponsorship (PQBS) or Standard Business Sponsor (SBS) status. PQBS status is initially valid for two years with annual or biennial renewal thereafter. Employers with PQBS status may lodge any number of business nominations during the validity of their PQBS status. SBS status allows sponsors to nominate a set number of vacancies to be filled by non-residents over a one-year period. The new

sponsorship arrangements mean that the majority of employers do not have to re-establish their sponsorship credentials each time they wish to nominate a temporary resident.

Both types of sponsor must establish that they are of good standing and will provide benefit to Australia through their sponsorship activity. Benefit may include contributing to employment creation or enhancing Australia's competitiveness or trading performance. It is necessary for employers to demonstrate a satisfactory training commitment towards Australian workers or that they will introduce, utilize or create in Australia new or improved technology or business skills.

Sponsorship by overseas businesses

The new temporary business entry arrangements also provide for the entry of executives, senior managers and other personnel, including specialists, for the purpose of establishing a business presence or fulfilling contractual obligations of the overseas business in Australia. Such employers are assessed against the sponsorship criteria and are required to meet normal sponsorship requirements.

Commonwealth Obligations of Sponsors

With respect to any sponsored persons and their dependants, sponsoring employers formally give a range of undertakings to accept responsibilities such as: financial costs (e.g. medical expenses); complying with Australian industrial relations laws including levels of remuneration and conditions of employment; co-operating in monitoring sponsorship activity; and, creating appropriate career opportunities for Australian citizens and permanent residents.

Nomination

Each approved sponsor must lodge a nomination for each position, specifying whether the position is 'key' or 'non-key.' A key activity is an activity 'that is essential to the business operations of the employer *and* requires specialist or professional skills or specialized knowledge of the business operations of the employer.' Where the activity is a 'key activity' there is considerable streamlining in that the nomination may be approved without any need

for labour market testing. Assessment that an activity is a 'non-key' activity does not mean the nomination fails, only that labour market testing may be required to establish that a suitably qualified Australian is not readily available to fill the nominated position.

Visa application

The visa application contains the personal details of the applicant and any dependants. Any skills assessment required of the applicant is undertaken at this stage. Applications assessed as key activity will not normally require skills assessment.

Health requirements

Health processing is streamlined to focus on public health (normally the visa applicant and any dependants over 16 years of age must provide an X-ray if stay is for more than 12 months to eliminate TB as a concern). The exception is for applicants who are intending to work in an area of 'special significance' for example, health-care fields or classroom situations.

❖ Independent Executives

The Subclass 457 visa is available for people who are interested in starting a new business in Australia as an owner, or part owner, or buying into an existing business. The visa provides for temporary residence in Australia for up to four years. At the end of the period, independent executives can consider returning home, applying for a further temporary visa or applying to remain permanently as the owner of a business.

Key criteria to be satisfied by the applicant include:

- ◆ proposed activity must be of benefit to Australia;
- ◆ commitment to obtaining sufficient ownership interest to be a 'principal';
- ◆ commitment to maintaining direct and continuous involvement at executive management level;
- ◆ applicant's background must be relevant to and consistent with proposed activity; and
- ◆ must have net assets of \$250,000 or lesser approved amount.

Applications with the prescribed charge must be lodged outside Australia with the nearest Australian overseas mission.

❖ ***Labour Agreements (LAs)***

Labour Agreements allow for the streamlined entry of a specified number of persons (both permanent and temporary entry) with particular skills where a skill shortage can be identified. Such agreements are negotiated between the Commonwealth and the employer or industrial association and normally cover significant labour shortages (frequently in labour-sensitive occupations).

Employers wishing to enter into a Labour Agreement lodge a submission with DIMA covering:

- company background;
- industry background;
- skilled overseas persons to be recruited;
- local recruitment efforts; and
- training record.

After an LA is negotiated, a nomination is lodged by the employer in accordance with the LA and the employee lodges a visa application. Applicants must be under 45 years of age (unless the appointment is considered to be ‘exceptional’) and have the required skills and qualifications. Streamlined health requirements apply.

❖ ***Regional Headquarters Agreements (RHQ)***

Visas granted under an RHQ are to enable the transfer of key expatriate executive and specialist personnel of the company group and such applications receive priority over applications to which a standard LA applies. The process requires approval of the RHQ (employers must lodge a proposal to Invest Australia, Department of Industry, Science and Resources for assessment); following approval, the company must lodge an Endorsement Form and the nominee must lodge a visa application and pay the prescribed charge. Streamlined health requirements apply.

❖ *‘Service Sellers’*

Provision is also made under Subclass 457 for the issue of a visa allowing a stay, where required, of up to six months to persons seeking to enter for temporary business purposes as ‘service sellers.’ This arrangement is to enable Australia to meet its obligations under the General Agreement of Trade in Services (GATS) to provide streamlined entry to such persons whose employers are seeking to negotiate the supply of services. A letter from the employer and a visa application with payment of the prescribed charge are required.

➤ **FURTHER INFORMATION**

For detailed information on any of the above, please contact the nearest Australian overseas mission or check the DIMA website at www.immi.gov.au.

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