



3 June 2013

Mr Ivan Powell
Inquiry Secretary
The Senate Standing Committee On Legal And Constitutional Affairs
PO Box 6100, Parliament House
CANBERRA ACT 2600

By email: LegCon.Sen@aph.gov.au

Dear Mr Powell,

RE Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements

CFMEU Answers to Questions on Notice - Committee's hearing on Thursday, 23 May 2013

Please find attached Answers to Questions on Notice put to Mr Dave Noonan and Mr Bob Kinnaird of the CFMEU, as requested.

Confidential information in response to other questions has been forwarded to the Committee separately.

Yours sincerely

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Question 1 – Senator Wright – at p. 12 of the Hansard transcript

Mr Kinnaird: Finally, we have data on the work-related fatality rate among 457 visa workers, which shows that the fatality rate is more than double the rate among Australian workers in equivalent occupations. So you would expect that the injury rate would be similar.

CHAIR: What is the source of that and can you provide that further information on notice, please?

Mr Kinnaird: We can provide that information. It is DIAC and our own analysis is included in our submission on Roy Hill.

ANSWER

Note: the following is a modified version of material presented in the Joint Unions Response dated February 2012 to the Roy Hill EMA proposal. Confidential information relating to the Roy Hill EMA proposal has been removed.

The data was current as at 31 December 2011. It is not known if further work-related fatalities of 457 visa workers have occurred since then. The practice of DIAC has been not to voluntarily disclose information on workplace deaths of 457 visa workers.

Number of work-related fatalities of 457 visa holders¹

Between March 2007 and December 2011, there were 12 work-related fatalities of 457 visa workers reported to DIAC. Of these, most (10 out of 12 deaths) occurred in calendar years 2007 and 2008 when lower 457 English language standards prevailed.

- Since the 457 minimum English language requirement was raised to IELTS 5.0 in September 2009, there was only one 457 work-related fatality in over 2 years to December 2011.

Table 1 (next page) shows the 12 work-related fatalities by State/Territory for both calendar year and financial year. (Australian work-related fatality data is generally published on a financial year basis- see below). Other key points:

- Nearly all (10 out of 12 deaths) were workers from countries where English is not the first language - the Philippines, China or Mongolia² (data not shown).
- One half of all work-related fatalities among 457 visa workers (6 out of 12) were in the Construction industry - 3 each in WA and QLD, the main jurisdictions for projects qualifying for EMAs (data not shown). All 457 workers killed were doing trades or sub-trades work, ie blue-collar jobs (eg, electrical workers, scaffolder, rigger, stone mason, welder, fitter etc).

¹ 457 primary visa holders only, ie excluding work-related deaths of 457 secondary visa holders.

² Only 2 of the 12 deaths involved 457 workers from English-speaking counties (UK and Ireland).

- 75% of all 457 fatalities between 2007 and 2011 (9 out of 12 deaths) occurred in QLD and WA, ie the same jurisdictions where major projects eligible for EMAs are heavily concentrated. This is a higher proportion than would be expected, as the WA and QLD share of 457 visa-holders in trades and sub-trades occupations averaged only around 60% over this period.
- In the 5 years between 2007 and 2011, there were more work-related deaths of 457 visa-holders in WA than in any other Australian jurisdiction – 5 of the 12 work-related deaths occurred in WA, or 42% of all such deaths; and
 - WA was the only state to record at least one 457 work-related fatality in 4 out of the 5 years between 2007 and 2011.

Table 1 457 work-related fatalities notified to DIAC, by State/Territory and year

Calendar year basis

	WA	QLD	NT	NSW	SA	TOTAL
2007 (a)	1	1	1			3
2008	2	3		1	1	7
2009	1					1
2010						0
2011	1					1
Total	5	4	1	1	1	12

Financial year basis

	WA	QLD	NT	NSW	SA	TOTAL
2006-07	1	1	1			3
2007-08	1	2				3
2008-09	2	1		1	1	5
2009-10						0
2011-12 (b)	1					1
Total	5	4	1	1	1	12

Source: DIAC published and unpublished data.

(a) From March 2007.

(b) To 31 December 2011.

457 work-related fatality rates

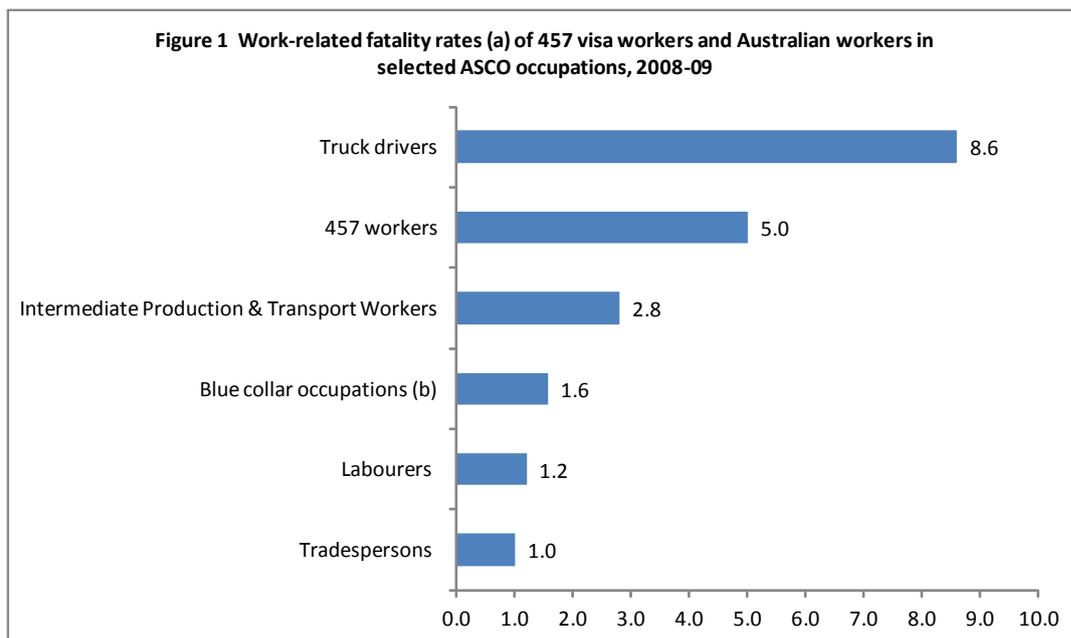
Figure 1 and table 2 below show work-related fatality rates for 457 visa workers and Australian workers in relevant occupations on a comparable basis for 2008-09.³

The work-related fatality rates in Figure 1 have been standardised and expressed as a rate per 18,000 workers, this being the average stock of 457 visa workers in Australia in the trades and sub-trades occupations in 2008-09. Safe Work Australia fatality rates by occupation are usually expressed as a rate per 100,000 workers. The conversions (to rates per 18,000) are shown in table 2.

Key points:

In 2008-09 the work-related fatality rate for 457 visa workers was **5.0 per 18,000 workers**. This was:

- **3.2** times the work-related rate in all Australian blue collar occupations (5.0 vs 1.6 per 18,000 workers), and **1.8** times the fatality rate for the most dangerous major occupation grouping in Australia, ASCO 7 Intermediate production and transport workers (2.8 per 18,000 workers).
- **5** times the work-related fatality rate among all Australian Tradespersons (1.0 per 18,000).
- Almost 60% of the rate for Truck drivers, the most dangerous single occupation in Australia with a work-related fatality rate of 48 per 100,000 workers, or **8.6** per 18,000 workers in 2008-09.



Source: Safe Work Australia, *Work-related Traumatic Injury Fatalities, Australia 2008-09* (May 2011); DIAC published and unpublished data.

(a) Fatalities per 18,000 workers. Includes 'Working' and 'Commuting' fatalities as defined by Safe Work Australia, excludes 'Bystander' fatalities.

(b) Total for Tradespersons, Intermediate Production & Transport Workers & Labourers combined.

³ Many 457 visa workers in Australia in 2008-09 had been granted 457 visas in previous years when there was either no minimum 457 English language requirement (up to July 2007) or a very low minimum - an average IELTS 4.5 score across the 4 test components (from July 2007 up to September 2009).

Table 2 Work-related fatalities (a) and fatality rates for 457 visa workers (b) compared to all Australian workers, by selected ASCO occupation: Australia , 2008-09

Occupation/ASCO major group	Fatalities	Fatality rate	
	2008-09 No.	Per 100,000 workers	Per 18,000 workers (c)
457 workers, 2008-09	5	N/A	5.0
All Australian workers, 2008-09			
4 Tradespersons and Related Workers	78	5.7	1.0
7 Intermediate Production and Transport Workers	134	15.4	2.8
<i>Truck drivers (included in ASCO 7)</i>	74	48.0	8.6
9 Labourers and related workers	64	6.9	1.2
Blue collar occupations total (4, 7 & 9)	276	8.7	1.6
All occupations (d)	403	3.7	0.7

Source: Safe Work Australia, *Work-related Traumatic Injury Fatalities, Australia 2008-09* (May 2011); DIAC published and unpublished data.

- (a) Includes 'Working' and 'Commuting' fatalities as defined by Safe Work Australia, excludes 'Bystander' fatalities.
- (b) In Trades and sub-trades occupations (ASCO 4-7). Includes negligible numbers in white collar occupations 5 & 6.
- (c) The estimated average stock of 457 workers in the Trades and sub-trades occupations (ASCOS 4-7) in 2008-09.
- (d) ASCOs 1-9, ie includes occupation major groups not shown.

Note that:

- Safe Work Australia work-related fatalities data for 2008-09, released in May 2011, was the latest available at the time of preparing Joint Union comments on the Roy Hill EMA proposal.
- 2008-09 recorded the largest number of work-related deaths of 457 visa workers (5 – see table 1) on a financial year basis. Detailed calculations have not been presented for the prior financial years when 3 work-related fatalities of 457 workers were notified to DIAC (in each year). The 457 work-related fatality rates for 2006-07 and 2007-08 will also be significantly above those for Australian blue collar workers generally.⁴
- 457 sponsors currently have no obligation to notify DIAC of the work-related death of, or serious injury to, a 457 visa worker in their employment.

⁴ While fatalities were lower, so was the base number of 457 visa workers in Australia.

Questions on notice to the CFMEU from Senator Cash

1. How many 457 visa holders, if any, has the CFMEU employed in the 2012-13 financial year?

None.

2. How many 457 visa holders if any did the CFMEU employ in the 2011-12 financial year?

None.

3. If employees are employed on 457 visas, how many are involved in training or up skilling Australian employees?

Not applicable.

4. How many allegations or cases of rorting in relation to the 457 visa program have been reported directly to the CFMEU?

In relation to the rort or fundamental abuse of the 457 visa whereby employers can engage 457 visa workers even when qualified Australian workers are available and willing to do the work – see CFMEU submission to this Inquiry, pp 8-12.

Many examples of employers placing job ads that target temporary visa holders already in Australia looking for a 457 visa have been reported to or identified by the CFMEU. Many are thinly disguised attempts to discourage Australian applicants and imply that the employer is really after 457s or would-be 457s.

Others brazenly state they are only interested in job applicants from one ethnic group, ie “Australian workers need not apply” eg this recent example on the Gumtree website (since removed) targeting 40 Irish Electrical power linesmen for 457 sponsorship –

40 Power Linesmens Needed - Sponsorship Opportunity - Melbourne
Melbourne VIC view on map

Date Listed:26/02/2013 Last Edited:27/02/2013 Advertised By:Private Job Type:Full-time

Irish Linesmen - 457 Sponsorship Opportunity

40 Positions Available in Melbourne

Offer includes -Sponsorship Paid by Employer , Visa Paid for by Employer , Relocation Costs paid by Employer

please contact Sabrina at Celtic Migration Services +61 8 83966814 or +0435784677

Send your Resume to sabrina@celticmigration.com.au

<http://www.gumtree.com.au/s-ad/melbourne-cbd/tradesmen-labour/40-power-linesmens-needed-sponsorship-opportunity-melbourne/1014972063>

In relation to exploitation of 457 visa workers, see Confidential information submitted to the Inquiry on 4 cases involving multiple 457 visa workers (including Statutory Declarations), and the following.

In the period 2012 to May 2013, the CFMEU has dealt with 3 main cases involving hundreds of 457 visa workers; and in one case, potentially thousands.

5. What evidence does the CFMEU have to justify the allegations or cases of rorting?

See answer to 4 above.

In relation to the three main cases:

Case 1 – Allegation that a 457 sponsor on the Sino-Iron major resources construction project at Cape Preston in North West WA, employing some 200-300 Chinese 457 visa workers was underpaying the 457 workers; employing 457 visa workers in high-risk semi-skilled construction jobs without authorisation, ie no 457 visas were approved for those occupations (and even though Australian workers were available); and unlawfully on-hiring 457 visa workers to subcontractors on the project.

Evidence included direct knowledge of Australian workers working alongside the Chinese workers; and a poster placed on the construction site by a major contractor stating Chinese 457 workers employed by MCC are “assigned” by MCC (head contractor) to work with contractors and that:

“ ...Like many other companies on the project, KG will have a large percentage of MCC labour (Chinese Trades People)”... to assist us in this and any other work we may be engaged to perform.”

Case 2 - That DIAC was permitting 457 visa workers approved as ‘Project administrators’ to continue to work as Scaffolders with a WA employer in North-West WA, for 11 months after one of these Irish 457 visa workers had been killed in a workplace accident while doing high risk scaffolding work.

Evidence comprised media reports indicating the 457 worker killed was actually doing scaffolding work at the time he was killed; DIAC advice that the 457 worker killed was granted the 457 visa as a “Project administrator”, as were several others employed by the same sponsor; and confidential information provided to the CFMEU by other Irish 457 visa workers.

As well, DIAC data showed that more 457 visas were being granted for “Project administrators” than any other occupation (2,740 were in Australia as at February 2012); and that around 30% of these were for sponsors in the construction industry

The CFMEU formally recommended to DIAC a freeze on 457 visa grants for “Project administrators”, pending a review to ensure employers were only being granted these 457 visas for genuine Project administrators, not as a smokescreen to obtain 457s for high-risk construction work.

CFMEU advice was not followed. In fact, between February 2012 and March 2013, the number of 457 ‘Project administrators’ in Australia increased by 37% or 1,020 - from 2,740 to 3,760. It is difficult to conceive a more reckless and irresponsible decision that almost certainly has placed more 457 visa holders at risk.

Case 3 – That a 457 sponsor in the ACT construction industry with some 30 Korean workers has grossly underpaid these workers, delayed payment of wages (some waiting 6 weeks to get paid); obtained at least one 457 visa in the occupation Accountant but put the visa holder to work as a painter; engaged in discriminatory treatment of the Koreans compared to Australian workers employed; and most seriously, made physical threats against the Korean workers and their families if they complain or speak out.

Evidence is Statutory Declarations by Korean workers, a former company manager and Director, and company records examined.

6. With the allegations that have been reported to the CFMEU, what action has the union taken as a result of these concerns?

The CFMEU has reported all allegations above to the Department of Immigration.

7. Has the union reported the concerns to the Department of Immigration? If not, why not?

See 6 above.

8. Has the union lodged complaints with the Department formally? If yes, in how many instances? Was this done through the Minister's office or via the DIAC Dob in hotline?

Yes, in all instances in 5 above. Complaints are usually directed first to the Department through the Outreach Officer network or established consultative forums rather than the DIAC Hotline.

9. Are you aware of the MCA Report "More than temporary" which found two percent of visa holders surveyed said they were being paid well below threshold figures. Just five percent indicated they did not feel their employer was meeting their obligations". How does the Union respond to this finding?

Yes. The CFMEU is aware of this MCA report and on 13 May 2013 issued a media release on it titled '457 Visa report by Migration Council misses the point', see link here:

<http://www.cfmeu.asn.au/news/457-visa-report-by-migration-council-misses-the-point>

The survey findings referred to in the Senator's question do not justify the claims by the MCA that only "a small proportion of employers are abusing the program" (MCA report, p14); or that the survey only found "issues in the order of around 2 to 4% in terms of regulatory abuses" of the 457 visa program.⁵

The MCA report presents a selective and misleading analysis of the survey findings relating to the earnings of 457 visa holders, and draws conclusions not supported by the survey findings reported.

The 2% of 457 visa holders identified by the MCA report represents simply the proportion being *extremely and grossly* underpaid – not the total percentage being underpaid the wages required by Immigration Regulations, which will be much larger.

The MCA report actually says that 2% of all 457 visa holders surveyed were earning *less than \$40,000 when they first arrived and in June 2012*:

It is cause for considerable concern that approximately 2 per cent of 457 visa holders indicated that their earnings were less than \$40,000, both when they first arrived and when they were surveyed (June 2012). This is significantly below the salary threshold of \$51,400 and indicates that a small proportion of employers are abusing the program.....it is also

⁵ Ms Carla Wilshire, CEO MCA, *Migration Council disputes government's 457 visa findings*, Interview with Fran Kelly ABC Radio National, 13 May 2013. <http://www.abc.net.au/radionational/programs/breakfast/migration-council-report-disputes-government-457-visa-findings/4685060>

highly unlikely that *these visa holders* are being paid wages that are comparable to market salary wages.”⁶ (emphasis added)

But the legal obligation of 457 sponsors (in relation to all 457 visa holders covered by the survey) was to pay visa holders the 457 market salary rate in June 2012 - ie, the same wage as the equivalent Australian worker in the same workplace – not simply the 457 ‘salary threshold’.

The key 457 earnings indicator of “regulatory abuse” is therefore the number and proportion of 457 visa holders surveyed who were being paid less than the appropriate 457 market salary rate in June 2012; and the number of 457 employers involved in such underpayments.

But the MCA report does not provide any data at all or comment on this central issue. The MCA report simply says that it is ‘highly unlikely’ that the 2% of 457 visa holders earning *less than \$40,000* in June 2012 (and when they first arrived) were being paid the required market salary rate – but says nothing about whether the other 98% of 457 visa holders surveyed were being paid the 457 market salary rate.

The report states only that a further 25 per cent of 457 visa holders responded ‘Don’t know’ or Refused to answer’ on the earnings questions. Its sole comment on this finding is that it is “notable” that “this was the single question in the survey that elicited this type of response.”

Published DIAC data shows that the average salary of 457 visa holders surveyed should have been at least \$86,400 (the average 457 nominated base salary approved in 2009-10 and 2010-11 when all the survey respondents obtained their 457 visas).

The MCA report does not disclose the average earnings in June 2012 of all 457 visa holders surveyed nor any data showing their earnings distribution by salary ranges. This is standard information expected in a professional research report.

The report also does not disclose the actual percentage of surveyed 457 visa holders who reported that their June 2012 earnings were less than \$51,400, the salary threshold applying from June 2012; or less than \$45,220 and \$47,480 (the threshold for those granted visas between October 2009 and June 2010 and July 2010 to June 2011 respectively).

The Committee might wish to obtain this information and to ask the following questions of DIAC (which commissioned the survey and holds all the data):

- a) What proportion of the 3,800 457 visa holders surveyed in June 2012 were not being paid the applicable 457 market rate as required under the Migration Act and Regulations? (DIAC has the capacity to match visa holders surveyed with their nominated and approved 457 market salary rate.)
- b) In relation to the actual 457 visa holders identified in a) as being underpaid in June 2012, what action has DIAC taken since August 2012 (when DIAC received the survey results) to investigate the underpayments and to ensure that sponsors complied with their obligation to pay the 457 market salary rate?

⁶ MCA Report, More than temporary, p14.

- c) In relation to the actual 457 visa holders identified in a) as being underpaid in June 2012, how much money was owed to the 457 visa holders as backpay and other entitlements; and what action has DIAC taken since August 2012 to recover monies owed as backpay to the 457 visa holders and/or assist the visa holders to do so, using DIAC's powers under the Migration Act?

Just as the 2 per cent figure does not provide a lower bound to the proportion of 457 visa holders not being paid the 457 market salary rate, neither does the finding that "just five percent indicated they did not feel their employer was meeting their obligations" provide an upper bound.

The relevant survey question concerned sponsor obligations *in general* and did not ask 457 visa holders whether the employer is meeting the specific obligation to pay the 457 market salary rate to the visa holder. In fact, the question did not even mention earnings.

The actual survey question was as follows:

D11. Under the 457 Visa program, your employer has a number of obligations they need to meet to protect visa workers from being exploited (such as equal working conditions to Australians, employing you as per the terms of the visa etc.). Thinking about your experience, do you feel that your employer is meeting these obligations?⁷

Even the phrase 'such as equal working conditions to Australians' is vague and imprecise with respect to the employer's specific obligation to pay the 457 market salary rate.

The MCA report also states that a further 6% of 457 visa holders surveyed responded "Don't know" if their employer is meeting their obligations (p14, table 13).

Thus a total of 11% of 457 visa holders surveyed reported that they did not 'feel' their employer was not meeting their obligations, or did not know if they were.

Finally, the MCA report implies that the survey findings are representative of all 457 visa holders, even though the survey was limited to only a subset of 457 visa holders – ie, those in Australia on 5 May 2012 and who had been in Australia on a 457 visa for at least 10 months. As well, the report provides no evidence to demonstrate that the survey findings were even representative of the subset of 457 visa holders actually surveyed.

⁷ The Social Research Centre on behalf of DIAC, *0892 Visa 457 Employees Online Survey*, 2012, p9.