Carrying Australia

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Tony Sheldon National Secretary

Tuesday 30 April 2013

The Committee Secretary
Senate Committee on Legal and Constitutional Affairs
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Parliament House
Canberra ACT 2600
Australia

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Dear Sir/Madam

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

Enclosed please find a submission to the Senate Standing Committee on Legal and Constitutional Affairs addressing the Terms of Reference for the inquiry into the framework and operation of subclass 457 visas. The submission primarily centres on issues relating to the existing arrangements and how the 457 and Labour Agreement processes could be improved.

We would be pleased to respond to any questions arising out of the submission and/or to attend a hearing of the committee to discuss its contents. Please direct any correspondence to Polo Guilbert-Wright

Yours sincerely,

Tony Sheldon
National Secretary

Submission to Senate Committee on Legal and Constitutional Affairs

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

26 April 2013

The Transport Workers' Union of Australia

Introduction

The Transport Workers' Union of Australia (TWU) represents some 90,000 men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries.

With over one hundred years experience in conducting Australia's freight task, the TWU has been proactive in establishing industry standards that improve the lives, and safety of transport workers, their families and public.

The TWU welcomes the opportunity to contribute to the Senate Committee's investigation into the current framework and operation of subclass 457 visas.

We've seen a 21 per cent increase in 457 visas granted in our industry [transport, postal and warehousing] compared with February last year. We propose a range of legislative changes that will greatly improve the future working of foreign workers coming to Australia.

The TWU position on 457

The ongoing public debate on migration to Australia, particularly the 457 visa scheme, forces us to consider the type of society we want in Australia. While we don't oppose the use of 457 visas we do believe that it is there for genuine shortages and not for employers to exploit workers.

The TWU has been vocal on the manipulation of the 457 visa scheme by unscrupulous employers who have used this as a means to exploit foreign workers, evade their responsibility to educate and train locals and to undercut Australian companies that play by the rules.

No matter whether you have a 60,000-year heritage in Australia or if you arrived last week – no worker in Australia should have fewer rights than another.

As we are seeing an explosion of "demand" for foreign workers without the proper labour market testing to determine whether demand and supply are in equilibrium.

This is a deliberate undermining of Australian labour rights, conditions and wages.

With the Federal Opposition on the record as determined *"to restore the access that has been taken away for 457 visas"*[1] any future Abbott Government will see a flood of foreign workers, open to exploitation, competing with Australian job seekers.

Australians are some of the best, most skilled and experienced workers in the world and we want to see them stay that way. Employing workers under the 457 visa scheme does not release an employer from their responsibility to up-skill local workers or train our young people.

But without changes to tighten up the current system, the abuse will only continue and it will be the Australian workers and their families that will suffer.

[1] Scott Morrison, Address to AMMA, 2 August 2012

Response to the terms of reference

The current framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements, including:

(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 Australian aviation industry is a major economic driver, contributing around $7 billion to the economy and employs 50,000 Australians directly and a further half a million indirectly.[2] The domestic aviation industry recorded 607,062 flights in 2010/11, 6.6 per cent higher than in 2009/10. There were 27.6 million passengers carried on international flights to and from Australia, an increase of 7.3 per cent over the previous financial year.[3]

Air passenger movement within Australia is predicted to double to 279 million a year within 20 years.[4] These figures demonstrate the importance of the aviation industry and it will only increase in importance. Government and businesses alike should be doing more to address this demand the potential skills shortfall to reduce our reliance on foreign labour.

Meanwhile the road transport sector is also experiencing continued growth. Over the five years to 2012/13, total tonnage hauled by road freight is expected to increase by an annualised 2.6 per cent to 207 billion tonne-kilometres.[5] Australia Post has recorded increased volumes of parcel traffic directly linked to the growth of online shopping.[6]

The TWU acknowledges that under certain circumstances it may be appropriate allow 457 visa holders into the Australian labour force. Current Australian Government policy is to outsource our skills shortage to employers believing this will result in attracting the best and brightest, all the while boosting productivity. But the checks and balances are not adequate to determine what efforts they are making to train local residents or ensure workers are not subject to exploitation

As Toner and Woolley suggest, the 457 visa scheme may in the longer term exacerbate rather than ease skill shortages in areas such as trade occupations, since it may reduce the incentive for employers to train apprentices.[7] In the year to June 2012, skilled tradespeople accounted for 7,930 visas, more than double the number of visas granted to tradespeople a year earlier. This demonstrates a trend that will seriously undermine the long-term viability of Australia's workforce.

Central to the problem is an ageing population; this is a global dilemma for developed nations. A typical transport worker in 2007 is a 43-year-old male working in a full time position for an average of 46.8 hours per week, earning $865. Up to 45 per cent of his peers will be aged over 45 and only 4.6 per cent of his fellow transport workers are aged 20-24.

In the next 20 years, many transport workers will reach retirement age and their exit will contribute to an anticipated shortage of transport workers by 2020; a time where the

[2] Anthony Albanese, 13 November 2012. Australian Airports Investing and Growing. Australian Airports Association. Melbourne.
[3] Bureau of Infrastructure. Transport and Regional Economics 2012. Avline 2010-11. Canberra ACT.
[4] Bureau of Infrastructure. Transport and Regional Economics 2012. Air passenger movements through capital and non-capital city airports to 2030-31. Report 133. Canberra ACT.
[5] Road Freight Transport in Australia. IBISWorld. August 2012.
[6] http://auspost.com.au/about-us/australia-post-increases-profit.html
[7] P Toner and R Woolley, 'Temporary Migration and Skills Formation in the Trades: A Provisional Assessment' (2008) 16 People and Place 47. p.113

number of freight movements and passenger movements will continue to rapidly grow.

The TWU believes that increasing pay rates of truck drivers will retain drivers and provide an enhanced incentive for potential entrants. Solving the impending shortage across sectors by introducing foreign labour to road transport through temporary business arrangements is a short-term fix to a long-term problem.

The 457 visas do nothing to address poor safety standards in the road transport industry. They do nothing to resolve the low rates of pay that cause high number of exits. They do nothing to resolve the lack of training pathways for potential entrants. And they occur at the expense of the employment opportunities of unemployed youths and the underemployed.

In terms of pay rates, the introduction of foreign workers will only foster competition with domestic drivers - driving down their market power and ability to achieve wage outcomes reflective of their economic position in a time of labour shortage. Safety standards can be expected to fall in proportion to the decline in wage rates, lower wages will attract fewer domestic entrants and reliance on foreign labour will deepen. Foreign labour will also remove any incentive for employers has to lift local productivity; particularly through training.

Inevitably, domestic job seekers are being crowded out, particularly young people seeking to enter the workforce. The surge in the number of young people on Youth Allowance from 75,664 to 90,753 between November 2011 and 2012 is alarming. Unemployment has increased from 629,969 to 666,830 in a year. Yet the latest Department of Immigration and Citizenship (DIAC) figures show the number of 457 visas being granted continues to increase, despite evidence of a softening labour market and job losses in a number of sectors.

> At Tullamarine Airport in Melbourne, a number of Australian Licenced Aircraft Engineers Association members employed by John Holland Aviation Services have been made redundant while 457 visa holders performing the same or similar work have been retained. The scheme is to fill skills shortages when employers cannot find sufficient workers from the domestic labour market. If workers are being made redundant then clearly a skills shortage no longer applies. In this instance, the 457 workers should be let go, not the other way around.

It is not acceptable to rely on employers to identify skill shortages. The reality is in many cases they don't want to offer the wages and conditions that are needed to attract a local worker. We recommend that employers who have retrenched labour within the last 12 months should be excluded from seeking sponsorship of permanent or temporary migrant labour.

The Ministerial Advisory Council on Skilled (MACSM) migration should work together to analyse our long-term skill needs and formulate ways to address this problem within the next six months. This would need to include on-the-job training, mentoring, flexible working conditions and more extensive use of traineeships. Further usage of workplace development and convincing employers of the return on investment in skills development is important.

We support the ACTU position that the use of temporary overseas workers should not be permitted unless the employer can demonstrate:

- a history of accredited training;
- a successful outcome of this training (measured in employment outcomes);

- retention of trained workers in the workforce;
- an ongoing program of, and commitment to, training in the areas of the skills shortage; and
- a demonstrated ongoing financial investment in training in the area of the identified skills shortages. This investment may be directed at new entrants into the workforce or up skilling existing workers.

Recommendation:

- *Unannounced inspections to verify if employers are complying with all requirements under the scheme.*
- *Implement the above ACTU recommendations.*
- *Legislate to prevent employers who have had redundancies in the previous 12 months from accessing the 457 visa scheme for a minimum 12 month period.*
- *MACSM strategy to better identify long-term skills shortage and ways for employers to focus on investing in local labour.*

(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;

The TWU maintains that temporary overseas workers should only be used where skilled labour cannot be sourced locally. Legislation should ensure that opportunities to use temporary migrant labour match genuine, short-term skill shortages and are not simply a response to employer desires to find labour that can be employed more cheaply and under more oppressive conditions than local labour.[8]

The fact that the system is essentially based on the employers' word is proof that reform is needed. Individual employers are not required to demonstrate, or even state, that they have explored the availability of suitably skilled local labour. There is not even a prohibition against replacing local workers with 457 visa workers. The individual employer has to do little more than offer assurances that they need foreign labour.

We need a legislative requirement that employers must seek to employ permanent residents before they are granted permission to recruit temporary overseas labour. We advocate the need to set a minimum timeframe for advertising job vacancies nationally. If after a 28-day period no applications and/or suitable candidates are found, then employers can apply for a 457.

The TWU does not support the Government position that the current ban on labour market testing in the 457 visa class would be in breach of our non-binding Doha offer. Australia's only existing binding World Trade Organization/General Agreement on Trade in Services dates from 1995.

The 1995 agreement clearly prohibits labour market testing in the 457 visa specifically for intra-company transfers in a specified range of 'classifications' including executives, managers and "specialists". Australia could change its 2005 Doha offer at any time including withdrawing the offer to remove labour market testing for "specialists" in the 457 program. As the CFMEU has said the decision of recent Government to not change its position is for fear of being criticised.[9]

[8] http://www.law.unimelb.edu.au/files/dmfile/CELRL_Working_Paper_No__50_-_March_2011_FINAL2.pdf p.20
[9] http://www.pc.gov.au/__data/assets/pdf_file/0009/102510/subdr090.pdf

The current Government stance on prohibiting labour market testing on the basis that it would be contrary to a non-binding agreement at Doha is more extreme than the Howard Government position. The Howard Government offer clearly states:

> *"Australia reserves the rights to withdraw, modify, or reduce this offer in whole or part, at any time prior to the conclusion of negotiations"*[10]

We believe that now is time to consider the national interest and institute labour market testing to ensure our economy is addressing the skills shortage where they are needed and clamp down on them where they are being exploited by employers.

We accept that some industries or enterprises may experience genuine difficulties in meeting skill requirements. We argue that these claims must be demonstrated through proper labour market testing. Employers who solely cite difficulties in recruiting workers should not meet this standard without reliance on additional evidence.

The TWU acknowledges that DIAC is not the appropriate department to determine skills shortage. We support the independent role of the Australian Workforce and Productivity Agency in providing advice on Australia's future skill and workforce development needs.

The Federal Court in Perth has heard allegations on behalf of the Fair Work Ombudsman that foreign workers on an oil rig off the coast of Western Australia were paid less than three dollars an hour. The Fair Work Ombudsman took action in 2011, alleging four men were underpaid a combined $127,425 over nearly two years while working on two North-West Shelf oil rigs operated by Petroleum. The Filipino painters received US$900 for 28 days of work, in which they worked seven days a week, 12 hours a day.

We do not support the practice of using foreign labour to undermine local wages and conditions and consider it serves to transfer the burden of business risk onto an inherently precarious workforce. This has significant ramifications not only for the migrant and domestic workers involved, but also compromises the long-term viability of the industries and/or individual businesses exploiting such practices and the wider communities within which they operate.

As outlined by the recent work of Joo-Cheong Tham and Iain Campbell[11]temporary migrant labour programs should be regulated to ensure that they match genuine, short-term skill shortages. Furthermore, the temporary migration schemes should not be used as a response to employer demands for a cheaper and more flexible labour supply.

The TWU recommends that there must be stronger sanctions and increased sponsorship costs in conjunction with a system that allows workers who have been mistreated to raise and report exploitation without fear of harsh penalties. Currently employers sponsoring a 457 visa holder only pay $420 for processing and $455 for the individual. The UK Border Agency fees for Tier 2 (equivalent of 457 visa scheme) are more onerous on employers, having to pay over $2300 while smaller companies pay $760, meanwhile employees have to pay over

[10] http://www.dfat.gov.au/trade/negotiations/services/
[11] Tham, J and Campbell, I (2011), Temporary Migrant Labour in Australia: The 457 Visa Scheme and challenges for labour regulation, Centre for Employment and Labour Relations Law Working Paper No. 50, March 2011

$700.[12] To offset the increases in fees we recommend the additional funds raised should go towards education and enforcement activities.

Recommendations:

- *A legislative requirement that employers seek to employ permanent residents before they are granted permission to seek temporary overseas labour.*
- *Legislate a minimum timeframe for advertising job vacancies nationally. If after a 28-day period no applications and/or suitable candidates are found, then employers can apply for a 457.*
- *Overturn the Doha trade position and institute labour market testing.*
- *In order to demonstrate genuine labour shortages, rigorous independent verification should first be undertaken before visas are granted. This process needs to make use of a wide range of economic and social indicators that investigates the underpinning reasons behind persistent labour shortages and difficulties in retention.*
- *Labour shortage claims must be verifiable and involve consultation with relevant organisations including training organisations, State Governments, unions, employer associations and job network agencies.*
- *To minimise the exploitation of migrant workers and undermining of the domestic labour market, the TWU supports the payment of genuine market rates to migrant workers based on ABS earnings data and the average collective agreement rate for that occupation.*
- *Increase the fee structure of the 457 visa scheme to fund training and enforcement.*
- *Whistle-blower laws to provide protection to 457 visa holders to report unscrupulous employers without fear of retribution.*

(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;

The TWU advocates for a number of changes to the process of listing occupations on the Consolidated Sponsored Occupations List (CSOL) and the monitoring of such processes. We believe that DIAC is not the right department to have oversight of such a list.

CSOL should be changed to *Consolidated Shortage Occupation List* to reflect its true meaning. This is in line with other countries, including the UK's Shortage Occupation List.[13] It should reflect specific skills shortages rather than a list of skills that is 642 occupations long. We still have 'project administrators' and 'cook' despite known exploitation of both occupations. Secondary legislation needs to remove Ministerial discretion being used to add occupations to the CSOL.

The CSOL no longer has legitimacy and needs an immediate independent audit, with an annual review with labour market testing thereafter, to see if occupations should be removed or amended. We believe the Australian Workforce and Productivity Agency is well placed to play a key role in providing independent advice on the existence of skills shortages for the purposes of the 457 visa program.

The Joint Standing Committee on Migration observed in 2007 that "it is unclear to the Committee to what extent DIAC and Department of Education, Employment and Workplace

[12] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/fees-2012.pdf
[13] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/workingintheuk/shortageoccupationlistnov11.pdf

Relations (DEEWR) customised the gazetted list in terms of listing not only 'skilled' occupations but also migration occupations in demand."[14] The Committee and the Deegan Inquiry recommended that DIAC should adopt more rigorous procedures in ensuring the integrity of the list.

For example, flight attendants were added to the CSOL on the 1 July 2012. The DIAC did not seek advice from the DEEWR on the labour market status before considering it for inclusion.[15] This is despite ABS Labour Force (Air and Space Transport) figures showing the number of persons working in the aviation industry, including flight attendants has fallen from 59,400 in November 2010 to 53,500 for the same period last year. Senator Xenophon has asked questions in Senate Estimates and no satisfactory answer has been provided as to why the then Minister for Immigration added this occupation to the list.

> The Transport Workers Union says Jetstar has breached Australian immigration law amid claims it employed Thai cabin crew to work on domestic routes within Australia for less than $AU400 per month. The Fair Work Ombudsman lodged a statement in the Federal Court claiming Jetstar owed thousands of dollars in back pay to eight Thai crew who had been working on domestic routes. This came to light during Senate Committee evidence. These crew were based in Thailand but regularly worked on flights travelling between Australian domestic airports and carrying domestic passengers. Even though they were flying domestic routes on Australian planes, often working side-by-side with Australian crew, they were employed under Thai contracts. That meant their pay was a fraction of what their Australian colleagues were earning and their contracts were not subject to Australian workplace conditions. Shifts of up to 20 hours straight with no limits on duty extensions meant that these flight attendants were so exhausted they doubted whether they could react appropriately in an emergency. This case demonstrates the lengths to which certain corporations will go to reduce labour conditions for shareholder profit. *(Rural Affairs and Transport Legislation Committee, Friday, 4 November 2011)*

Given that ABS figures show a reduction in the number of persons working in the industry, why has the Government granted the aviation industry access to 457 visas to hire flight attendants? Jetstar has clearly demonstrated its treatment of foreign staff through the Thai flight attendants matter. It prompts the question: What is to say Jetstar won't continue this behavior towards those employed under 457 visas?

DIAC cannot demonstrate a sound evidentiary basis for exercising its functions under the 457 visa scheme. For example the Minister for Immigration decides the terms of Labour Agreements on the advice of the DIAC. It is troubling to the TWU that "officers are not required to undertake detailed analyses of enterprise agreements or industrial instruments in order to assess the 'market salary rates'."[16]

It would appear that DIAC is relying upon employer evidence rather than doing its own investigation and analysis. If it doesn't have the resources another Government department should be found that does.

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[14] Joint Standing Committee on Migration, Parliament of Australia, Temporary Visas… Permanent Benefits: Ensuring the Effectiveness, Fairness and Integrity of the Temporary Business Visa Program (2007) n 9, 80

[15] Senate Standing Committee on Education Employment and Workplace Relations, 2012-13, Questions on Notice, DEEWR Question No. EW0653_13

[16] DIAC, Policy Advice Manual: Subclass 457 Visas, para 24.4 (as at 1 July 2010)

Temporary migrant workers are more likely to suffer from discriminatory work practices. Similarly, poor language and cultural literacy will affect many temporary migrant workers to a greater extent than local workers. These factors strengthen the power of the sponsoring employer.

Extreme dependence on the employer is associated with the visa. The reliance on income and likely desire for permanent residence, coupled with the threat of deportation in 28 days, creates a situation whereby the employee feels limited in his or her ability to change their conditions even if they are being exploited.[17]

The lack of enforcement to date from DIAC has allowed unscrupulous employers to remain undetected. As Bob Birrell noted in *Immigration Overshoot*[18] DIAC had only 37 inspectors available in 2011/12, who visited less than four per cent of those employing 457 visa holders. The recent announcements from the Government to give some 300 Fair Work Ombudsman inspectors the powers to monitor and enforce compliance will go a long way to address the concerns of the union movement.[19]

Recommendations:

- *An immediate independent audit of the CSOL, thereafter, an annual independent review of the CSOL with labour market testing to see if occupations should be removed or amended.*
- *CSOL's name should be changed to Consolidated Shortage Occupation List to reflect its true meaning.*
- *Remove the Ministerial discretion to add occupations to the CSOL.*
- *Australian Workforce and Productivity Agency to play a key role in providing independent advice.*

(d) the process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes;

For the purpose of this section we'd like to focus on labour agreements. Like many unions around Australia we have observed an increase in applications. We anticipate a growth in this scheme by any future Coalition Government given its intensions:

> *"Under a Coalition Government, 457 Visas won't just be a component but a mainstay of our immigration policy."*[20]

Further improvements in the consultation process are needed. Currently, labour agreement sponsors can meet their obligations by simply sending unions and other stakeholders an email with the bare minimum of information about what is being proposed and ask for a response within 10 days. Once the employer has done this, they have no obligation to engage in any further stakeholder discussion.

This should be changed to include an explicit obligation for employers to respond to reasonable questions and requests put to them by unions and other stakeholders during the consultation period. Our experience to date has been broadly been positive. Employers have engaged with the TWU and answered our questions despite no requirement to do so. We consider, however, that this should still become a formal requirement

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[17] S Rosewarne, 'Globalisation and the Commodification of Labour: Temporary Labour Migration' (2010) 20(2) Economic and Labour Relations Review p.103-4

[18] http://www.monash.edu.au/assets/pdf/news/cpur-immigration-overshoot.pdf

[19] http://www.minister.immi.gov.au/media/bo/2013/bo194313.htm

[20] Tony Abbott address to the IPA, 27 April 2012

We are advocating for the need to set a minimum timeframe for advertising job vacancies nationally. If after a two-month period no applications and/or suitable candidates are found, then employers can apply for a labour agreement. The onus should be on the employer to prove a 'genuine labour shortage'. We believe the onus should be higher for labour agreement given the emphasis on semi-skilled occupations.

The advertisement should include:

i. the job title;
ii. the main duties and responsibilities of the job;
iii. the location of the job;
iv. an indication of the salary package or salary range or terms on offer;
v. the skills, qualifications and experience needed; and
vi. the closing date for applications, unless the job is part of a rolling recruitment program (in which case the advertisement should state the period of the recruitment program).

The TWU opposes the use of labour agreements if the employer does not provide us with evidence of genuine local recruitment and training efforts, or provide a level of information that gives a clear picture of the type, location and remuneration of the work to be performed. It is difficult to know how DIAC makes its recommendation to the Minister since the information provided by the employer is commercial-in-confidence.

We are happy to work with employers to help fill positions locally for example, by providing links with members who are currently unemployed and who could perform the work in the nominated occupations. But we reject the use of labour agreements by employers in industries where local labour cannot be attracted due to poor wages and conditions.

The ACTU has noted that in several cases where unions have challenged the inclusion of certain occupations in labour agreement on the basis that the positions could be filled locally, the employers have dropped them off their list of nominated occupations. This highlights the importance of external scrutiny, and the fact that when such scrutiny.[21]

Hanson is a construction materials company that specialises in cement, aggregates and other forms of concrete. It is part of the international company known as HeidelbergCement Group. Hanson through lawyers has written to the TWU to express a desire to import drivers to fill 90 positions under a labour agreement.

We have expressed our concerns to Hanson about its plans. Late last year it transferred its existing company agitator employees to Hymix, or made them redundant. Hanson has maintained throughout the lorry owner-driver contract dispute using owner-driver's is its preferred method of distribution. Hanson's current agitator employee EBA expired in December 2012 and it has resisted attempts to commence bargaining. Using imported labour will be an attempt to undermine the right of their workforce to collectively bargain.

The TWU would like to see a clamping down on the use of 457 visasfor semi-skilled occupations. These skills can be developed within a shorter period of time or through a combination of off-the-job and on-the-job training, therefore it is reasonable to expect that employers will obtain these workers exclusively from the local labour market.

[21] http://www.actu.org.au/Images/Dynamic/attachments/6638/ACTU_Congress_Skilled_Migration_policy.pdf

Access to specialised semi-skilled occupations may be appropriate in limited circumstances but this should only occur after a detailed assessment of the labour market at the time and only after establishing that no Australian workers are available to do the work, even with retraining and or relocation.

We believe that an online register of all labour agreements should be updated quarterly by DIAC. It should include employer's name, the number of workers, in which category of occupation – the ANZSCO code – and in which region of Australia. This would add a level of transparency currently not available.

Further, the current 457 training benchmarks of either one per cent of payroll into training their local workforce or two per cent into an approved industry-training fund are generally inadequate and open to abuse. DIAC is not policing this system properly. We believe that this needs reviewing.

We propose that DIAC be required to notify and advise all stakeholders that were consulted as to the outcome of the application.

Recommendations:

- *An online register of all labour agreements should be updated quarterly by DIAC.*
- *Obligation on employers to respond to reasonable questions and requests put to them by unions and other stakeholders during the consultation period.*
- *Minimum timeframe for advertising job vacancies nationally before beginning consultation for a labour agreement.*
- *Clamping down on the use of 457 for semi-skilled occupations.*
- *Clamping down on the current 457 training benchmarks, generally inadequate and open to abuse.*
- *DIAC to inform stakeholders of outcome.*

(e) the adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities;

Australia has gone through two years of slow jobs growth, with total jobs growing by less than one per cent a year. Yet applications for section 457 visas continues to rise. At the end of February, there were 107,510 primary 457 visa holders in Australia – up 21.5 per cent on this time last year. The total number of applications lodged so far this program year (the past eight months' worth) is 8.3 per cent higher than over the same period last year. This is despite, the ANZ series of job advertisements, which covers newspapers and internet job vacancies, showed a 15 per cent decline in the year to October 2012.[22]

The Government should consider the structure of those industries making 457 application and whether there are inherent difficulties in attracting workers. For example, chronic underinvestment in their workforce, internal mismanagement, unsociable hours, notorious underpayments or poor conditions. Unless the industry or a particular employer can demonstrate that they have taken remedial steps they should not have access to an overseas labour supply.

[22] http://www.anz.com.au/corporate/research/australian-industry-economics/job-advertisement-series/

A Transport Workers Union official has taken a series of photographs at Go West's Port Hedland depot in Western Australia, which showed a worker perched on the top of a bus without safety equipment. The photographs also show a dirty old bus used for emergency accommodation and filthy mould-covered bathroom facilities. TWU national secretary Tony Sheldon said the photographic evidence showed that the staff worked in unhygienic conditions and that more should be done by Go West to protect their welfare. "The living conditions are appalling; it is something you'd actually find in a Third World country," he said.

A positive change to the current arrangement would be to allow the 457 visa holder the right to change sponsor after a minimum of six months. This would give the visa holder a certain degree of freedom. It would place upon the employer the expectation to pay staff at the appropriate levels if they are to retain them.

We agree with Bob Birrell that the current net migration target set by the Government does not reflect our current economic outlook. By maintaining a net migration policy close to 200,000 the Government is increasing the competition for local residents facing already challenging employment conditions. The first obligation of government to its citizens is to protect their welfare, and the best way of doing so is to ensure that they get access to whatever employment opportunities exist.[23]

The hospitality sector, with the lowest paid 457 workers, was one of the biggest growth areas. Until mid-2011, few firms used 457 visas to import cooks. Yet by January 2013, 1690 cooks had been granted 457 visas 240 a month. Cooks have suddenly become the biggest users of section 457 visas. This is despite ABS estimates that spending in hotels and restaurants fell 1.1 per cent last year, as the public reduces its discretionary spending to avoid more debt. Where is the labour shortage that requires us to suddenly import thousands of foreign cooks?

The Victorian Government plans to cut an estimated $300 million from TAFE will impact on employment conditions. That figure includes money TAFE colleges used for student services such as libraries and disability support. Many courses such as hospitality will lose funding. The TAFE sector not only provides initial training for young people so they can get into the workforce, it also provides retraining to enable people to re-enter the workforce after redundancy or long periods of unemployment.

Recommendations:

- *Allow 457 visa holders the right to change sponsor after a minimum of six months.*
- *Consider setting a net migration cap according to our economic forecast to ensure we don't have a supply and demand imbalance.*
- *Further funding allocated towards TAFE and other vocational training.*

(f) the economic benefits of such agreements and the economic and social impact of such agreements;

Since 2000 there has been a significant increase in the proportion of temporary workers coming from developing countries. In 2013, the two fastest growing categories by home countries of workers on 457 visas were Indian and the Philippines. In addition, it is only in more recent years that Australia has entered into working holiday arrangements with

[23] http://www.monash.edu.au/assets/pdf/news/cpur-immigration-overshoot.pdf

developing countries such as Indonesia and Bangladesh.

Workers from these countries tend to be at greater risk of being exploited by unscrupulous recruitment and migration agents and employers through:

- The potential for recruitment and/or migration agents to provide misinformation during the recruitment process;
- Language barriers;
- A lack of traditional support and family networks in Australia;
- Unfamiliarity with the way the Australian legal and administrative system works; and
- A lack of knowledge of their rights under Australian law and low rates of union membership.

An Indonesian engineer (Puspitano) on a 457 visa was sacked by the employer for speaking up about his rights and as a result, had to leave Australia with detrimental effects on him and his family. Maurice Blackburn successfully ran an adverse action case against the company. The court awarded damages, (both economic loss & pain & suffering) and fined the company.

We agree with Joo-Cheong Tham and Iain Campbell's analysis that the rights of temporary migrant workers should be governed, firstly, by their status as human beings.[24] As human beings, temporary migrant workers should enjoy the bundle of rights recognised as human rights.[25] Temporary migrant workers should be employed according to working conditions that apply to local workers. Inferior working conditions for temporary migrant workers will result in unfair competition for local workers and a race to the bottom.

The migrant worker needs to find a new employer within 28 days of ceasing employment or face deportation. The Deegan inquiry recommended 90 days to find a new sponsor. We propose a compromise of 60 days should be adopted.

Recommendations:

- *The Deegan inquiry recommended 90 days to find a new sponsor, however a compromise of 60 days should be adopted instead of the current 28 days.*

(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;

We have already articulated throughout this submission to see better long-term forecasting of workforce needs.

(h) the capacity of the system to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights;

Registered organisations as defined by the *Fair Work (Registered Organisations) Act 2009* should have access to 457 visa holders upon employment to inform them of work place rights. We strongly support measures to ensure workers on 457 visas are adequately informed of their rights and entitlements under Australian law, and to the existence of

[24] http://www.law.unimelb.edu.au/files/dmfile/CELRL_Working_Paper_No__50_-_March_2011_FINAL2.pdf
[25] ILO Multilateral Framework on Labour Migration Principle 8 states '[t]he human rights of all migrant workers, regardless of their status, should be promoted and protected'.

relevant unions and community support services.

Employers should also be required to provide the following information to prospective workers prior to departing their home country and also make the information available to workers on arrival in Australia:

i. the nature of the work to be performed;
ii. the location of employment;
iii. the obligation upon the employer to pay for economy class air tickets to Australia;
iv. arrangements for income and medical insurance;
v. a copy of the employment contract;
vi. information on workers' rights and entitlements under Australian law (including the right to participate in a trade union); and
vii. contact details for the Department, migration support services and relevant unions.

Upon arrival in Australia and prior to commencing work on a worksite people on 457 visas should receive training on employment rights, occupational health and safety and cultural awareness. This training should be provided by the relevant union or by a registered provider.

Involving stakeholders in both policy design and practical administration of migrant worker programs must involve all stakeholders – not just employers. The longstanding work of organised labour demonstrates there is a critical role for unions to support migrant workers, and to assist in their integration into Australian communities.

Recommendations:

- *Registered organisations should have access to 457 visa holders upon employment to inform them of work place rights.*

(i) the role of employment agencies involved in on-hiring subclass 457 visa holders and the contractual obligations placed on subclass 457 visa holders;

The TWU has no comments to make.

(j) the impact of the recent changes announced by the Government on the above points;

We acknowledge that a number of policy reform improvements have been implemented to the 457 visa scheme since 2007. Further, the Government recently has made a number of recommended changes that the TWU supports.[26] For example giving Fair Work Ombudsman inspectors' immigration powers. This adds transparency and accountability to the system that had been lacking. As outlined in this submission further legislative reform is needed to improve the scheme.

(k) any related matters.

Separately to the labour agreement register we believe that an online register of all 457 sponsors should be updated quarterly by DIAC. It should include factors such as the employer's name, the number of workers, in which category of occupation – ANZSCO code – and in which region of Australia.

Recommendation:

[26] http://www.minister.immi.gov.au/media/bo/2013/bo193683.htm; http://www.minister.immi.gov.au/media/bo/2013/bo194313.htm;

- *A 457 visa scheme online public register.*

Conclusion

Australia's migration program should be underpinned by sound principles that are used to guide the department's recommendations to the Minister on the size, composition and appropriateness of the program.

The use of 457 visas should not be a way for businesses to shift their corporate risk and responsibility onto workers, particularly low paid workers who are among the most vulnerable within our community. DIAC should implement stronger labour marketing testing to determine supply and demand for skills.

Discussion on migration policy and the issues around population policy needs to be more nuanced with a focus on adequate levels of infrastructure, social services, and community planning underpinning the debate.

Recent examples:

- The CFMEU has achieved an interim settlement for a group of workers on 457 visas employed as construction workers on various Canberra sites. The workers, employed by K.P. Painting Pty Ltd, were underpaid by hundreds of dollars per week, forced to work unpaid overtime and did not receive other legal entitlements covered by Australian law.

- The Immigration Department has started investigating concerns that Syntheo may have misused the 457 skilled temporary migration visa scheme in the process of fulfilling its contract with NBN Co.

- A Northern Territory mining company is being investigated for employing 14 foreign workers under the 457 visa program to do unskilled work for half the wage of their Australian colleagues receive. The Immigration Department has confirmed it was investigating a complaint made by the Australian Manufacturing Workers' Union against the McArthur River mine.

- The Federal Court in Perth has heard allegations on behalf of the Fair Work Ombudsman that foreign workers on an oil rig off the coast of Western Australia were paid less than three dollars an hour. The Fair Work Ombudsman took action in 2011, alleging four men were underpaid a combined $127,425 over nearly two years while working on two North-West Shelf oil rigs operated by Woodside Petroleum. The Filipino painters received US$900 for 28 days of work, in which they worked seven days a week, 12 hours a day.

- Protestors have blockaded a construction site in Werribee, Victoria. The group, which included unemployed tradesmen, was blocking access to the construction of a water treatment plant in protest over Filipino workers employed on the site under 457 visas. A group of 12 men, including Filipino workers, was helicoptered into the water treatment plant to avoid the blockade.

- The Maritime Union wants the Federal Government to close a legislative loophole that allows an overseas company to employ foreign workers in Australian waters without 457 visas. The Federal Court has ruled Allseas does not need to obtain 457 visas for its 125 overseas employees. In the Federal Court in Perth, Allseas successfully argued their employees on two boats are not working in Australia's migration zone, and don't need work visas. It argued the two boats laying the pipeline were not permanent resource installations, fixed to the Australian seabed, and therefore could bypass the need for visas.