

ACTU response to Questions on Notice from Senator Cash

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

None.

- 2. How many 457 visa holders if any did the ACTU 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; no employees at the ACTU are employed on 457 visas.

- 4. How many allegations or cases of roting in relation to the 457 visa program have been reported directly to the ACTU?**

The ACTU has directly received reports of around 150 individual cases of roting and exploitation under the 457 visa program.*

These reports come from a variety of sources including through the ACTU's confidential 457 visa hotline, from affiliated unions of the ACTU, and through our relationships with other community organisations such as Migrante Australia.

The cases of roting and exploitation reported to the ACTU include:

- 457 visa workers being engaged where skilled and qualified Australian workers were available to do the work
- Breaches of employer sponsorship obligations
- Under-payment of workers
- Workplace bullying
- Debt bondage
- 457 visa workers nominated to work in skilled occupations and then being required by their employer to perform unskilled work on a regular or permanent basis

*Note: this figure includes cases where multiple workers were the subject of a single report or complaint.

5. What evidence does the ACTU have to justify the allegations or cases of reporting?

The ACTU has the direct evidence of 457 visa holders themselves who have experienced poor treatment and exploitation in the workplace, in contravention of 457 visa program requirements and obligations on sponsoring employers.

In addition to that, the ACTU also has the evidence from our affiliated unions who represent both 457 visa workers who have been exploited and the Australian citizens and permanent residents who have been passed over for job opportunities despite having the skills and qualifications to do the work.

The ACTU also points to the macro-evidence cited in our written submission to the Committee that shows that 457 program numbers have continued to grow as the labour market softens.

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

Subject to the wishes of the visa holders themselves, as appropriate the ACTU puts callers in contact with relevant unions and government bodies, such as DIAC, the Fair Work Ombudsman and WorkCover, who can help them find out further about their rights and what further action they might be able to take to rectify the situation they find themselves in.

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

The ACTU has reported individual cases to the Department of Immigration, where appropriate and subject to the wishes of the visa holders themselves. Callers to the hotline are often very reluctant to go to DIAC, or to have the ACTU contact DIAC on their behalf, for fear of losing their visa and being deported.

Some callers to our confidential hotline have independently reported their cases to the Department of Immigration, while also contacting the ACTU.

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?

The usual practice is for the ACTU to refer complaints to the relevant union to follow up or to refer the visa holder to DIAC.

Where the ACTU has itself helped visa holders and their representatives to lodge complaints with DIAC, this has usually been done through the ACTU's DIAC Outreach Officer in the first instance and then through the DIAC monitoring unit in the relevant state or territory.

As noted in the previous response, many callers are reluctant to take matters to DIAC.

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 ACTU is aware of the MCA report.

In response to the findings referred to above, the ACTU is very concerned to hear that 2% of visa holders were paid well below threshold figures (i.e. earning less than \$40 000 per annum compared to the TSMIT of \$51 400 per annum) and 5% did not feel their employer was meeting their obligations. Extrapolating this finding based on the total number of primary visa holders currently in Australia (108, 807 as at 30 April 2013), the MCA report indicates that 5, 443 visa holders were not receiving their full and proper entitlements i.e. 5, 443 individual breaches of the 457 visa program. There is also a further 6% who don't know if the employer is meeting their obligations (p. 74, MCA report). We would hope the Committee would be similarly concerned to hear these findings.

Other related findings of note in the MCA report we would bring to the attention of the Committee include:

- 7% of visa holders said their working conditions were not equal to Australian colleagues (p. 14). For those visa holders of non-English speaking background, this figure was higher again at 8.6% (p. 72).
- 15% of sponsoring employers said they did not find it difficult to hire or employ workers from the local labour market (p. 76), yet they still employed workers under the 457 visa program – this finding points to widespread and fundamental abuse of a fundamental tenet of the 457 program that 457 visa workers should be engaged only where there is a genuine skill shortage that cannot be filled locally
- Only 1.1% of employers said they would ‘increase salary’ for the job if they cannot find someone who matches their preferred job specifications, while 33.5% said they would seek overseas workers - this indicates to us that many employers are not willing to pay genuine market rates to attract and retain employees and prefer to take the easy option of obtaining 457 visa workers (p. 77)
- 26% of 457 visa employers said they found their 457 visa workers because the workers themselves approach the employer (p.78) - this means that those employers incurred none of the search and recruitment costs that DIAC claims make 457 visa workers more expensive than Australian workers.

- About half (48%) of all 457 visa holders indicated the reason for applying was to live in Australia or become a permanent resident (p. 69), and 71% intended to apply to become permanent residents after their visas expired (p. 71) – this desire for permanent residency is perfectly understandable on the part of those visa holders, but as the 2008 Deegan report noted it makes them more susceptible to exploitation and reluctant to make any complaint that may put their employment at risk (p.14)
- Around 20% of employers surveyed cited the benefits of sponsoring 457 visa workers being ‘increased loyalty’ and ‘great control of employees’ (p. 80) - this points to concerns that unions have continually raised about some employers favouring the use of 457 visa workers over Australian citizens and permanent residents because it gives them a more compliant workforce
- 25% of respondents didn’t know how much they were paid or refused to say; no other question in the survey elicited this type of response (p. 14)
- 457 visa holders who are union members are significantly more satisfied with their jobs (p. 20).

10. Are you aware of the number of people on 457 visas across the union movement? If so, please provide figures.

The ACTU does not know the number of people on 457 visas across the union movement and does not collect and record such figures.

11. Have you provided any guidance to council members about how to employ 457 holders correctly?

No.

ACTU further response on notice to questions from Senator Xenophon on 23 May

In further response to questions put to Mr Shipstone by Senator Xenophon at page 11 of the Proof Committee Hansard, the ACTU provides the following answers:

How long has the hotline been in force:

The ACTU confidential 457 visa hotline began operation on 11 March 2013.

How well has it been advertised?

The hotline was well advertised at the time it commenced operation and received extensive media coverage. Information on the hotline continues to feature on the ACTU website. Affiliated unions of the ACTU are also encouraged to promote the operate of the hotline.

How many complaints have you had so far?

50.

Some of these complaints relate to the case of a single individual visa holder; in other cases the complaint relates to a number of workers employed by a 457 visa sponsor.