



The Ethnic Communities Council of Queensland Ltd

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Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
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Canberra ACT 2600

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Inquiry into the Migration Legislation Amendment (Worker Protection) Bill 2008

Following is a submission from the Ethnic Communities Council of Queensland (ECCQ) to the Committee's inquiry into the above named legislation.

ECCQ is a community based peak body in Queensland for multiculturalism, migrant communities and the organisations who work with them and is affiliated with the Federation of Ethnic Community Councils of Australia (FECCA).

ECCQ is happy to provide further evidence or details if that would be of assistance to the Committee.

Yours sincerely

Agnes Whiten
Chairperson, ECCQ

Introduction and Background

The overarching advocacy role which ECCQ fulfils requires regular contact with a wide range of multicultural and migrant advocacy workers, community based service delivery organisations, and people and communities with migrant backgrounds. Issues and concerns relating to the 457 visa are being raised continually in a wide range of contexts. This submission draws on that feedback and consultations.

ECCQ emphasises that expressing concerns regarding the impacts on some individuals and families who are on subclass 457 visas should not in any way be interpreted as expressing opposition to encouraging people from other countries to work and live in Australia. ECCQ supports policies which provide opportunities for people from other countries to be able to reside and work in Australia, whether temporarily or on a permanent basis.

Issues surrounding the subclass 457 Visa have also been a matter of significant public interest and debate for a number of years. These have led to a number of inquiries being held and changes being made over recent years.

The legislation before the Committee seeks to make further changes, in addition to others that have been made in the last 18 months by both the current and previous government.

These have included an increase of 3.8 per cent in the Minimum Salary Levels (MSLs) from 1 August 2008, a requirement from 1 October 2007 that on-hire companies could only sponsor overseas workers on a subclass 457 visa if they used a labour agreement, and a requirement from 1 July 2007 for many overseas workers to demonstrate English language skills equivalent to level 4.5 of the International English Language Testing System (IELTS) test.

During the time of the previous parliament, inquiries were also conducted, such as the Parliamentary Joint Standing Committee on Migration report into the eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas, tabled in September 2007.

Subsequently, the current Minister for Immigration, Senator Evans, has appointed an external reference group to examine temporary work visas – which has since reported – and also initiated the Subclass 457 Integrity Review, being conducted by Ms Barbara Deegan, which should be producing a final report soon.

In July this year, the Minister also announced the “establishment of a Skilled Migration Consultative Panel to provide advice to the Government on proposals aimed at improving Australia's temporary skilled (457 visa) migration program.”¹

The legislation before the Committee needs to be considered in the context of these wider, ongoing changes and reviews, as well as the significant change in global economic circumstances that has occurred in recent months. There is little doubt major economic downturns both locally

¹ “Panel of experts to advise on changes to 457 visa program”, Media Release by Minister for Immigration, 8 July 2008. <http://www.minister.immi.gov.au/media/media-releases/2008/ce08064.htm> <accessed 25 October 2008.

and overseas will impact on the decision making of both migrants and employers, as well as have the potential to influence public debate and attitudes towards migrants and migration policy.

ECCQ provided a submission to the 457 'Integrity Review', which is attached for the Committee's information². Whilst the legislation before the Committee is narrower in its scope, ECCQ's concerns and views go as much to underlying principles as to specific technical details. Many of the points made in our submission on this legislation are based on the broader points raised in our submission to the Integrity Review, which are drawn specifically from the feedback we receive from people working with migrant workers at community level throughout the state of Queensland.

Core Issue

"Immigrants here aren't seen as people. They are viewed as instruments of work."³

This quote was made by a migrant worker in a media article reporting on a foreign government's push to reduce the number of foreigners in their country as their economy contracts. The woman quoted, and the situation the article reports on, is in Spain, not Australia. But the quote reflects the key point ECCQ wishes to emphasise, which is that we should guard against losing sight of the individuals who are at the very centre of the 457 debate; the migrants themselves. This point is relevant to this legislation, as it is to the wider public debate about the 457 visa and the migration program in general.

ECCQ has no reason to doubt the genuineness of the government and indeed all stakeholders in this area in seeking to eliminate the exploitation of migrant workers and prevent migrant workers from being used to undermine local wages and conditions.

But we are concerned that this widely shared goal will be very difficult to achieve unless the people residing and working in Australia on subclass 457 visas are recognised as migrants, rather than just "visa holders". A majority of migrant workers on 457 visas transfer to permanent residency visas at some stage. It does not serve anyone's interests to excessively curtail their basic rights, and it is a false economy not to invest in providing support for migrants to effectively settle and integrate when they first arrive.

Regardless of whether migrant workers stay in the country temporarily or permanently, it is still in the wider national interest, as well as the interests of the migrant, to ensure they have adequate individual rights – and sufficient means to be able to get those rights enforced. This is the best mechanism for preventing exploitation.

Regardless of the specific safeguards built into legislation, one of the most effective ways of preventing exploitation, as well as to maximise the benefits migrants can bring to the entire community, is to ensure that new migrants – including their families - are aware of services and

² ECCQ's submission to the 'Integrity Review' can also be accessed online at http://www.eccq.com.au/downloads/News/457VisaSubmission_Oct08.pdf

³ Alexandra Starr, "Spain cools to Immigration." Slate. 17 October 2008. <http://www.slate.com/id/2201909/entry/2201914/> <accessed 25 October, 2008>

support they can access. This can be facilitated by providing greater information to government departments, local government authorities and community agencies regarding the arrival and movement of 457 visa holders, which this legislation goes part way to facilitating.

ECCQ has no in principle objections to the aims of the legislation before the Committee. It is also recognised that the changes being made and enabled through this legislation are only part of a wider package of measures.

However, expanding the powers of government agencies and introducing greater sanctions on employers who do the wrong thing, as this legislation seeks to do, will have less impact if the migrants themselves are in situations of relative powerlessness. ECCQ is not aware of any signs, at least at this stage, that this aspect of the issue is being addressed. In the absence of such actions, the changes foreseen through this legislation may have lesser positive impact than would otherwise be the case, particularly from the point of view of migrant workers and their families.

The overall purpose of the legislation

The stated aims of the legislation are to:

1. provide a new structure to define sponsorship obligations for employers;
2. change information sharing across government;
3. expand powers to monitor and investigate possible non-compliance by sponsors; and
4. introduce new penalties for sponsors found in breach of their obligations.

ECCQ support the principle behind these changes. As always, the test is in the detail and in the implementation.

Paragraph 3 of the Explanatory Memorandum for the legislation states that

the recommendations of various review and consultation processes (are) to be taken into account in drafting the regulations, policies and procedures that will support the new provisions on commencement.

As much of the detail supporting the new provisions in this legislation is still to be finalised, it is difficult to comment on how effective or appropriate they will be. ECCQ recommends the Committee use this inquiry to obtain clear indications of what safeguards will be in place to make sure these as yet unwritten regulations and procedures will operate in a way which is fair and transparent.

ECCQ notes that the Skilled Migration Consultative Panel, which will be advising the Minister on many of these details, consists of representatives from industry, unions and State Governments. Whilst not in any way wishing to reflect negatively on any of these representatives, ECCQ notes that there is no representation of migrant communities, or community organisations which work with and support migrants, on this Panel. This runs the

risk of decisions being made which could have significant impact on some migrants without adequate consultation with migrants themselves about what they are feeling and experiencing.

Comments on specific measures in the legislation

- Scope for better defined obligations on employers

ECCQ support the aim of better defining the obligations on employers. ECCQ also supports and recognises the benefits for all parties of allowing a high degree of flexibility in these obligations. However, in the absence of the details being finalised, it is not possible to be more definitive in our support, again noting the lack of specific migrant representation on the Consultative Panel which will be providing advice on these obligations.

Whilst the intent of better defining employer and sponsor obligations appears to be better protect against exploitation of the migrant – a goal which ECCQ fully supports – it must be remembered that putting unnecessarily onerous or costly obligations on employers may have the consequence of preventing an employment opportunity being provided at all.

It is particularly problematic if an employment opportunity is withdrawn once a migrant worker, and potentially also their family, has already entered the country – often expending significant resources in the process. People in Australia on 457 visas are particularly vulnerable if their employment is withdrawn. The low level of rights the migrant has in this situation, and the resultant level of powerlessness, can leave them more at risk of exploitation, regardless of the legal obligations on the employer.

ECCQ believes migrants on 457 visas should have a longer period of time than is currently the case to find alternative employment, should for whatever reason that employment cease, before they are at risk of having their visa cancelled and being removed from Australia.

Any action taken by the government against an employer, no matter how completely justified it may be, has the potential to impact unfairly and negatively on the migrant who may find themselves having a very short period of time to find a new job before they are at risk of being removed from the country.

Given this potential situation, it is in the migrant's interests to be confident that the sponsor understands all their obligations. Paragraph 101 of the Explanatory Memorandum states that “as a matter of good practice, the Department intends to ensure that all persons who apply to be an approved sponsor understand the sponsorship obligations they will be required to satisfy.”

ECCQ is unsure why this is only a “matter of good practice”, rather than an obligation on the Department, but in any case, given the potential complexity of the obligations ECCQ recommends that the Committee seek to obtain some indication from the Department as to how they are going to “ensure” all potential sponsors fully understand their obligations. Many employers are also of migrant background. It is important that the Department can ensure that any information provided to them is able to be clearly understood.

- Improved information sharing

As noted in ECCQ's submission to the Integrity Review, further enhancement of information sharing is welcome, subject to potential privacy issues being properly taken into account. ECCQ believes providing basic information to community support agencies, local government authorities and the like could assist in helping local organizations welcome new arrivals and provide support beyond what is appropriate or reasonable for the sponsor to provide.

To quote from our own submission to the Integrity Review, "one of the issues raised most consistently with ECCQ has been migrants on temporary work visas 'slipping through the cracks' and being isolated from community support which could otherwise be provided."

We also draw the Committee's attention to the report released by the Local Government Association of Queensland earlier this year which examined skilled migration in regional and rural Queensland, which highlighted the importance of this issue.

It included a recommendation that

the Dept of Immigration & Citizenship (DIAC) and the Queensland State Government develop mechanisms to communicate with Local Government and other relevant agencies in regional and rural communities, particularly to newly settled areas to assist with local and regional planning⁴

The changes made in the legislation will potentially go part of the way to meeting that need, but consideration could be given to further broadening this measure.

- Expanded investigation powers

Giving such powers to workplace inspectors appears to be justified and sensible in the circumstances, subject to the usual need for oversight to make sure the powers are used appropriately and fairly.

- Penalties

Assuming the obligations put on employers are fair and reasonable and the way they are administered is similarly balanced, ECCQ supports having clearer penalties for those who clearly and deliberately do the wrong thing.

Conclusion

Migrants on 457 visas provide a significant net revenue gain for Australian governments, even before other economic and social benefits they bring are taken into account. It is not reasonable to expect sponsoring employers to be solely responsible for ensuring the wellbeing of the migrant and their family, nor to leave the migrant to sink or swim on their own.

⁴ "What Makes a Welcome? Strengthening Queensland's regional rural communities through skilled migration", Local government Association of Queensland, May 2008". page 10.

Strengthening the basic rights of migrants and ensuring they have access to full information about what those rights are and how they can get them enforced is central to reducing exploitation. While this legislation and the broader regulations around the subclass 457 visa focus on the obligations of employers and the migrants, governments also have obligations to fulfil. These obligations should apply regardless of how positive the revenue impact is from the presence of the migrants, but when there is such a large overall gain to public revenue as occurs with the 457 program, there is even less reason for a small amount not be invested from the government side in enabling basic community level support to be provided, along with adequate information about rights and responsibilities.