



Submission to the
Senate Legal & Constitutional Affairs Committee

Inquiry into
***Migration Amendment
(Temporary Sponsored Visas) Bill 2013***

June 2013



EXECUTIVE SUMMARY

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1. Does the 457 visa scheme work?

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Australia has gone through two years of slow jobs growth with total jobs growing at less than 1% per year. Yet applications for 457 visas have shot up 33% in 2011-12 and have grown by another 10% so far this year. Demand for 457s has declined in most sectors of the slowing economy but this is outweighed by surging demand in other industries. The evidence leads us to question the effectiveness of the 457, EMA and RMA temporary visa schemes in filling areas of identified skills shortages. Without reform the schemes may even be detrimental to the Australian economy by placing pressure on employment, and leading to a decline in Australia's national training effort. The temporary migration scheme has a negative flow on effect on training and the availability of apprenticeships as it decreases the need or imperative for 457 sponsoring employers to train. Proper and rigorous labour market will help address this.

2. Labour market testing – criteria against which applications are assessed

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The CEPU continues to be concerned about the lack of rigour and scrutiny applied to the application process for the 457 visa program as well as labour agreements.

The success of a 457 application should be contingent upon proof of proper, genuine and rigorous labour market testing and testing in the locality in which the prospective visa holders will be working. A common complaint among our members is that it's not easy to get a job in the mining and resource industry. We have recently retrenched members who want the work but are told their skill base does not match the skills required. Employers argue Australian workers won't travel to where the jobs are. Our members say they would - and want to. Proper labour market testing would show whether this in fact the case.

To be eligible for a 457 visa, prospective sponsoring employers must first demonstrate what they have done to employ and train Australian workers. Major project owners seeking EMAs and employers sponsoring 457 visa workers must demonstrate they made every effort to fill the vacancies locally and with Australian labour. This should include:

- Proof they have advertised both locally and nationally at genuine market rates, including mandatory use of the Government's resources sector Jobs Board;
- Offering relocation assistance where required;
- Providing information on specific measures taken to employ groups who are currently disadvantaged or under-represented in the workforce such as

indigenous workers (particularly important in rural and remote areas), women, unemployed local workers, recently retrenched workers and older workers.

3. Process of listing occupations on Consolidated Sponsored Occupation List

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The only occupational limitation on 457 visas (or permanent entry employer nominated visas) is that the applicant must have an occupation listed on the Consolidated Sponsored Occupation List. This is a vast list of skilled occupations which is too loose and takes no account of the state of the labour market. Too much reliance is placed by DIAC on the assertion of the sponsoring employer that the applicant's skills and training matches a skills gap. This list should be rationalised. The Unions should be consulted about occupations *prior* to inclusion on this list and the SOL.

INTRODUCTION

“ our analysis of the visa-issued data indicates that the system is being navigated by people ‘jumping the queue’ in order to obtain permanent residency. It is allowing persons with limited English and no formal assessment of qualifications, who would not qualify for a visa under the points-tested visa subclasses.

Sceptics who have got this far should consider the following statistics. For the months of July and August 2012, the number of primary applicants granted 457 visas jumped by 20.6 per cent compared with the same months in 2011. The number of visa grants is increasing just as the Australian labour market is weakening. One further statistic, which offers compelling evidence of the navigation thesis, is that the top occupation visaed in July and August 2012 was cooks. There were 50 such grants. If they were serving up meals in the Pilbara there might be less concern. But 170 were for jobs in Sydney and 170 in Melbourne. Just 30 were for jobs in WA.¹ (Emphasis added)

The CEPU welcomes the opportunity to make this submission to the Senate Legal & Constitutional Affairs Committee into the Migration Amendment (Temporary Sponsored Visas) Bill 2013.

The CEPU represents the interests and concerns of 120,000 members in a range of occupations and industries spanning:

- Electrical contracting and construction
- Plumbing and mechanical services
- Manufacturing
- Energy and power
- Public and private sector communications

We support the introduction of the Bill as it is aimed at improving the 457 visa program, building in better protections for both for Australian citizens and residents, and for temporary overseas workers. We have been advocating for these changes for a number of years.

We have had substantial input into the drafting of this Bill through our role on the Ministerial Advisory Council on Skilled Migration (MACSM).

In this submission we specifically address the argument that sponsoring employers must be obliged to undertake rigorous and proper labour market testing prior to making an application for 457 visa workers. Proof of this testing must accompany their application for 457 visa workers. *We support the Submission of the ACTU regarding other aspects of the Bill.*

¹ Birrell B and Healy E (2012) “Immigration Overshoot” Centre for Population and Urban Research Monash University, research report November 2012 p.31

Our interest in the 457 visa program, and the debate that surrounds it, is motivated by three priorities.

The first is to ensure that jobs and training opportunities for Australians - that is, citizens and permanent residents of Australia, regardless of their background and country of origin – come first.

The second is to ensure that those overseas workers who do come here under the 457 program to meet genuine skill shortages that can't be filled locally are treated fairly, that they receive their full and proper entitlements, and they are safe in the workplace – and if this does not happen, they are able to seek the same redress that any Australian worker can, including accessing union membership and representation.

The third is to ensure that the 457 visa program does not provide employers with an easy way to avoid investing in training local workers, including taking on apprentices. This includes undertaking genuine testing of the local labour market. It is also about protecting those employers who do the right thing from being undercut by those employers who exploit and abuse the 457 visa program and the workers imported under it.

The Need for Reform

1. Does the 457 visa scheme work?

- 1.1 The 457 visa program is designed to allow businesses to temporarily access skilled workers to cover temporary skill shortages that cannot be met through the employment and training of local Australian workers. There seems to be a consensus that the employment of Australian workers should be the first priority and only in genuine cases of skill shortages should overseas workers be brought in to fill the gap. However, the lack of effective local labour market testing has meant that it is difficult to assess claims of genuine skills shortages. There is anecdotal evidence that a skills shortage exists in some sectors of the economy but equally there is anecdotal evidence that these skills shortages either do not genuinely exist or at best are exaggerated.
- 1.2 In theory, the scheme is supposed to recruit skilled workers to regional and remote areas where there may be great difficulty in recruiting Australians, especially in medical services, engineering and specialised skilled trades. Whether or not these skills shortages do exist, the program itself has not been very successful in directing workers to geographic areas of most need and occupations in short supply.
- 1.3 The evidence leads us to question the effectiveness of the 457 visa scheme in filling areas of identified skills shortages. Without further safeguards in place, such as

proper labour market testing, the scheme may even be detrimental to the Australian economy by placing pressure on employment, and leading to a decline in Australia's national training effort.

- 1.4 457 visas were introduced to allow businesses to more quickly respond to skill shortages at times of economic growth. It has been spectacularly successful in attracting immigrants to Australia but perhaps less successful at getting the right people in the right places.
- 1.5 ***Australia has gone through two years of slow jobs growth with total jobs growing at less than 1% per year. Yet applications for 457 visas have shot up 33% in 2011-12 and have grown by another 10% so far this year .*** Visa grants have grown by 16% in January, 12% in February and 10% in March already this year.
- 1.6 Demand for 457s has declined in most sectors of the slowing economy – visa applications from mining companies are down 15% so far in 2013-2013 but this is outweighed by surging demand in other industries which is at odds with what we know about economic growth in those industries.
- 1.7 Thousands were issued to persons in occupations arguably not in short supply such as 2150 project administrators, 1560 cooks and 1440 marketing specialists. Something is obviously not right. ***Until mid-2011 few firms used 457 visas to import cooks. In 2010-11 just 45 visas a month were issued for skilled kitchen staff. Yet by January this year, 1690 cooks had been granted 457 visas – some 240 month.***
- 1.8 Birrell and Healy conclude that migrants are adding over 100,000 persons a year to the employed workforce at a time when employment growth in Australia is stalling. However, they state that this wouldn't be such a problem if recently arrived migrants were locating where employment growth is still strong. However, using Census and DIAC figures, they claim this is not happening. Only 15,620 (or 23%) of the 457 visas issued in 2011-12 were for persons sponsored by employers in the construction and mining industries. Only 24% went to employers in WA with over half of all 457 visas issued in 2011-12 to persons sponsored by employers in NSW (33%) and Victoria (20%). This is creating serious competition for incumbents, mainly young males in metropolitan areas for jobs.
- 1.9 Some 47,000 of the 58,000 net growth in employment in Australia between the August quarters 2011 and 2012 occurred in Perth. However, employment increased by about 21,000 in Sydney and actually fell in Melbourne by 4,000 over the same year. Yet over half of all migrants coming to Australia (permanent and temporary) are locating in Sydney and Melbourne. This is reinforced by DIACs figures which show the 457 visa holders live mainly in NSW and Victoria with even an inexplicable

few going to Tasmania. Birrell and Healy conclude they are therefore making minimal contribution to resolving skills shortages in areas where they are needed - such as the resources industries.

- 1.10 So we have an immigration program running at record levels, the net growth of the employed workforce in Australia is almost static, with domestic job aspirants being pushed out of the labour market by the expansion of the “temporary” migration programs. Youth unemployment is rising and as of August 2012, there were 666,830 unemployment benefit recipients up from 626,969 in August 2011. On top of this, the evidence is that the resources boom is slowing. We say there is clear evidence the scheme is not working or at least not in the way it is supposed to be working.
- 1.11 The growth of the 457 visa scheme has created major areas of concern to the CEPU. We are concerned about the impact that the 457 visa scheme is having on wages and conditions of employment in the local market and on the availability of work for domestic workers. Working for potentially lower wages and conditions, and more willing to accept conditions that are unacceptable in the Australian labour market, 457 visa workers are vulnerable to employer exploitation and manipulation. With the ever present threat of being sent home hanging over their head, there is little incentive on the part of an exploited 457 worker to complain or do something about their situation. The alternative is as unappealing as the solution.
- 1.12 Further, the Union is concerned about the flow on effect on training, as filling the skills gap with 457 workers removes the need or imperative for local employers to train. Sponsoring employers are unlikely to employ apprentices further compounding a lack of apprenticeship opportunities available for young Australian workers. Competition for work in urban areas such as Sydney and Melbourne is causing underemployment of local workers as local workers take what they can in the absence of full time work.

2. Labour Market Testing

- 2.1 The CEPU supports a non-discriminatory skilled migration program. We believe the permanent skilled migration program, where workers enter Australia independently, is the best avenue to meet labour market needs that are not being met locally. One of the reasons we support the permanent scheme over a temporary scheme is that with the permanent migration schemes, proper labour market testing does occur. However, we accept there can be a need for some temporary migration to meet critical skill needs. But such a program must be underpinned by a ***proper, rigorous process for ensuring there are genuine skill shortages and Australian workers are not missing out.*** To ensure this is the case, sponsoring employers must be

compelled to *genuinely* test the local market before they are able to import overseas labour. *And we don't want their word for it* – employers applying for temporary overseas labour must be obliged to follow proper procedures before being allowed to import labour and prove to the satisfaction of DIAC that they followed these procedures.

- 2.2 Currently under the 457 visa program, sponsoring employers are not required to employ qualified Australian workers before gaining access to 457 visa employees. In addition, once here, visa holders are dependent on their sponsoring employer to maintain their visa allowing them to stay in Australia. In the majority of cases, 457 visa holders want and apply for permanent residency and so are motivated to accept sub-standard conditions if this is their only ticket in. These workers are in a sense hostage to their sponsoring employer and are at risk of exploitation, as overseas workers are less prepared to speak out if they are underpaid, denied their entitlements, or otherwise exploited.
- 2.3 In 2006, a DIAC Deputy Secretary explained why rigorous labour market testing was not necessary by saying; *“bringing skilled workers in from overseas involves very significant costs for the employers”* and that; *“employers are unlikely to incur these costs if they can find the skills locally.”* While this may be true for the high-skill, high-salary end of the labour market, it is by no means true of occupations at the less skilled end of the labour market who, while still being eligible to enter Australia under the 457 visa scheme, are more likely to be in competition for jobs with local labour.
- 2.4 Contrary to DIAC's assurances that employers are best placed to determine the advisability of bringing in overseas labour, DIAC figures show that the 457 visa scheme is being misused. Most 457 visas are issued to persons with skills unrelated to the industries in need, such as the resources industry, and for jobs in locations where Australia's labour market is weak. ***The highest number of primary applications for visas are granted in States such as New South Wales and Victoria, whose labour markets are in decline and experiencing business shut downs and redundancies!*** And these visas are being granted to people living in the metropolitan areas such as Sydney and Melbourne where there is already fierce competition for scarce jobs – especially among young people looking for less skilled work. ***We agree with the ACTU that it is naïve to assume and blindly accept that employers will always look to employ locally first.*** Further, we agree it is factually incorrect to continue to assert it is considerably more expensive to employ overseas workers.

- 2.5 Recently the SMH reported² about the absurdity of the fact that visa applications from mining companies are down 15% so far in 2012-13 – while there is surging demand in other industries - which seems at odds with what we know about how those industries are faring. For instance, the demand for cooks under the scheme has inexplicably risen. Until mid-2011 few firms used 457 visas to import cooks; in 2010-2011 just 45 visas a month were issued for skilled kitchen staff. Yet by January this year, 1690 cooks had been granted 457 visas, 240 a month! This must point to something being wrong. Discretionary spending in hotels and restaurants declined last year – it’s hard to see a labour shortage requiring us to import thousands of foreign cooks. And it’s not just cooks. The number of chefs increased, as has the import of café and restaurant managers. Retailing which is also going through hard times, in 2012-2013 imported 300 foreign workers a month just to be shop assistants – predominantly in Victoria and NSW. Surely there are plenty of local workers willing and able to fill these positions. *Again, anecdotally we know there are plenty of young people willing but unable to fill these positions while inexplicably being considered unsuitable for the work.* This is clear evidence that rigorous labour market testing is required but not being undertaken.
- 2.6 Looking at the area of specific interest to the CEPU, “Technicians and Trades Workers”, you would think this category would be exploding with applications for 457 visa workers – especially in remote areas – as we are continually told there is a skills shortage of construction trades workers. Even taking into account that DIAC statistics lump electricians in together here with motor mechanics, diesel mechanics, construction trades, bakers/cooks and butchers/small goods makers, hairdressers and other technician and trades, trades workers are nowhere to be seen in the top 15 nominated occupations for primary visa holders. This list is actually dominated by vaguely named program or project administrators, those cooks, marketing specialists, specialist managers, programmers, sales and marketing managers and consultants – all very vague and open to interpretation but none of whom jump out as being obviously in huge demand in areas experiencing skills shortages.
- 2.7 All this highlights the need for greater scrutiny of visa applications, the scheme itself and improvements to the assessment process.
- 2.8 The success of a 457 application should be contingent upon proof of proper, genuine and rigorous labour market testing. *Our union has anecdotal evidence of members applying for positions and being told there are no positions available.* Despite the illusion of ample well paid work on the big resource projects, a common complaint is that it’s not easy to get a job in the mining and resource industry.

² Tim Colebatch (2013) “The books are being cooked on 457 visas” Sydney Morning Herald, 19 March 2013.

- 2.9 *We have recently retrenched members who want the work but are told their skill base does not match the skills required.*
- 2.10 Employers argue Australian workers won't travel to where the jobs are. Our members say they would and want to. *Proper labour market testing would show whether this in fact the case.* We would even suggest that an employer who has recently retrenched workers should not be able to import 457 visa workers in the same or similar classifications.
- 2.11 We are not alone in dealing with the problem being created by a lack of genuine labour market testing. In both the US and Canada, Governments are grappling with the same issues. In some cases, employers are working actively against being required to employ local labour. It has been reported in the US, of lawyers coaching companies on how to advertise locally but find no-one.³
- 2.12 In Australia, it has been reported that an Indian international labour hire company, TATA Consultancy Services or TCS overuses 457 visas. A former TCS worker reports "I was never asked to advertise for Australians when developers were required. We just contacted the local area manager and he would send a developer on the next plane from Mumbai." As an example of how major companies use 457 visa workers, the journalist reports that TCS has a \$120 million IT contract with Qantas. But its Australian based staff working on the account are almost all brought in from overseas. There is a list of TCS IT workers at Qantas. Of the 211 names on that list almost 200 are on 457 visas, filling roles such as business analysts, project managers, even accountants. A woman, who didn't want to be identified as she is looking for work in the IT sector, but was a former business analyst employed by TCS, says she witnessed open reliance on 457 visas at the expense of local graduates⁴. Qantas is not headquartered in a remote mining area but in major metropolitan areas. It beggars belief that there are no local analysts, program managers and accountants which could be employed by Qantas over 457 visa labour.
- 2.13 To be eligible for an EMA, prospective sponsoring employers must demonstrate they made every effort to fill the vacancies locally and with Australian labour. This should include:
- Proof they have advertised both locally and nationally at genuine market rates, including mandatory use of the Government's resources sector, or sector equivalent, Jobs Board;
 - Offering relocation assistance where required;

³ ABC 7:30 Report 20 June 2012, reported by Hayden Cooper www.abc.net.au/7.30/content/2013/s3786315.htm

⁴ ABC 7.30 Report Ibid

- Providing information on specific measures taken to employ groups who are currently disadvantaged or under-represented in the workforce such as indigenous workers (particularly important in rural and remote areas), women, unemployed local workers, recently retrenched workers and older workers. We agree with the ACTU that the employer should be able to justify why the 457 visa positions sought cannot be filled by increasing the participation of these groups. They must also be able to show why local recruitment efforts were not successful in meeting their needs.
- 2.14 Further, there is no labour market testing or analysis required for subsequent labour agreements that direct employers make under the umbrella of an EMA. The idea being that this will allow the fact tracking of labour agreements. However, this is the wrong approach. The priority should always be that available work goes to Australian workers first. EMAs can run for up to 5 years and a lot can happen in that time. This is all the more reason that agreements should not just “roll over” and a proper assessment of the labour market should occur each time. These requirements should apply to all subcontractors and employers under an EMA. During the term of an EMA there would be time and opportunity for training of local workers to occur and this should be considered when assessing the need for 457 visa labour.
- 2.13 Australian workers must have enforceable first rights on all jobs on major resource projects. *Why would we fast track migration and weaken the current system to make migration easier, if there are Australian workers ready and willing to take those jobs.*
- 2.15 *Genuine shortages must be demonstrated not just in the occupation but in the geographic area where the jobs are located.* There is no official assessment of whether there is a shortage in the occupation where the job is located. From the figures it is clear, too many visa workers end up working in areas where the jobs could be filled by local workers. The fact that most 457 visa holders end up in Sydney or Melbourne shows that something must be done to tie the grant of the visa to working in the geographic area of shortage. It should not be a general permit to work anywhere. It would not be difficult to limit visa approvals to geographic areas known to be experiencing skills shortages. Applications for 457 visas, enterprise migration and regional migration agreements should all be subject to a genuine and rigorous review of the labour market in the industry and the locality in which the prospective visa holders will be working.
- 2.16 Lists of skilled occupations eligible for 457 visas should be confined to the geographic area experiencing a shortage. This should overcome the mismatch between 457 visa holders predominantly living in Sydney and Melbourne and other areas where there are no real labour shortages. There must be real evidence that

the there is a relevant skills shortage in the geographic area where the sponsoring employer requires the labour.

2.17 The Jobs Board

2.17.1 The CEPU strongly supports the Government's Jobs Board. *The Jobs Board should be an integral part of the labour market testing regime.* If sponsoring employers are genuine about needing to fill a skills gap, it must be easier and more cost effective to fill those jobs with Australian labour. *Making the use of the Jobs Board a mandatory part of the application process, tests the genuineness of the need.*

2.17.2 With respect to EMAs, it is a simple exercise to make it a contractual requirement of any EMA that all jobs are advertised on the Jobs Board before the engagement of 457 visa workers can be considered.

2.17.3 To ensure the proper operation of the Jobs Board, the CEPU supports the call for the establishment of an independent body to oversee the operation of the Jobs Board, including an opportunity for individual complaints to be dealt with. The Jobs Board should be an effective and integral part of the Government's labour market policy. It has a primary role to play in delivering jobs and training opportunities to local workers.

3. Consolidated Sponsored Occupations List, (CSOL) used for the 457 visa scheme

3.1 Some employers argue that if an occupation is on the Consolidated Sponsored Occupations List, (CSOL), used for the 457 visa program, this is sufficient to prove there is a labour market shortage in that occupation – that further labour market testing is not required. However, simply being on this list is not sufficient to prove a shortage. This is because there is no rigour in how list is put together. We say it's too easy to get an occupation on this list.

3.2 Applicants under the general skilled independent migration scheme must have their occupation listed on the Skilled Occupation List (SOL). This list is compiled from expert advice by the independent body, Skills Australia – now the Australian Workplace and Productivity Agency (AWPA). The SOL list of occupations is aimed at delivering a skilled migration program that delivers skills in need in Australia.

3.3 By way of contrast, the CSOL is a vast list of skilled occupations which seems to take little account of the state of the labour market.

- It does not adequately reflect occupations in shortage;
- there is no rigour about assessing the list;

- There is no assessment about the level of the shortage claimed;
 - There is no certainty about how an occupation is added to the list.
- 3.4 The CSOL grows like topsy without any discernible ongoing review as to its currency. It is the responsibility of DIAC to add or delete occupations from the list. There is no transparency in the process. Certainly stakeholders are not consulted as to the accuracy of the list.
- 3.5 The only proper way to check whether there are people to fill is to undertake proper and rigorous labour market testing – to advertise and advertise at market rates in the relevant labour market.

CONCLUSION

The expansion of the temporary immigration program is occurring at a time when the resources boom, which has been the powerhouse of the Australian economy, insulating it from the worst effects of the global financial crisis, has “gone off the boil”. Partly as a result, the growth of employment in the Australian economy has fallen sharply. Paradoxically at the same time, the 457 visa program is growing in areas of the economy that would seem to have adequate available local labour. Many 457 visas are issued to persons with skills unrelated to industries in need and for jobs in locations where Australia’s labour market is struggling and highly competitive, such as NSW and Victoria and particularly Sydney and Melbourne. The CEPU believes the 457 visa program needs greater scrutiny and reform. A key reform is the obligation on sponsoring employers to undertake proper, rigorous labour market testing prior to applying for 457 visa workers. Proof of this labour market testing must accompany the application for 457 visa workers. Otherwise the interests of domestic workers will continue to be at risk. Local employment opportunities will be limited, and the training of local workers and the uptake of apprentices diminished. The CEPU supports the ongoing work of the Ministerial Advisory Council on Skilled Migration as the best avenue through which the temporary worker programs can be reviewed.