COMMUNICATIONS
ELECTRICAL
PLUMBING
UNION

NATIONAL
OFFICE

Peter Tighe
National Secretary

Suite 701, Level 7
5-13 Rosebery Avenue
PO Box 380
Rosebery NSW 2018

Ph: (02) 9663 3699
Fax: (02) 9663 5599

Email:
edno@nat.cepu.asn.au

3 May 2013

The Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

CEPU Submission to the Inquiry into the Framework & Operation of sub class 457 visas, Enterprise and Regional Migration Agreements

---

Please find enclosed a submission by the CEPU. The CEPU represents the interests of skilled electrical plumbing and communications workers in a wide range of industries including electrical and plumbing contracting and construction, resources and mining, manufacturing and power generation and distribution. Electrical tradespeople form the largest membership group.

We have substantial numbers of members working in areas such as the resources sector, directly impacted by 457 visa working arrangements. We are particularly concerned that Australia has gone through 2 years of slow jobs growth of less than 1% per year while applications for 457 visas have shot up by 33% in 2011-12.

The evidence leads us to question the effectiveness of the 457, EMA and RMA temporary visa schemes in filling areas of identified skills shortages. We are seriously concerned about the growth of the 457 visa program in industries and areas where there would appear to be available local labour. Without reform, the 457 visa scheme, enterprise and regional migration agreements may end up being detrimental to the Australian economy by placing pressure on employment and leading to a decline in Australia's training effort.

We welcome this opportunity to put our views to the Committee and thank you for the extension of time granted for us to submit our views to the Committee. If you have any questions about our Submission, please contact myself or Electrical Division Assistant Secretary, Allen Hicks, of this office.

We welcome the opportunity to address the Committee further on the issues raised in our Submission.

Yours sincerely

Peter Tighe
NATIONAL SECRETARY
TRIM 2013/0040

Communications Electrical
Electronic Energy
Information Postal
Plumbing and Allied
Services Union of Australia

CEPU

Submission to the
Senate Legal & Constitutional Affairs Committee

Inquiry into

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

April 2013

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;

(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;

(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;

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

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

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

(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;

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

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

(k) any related matters.

EXECUTIVE SUMMARY

INTRODUCTION

____**pp.7-9**

1. Effectiveness of the 457 visas, EMAs and RMAs in filling areas of identified skill shortages

____pp9-13

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.

The CEPU supports:

- the work of the Ministerial Advisory Council on Skilled Migration in attaching stronger training obligations and benchmarks to the use of temporary skilled migration. If we do not tie training obligations to the opportunity afforded by fast tracking the visa process and reducing the eligibility requirements, we will become increasingly dependent on overseas labour to fill the growing void.

- the ACTU/Union proposal to the Council to strengthen the current training obligations by requiring payment by employers of 457 visa trade workers of an amount equivalent to what an employer would have received in Government incentive payments had they employed an apprentice.

- the proposition that for every 10 or more 457 visa workers sought by the sponsoring employer, Australian apprentices should make up at least 25% of the sponsor's trade workforce.

2. accessibility and criteria against which applications are assessed

____pp13-20

The CEPU continues to be concerned about the lack of rigour and scrutiny applied to the application process for EMAs, RMAs, 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.

Skills assessment should be done by an independent body, such as the Trades Recognition Australia or an endorsed registered training organisation, with the relevant experience assessing overseas qualifications and work experience for the range of occupations for which overseas workers can apply for a visa.

3. Process of listing occupations on Consolidated Sponsored Occupation List

pp.20-21

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.

4. Process for granting visas and the monitoring of these processes

pp.21-23

The 457 visa scheme involves a considerable amount of self regulation. DIAC monitored fewer 457 employers in 2005-2006 than in 2004-2005 despite the number of 457 visas granted growing from 28,000 to 37,527. In a self-regulating system, visas are granted too easily. The rapid growth of the scheme makes it inevitable that abuse of the scheme will also be growing. This is why we believe that monitoring of the scheme needs to be greatly improved and the number of site visits greatly increased.

5. Adequacy of the tests & impact on local employment opportunities
p.23

The CEPU believes the attestation is inadequate and pointless if it cannot be enforced. The Department must be given the power to first make the attestation legally binding and enforceable and the power to continually monitor the situation and take action in the event of a breach. The Department must have power to refuse an application where it believes the attestation is not genuine or where the employer shows a preference to employing 457 visa labour. Failing to enforce these obligations will impact on local employment opportunities

6. Would better forecasting reduce reliance on such visas
p.24

The CEPU supports any measure to improve long term forecasting to reduce our reliance on temporary visas. We must properly resource and support training institutions and employers willing to train Australian workers and in particular, employers willing to take on apprentices. The key to levelling out those peaks and troughs in the labour market is an ongoing commitment to training. We echo the concerns of the ACTU over the cuts to TAFE training. Cuts to TAFE training and low apprentice wages will not assist in creating a skills base for the future.

7. the capacity of the system to ensure the enforcement of workplace rights, including occupational health and safety laws and workers' compensation rights;
pp.24-26

DIAC is vastly under-resourced. In 2011-12 (up to 30 April) there were only 37 inspectors available for this purpose Australia wide, who visited less than 4% (of about 22,000) of those employing visa holders. A key improvement would be to increase the resourcing of DIAC's inspection and compliance capability.

Where 457 visaholders are to work in "high risk industries" they should complete an induction course before they commence employment.

457 visaholders should be proficient enough in English to understand the hazards of their occupation and the industry in which they will be working. The industries in which CEPU members work are not safe industries and if visaholders do not fully understand the occupational, health and safety considerations of their work they are a hazard to themselves, their fellow workers and the public.

8. The role of employment agencies involved in on-hiring subclass 457 visa holders and the contractual obligations placed on subclass 457 visa holders;
pp.26-27

We have strong concerns about labour agreements covering employment agencies and on-hiring 457 visa holders. Monitoring of compliance is hard enough under a

system of direct employment but once 457 visa workers are on hired it becomes even harder.

We have had input into the ACTU Submission concerning the requirement to comprehensively reform the labour agreement process. The agreement process is deficient both in terms of the process for consultation and the matters upon which labour agreement proponents must consult on.

9. Impact of recent Government changes

p.27

We support the creation of the Ministerial Advisory Council on Skilled Migration (MACSM). MACSM is a positive initiative which involved all the stakeholders in improving skilled migration.

10. And finally …. Don't tie temporary migration to permanent migration

p.27

The 457 temporary visa scheme is in fact a pathway to permanent migration and used by the majority of visa holders as a fast track path to permanent residency. The CEPU believes that the link between the temporary scheme and permanent residency should be severed. In this way the 457 program would be much more the scheme envisaged by the Government than it actually is – ie a scheme responsive to the short term needs of industry.

"There will always be a need for skill transfers in an Australian economy dominated by multinationals. But, this is not what is driving the 457 program. Rather, 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 it 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]

Introduction

The CEPU welcomes the opportunity to make this submission to the Senate Legal & Constitutional Affairs Committee i*nquiry into "Framework and operation of subclass 457 visas, Enterprise Migration Agreement and Regional Migration Agreements*."

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

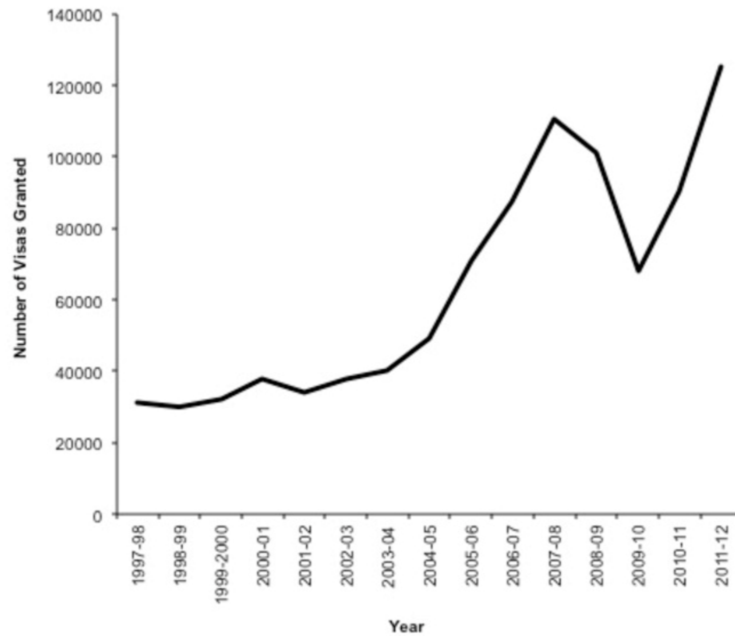
- Electrical contracting and construction
- Plumbing and mechanical services
- Manufacturing
- Energy and power
- Public and private sector communications

The 457 scheme

The demand for 457 visas has grown rapidly, as shown in the graph below. During the global financial crisis, the numbers decreased but quickly recovered as economic conditions improved. A new record was reached in 2011-12 when there were 125,070 visas granted – 68,310 primary applicant (workers) and 56,760 secondary applicants (dependents). As at March 2013, the number of primary visa holders at 105,600.

In June 2012, there were 162,000 457 visa holders including 91,050 primary visa holders. The number of businesses employing 457s increased to 22,450 in 2011-12.

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



457 visas granted 1997-98 to 2011-12. DIAC [2]

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.

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.

Through the Ministerial Advisory Council on Skilled Migration (MACSM) and the ACTU, we have been working with the Government to address our issues and concerns with the 457 visa program and with EMAs and RMAs. We commend the Government for its commitment

[2] Source: DIAC Statistics – Populations Flows (various years) and Sub Class 457 State/Territory Reports (Various years) reproduced in http://theconversation.com/explainer-457-visas-in-australia-12622

to working through these issues. Our concerns are explained in greater detail below under the terms of reference.

Do the visas work?

The 457 visa program is designed to allow businesses to temporarily access skilled workers to cover temporary skill shortages than cannot be met through the employment and training of local Australian workers. However, the lack of effective local labour market testing has meant that is it difficult to assess claims of genuine skills shortages. There is much 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.

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.

When the 457 visa program was introduced in the second half of the 1990s it signalled a significant change in Australian immigration policy. Before this, our policy was geared to large-scale permanent migration. However, sudden international increases in the demand skilled labour resulted in competitive international labour markets for the highly mobile, high skilled workforce. In this context, the permanent migration avenues were not supplying the rights skills fast enough. 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*.

RESPONSES TO THE TERMS OF REFERENCE

1. 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;

> *"Australia has been in the grip of a boom mentality over the last decade, fed by the surge in resource industry investment ... government and business enterprises seem to lose the capacity to reality test claims about their impetus to employment growth… it is assumed that the growth rates of the recent past will prevail into the distant future."*

1.1 The evidence below leads us to question the effectiveness of the 457, EMA and RMA temporary visa schemes in filling areas of identified skills shortages. Without some of the following safeguards in place, 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.

1.2 With the growth in employment declining from 307,000 between August 2007 and 2008 to 141,000 from August 2010 and 2011 to just 58,000 between August 2011 and 2012, even Government agencies are now backing off previous optimistic projections. This decline leads academics, Birrell and Healy, to comment that if employment growth were to stabilise at 58,000 for the next few years there would be little need to augment the workforce through immigration at all, especially since it is expected that the Australian workforce will grow by at least this level over the next few years.

1.3 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[3]. Visa grants have grown by 16% in January, 12% in February and 10% in March already this year.

1.4 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.[4]

1.5 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.[5]

1.6 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 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.

1.7 Using Census figures and DIAC figures, Birrell and Healy conclude there would be less concern about immigration levels if recently arrived migrants were locating

[3] Tim Colebatch (2012) "The Books are Being Cooked on 457 Visas" Sydney Morning Herald, 19 March 2013
[4] Tim Colebatch (2012) "The Books are Being Cooked on 457 Visas" Sydney Morning Herald, 19 March 2013
[5] Colebatch (2012)

where employment growth is still strong – predominantly Perth. 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.[6]

1.8 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. Australian-born 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.

1.9 DIAC has recently stated: "*Our skilled migration settings therefore need to be dynamic and responsive to the needs of our economy. They need to be underpinned by a solid understanding of the current economic climate. They need to accommodate projected future trends.* [7]

The CEPU agrees with this statement and in particular that the skilled migration settings need to be dynamic and responsive to the needs of our economy. This review is timely. The temporary-entry 457 visa program continues to expand despite the recent slow-down in employment creation. The time has come to reassess the optimistic projections of employment growth which led to the current record levels of migration. The 457 visa scheme and both enterprise migration and regional migration agreements must be assessed against this turn around in the economy.

[6] According to Birrell and Healy this is demonstrated most starkly for North Asian and South Asian migrants. By 2011-12 the share of Australia's permanent migration program deriving from the Indian sub-continent had increased to 23.7% and from North Asia to 20.9%. According to the 2011 Census, there were 156,321 persons born in India who arrived in Australia between 2006 and 2011 and 124,064 persons born in China. They are making a minimal contribution to resolving skill shortages in the resources industries, if residence in the 'Rest of WA' (that is, not Perth) can be taken as an indication. In 2011, there were just 880 recently-arrived India-born migrants who were enumerated in the Rest of WA (compared with 39,236 in Sydney) and 747 Chinese-born (compared with 42,957 in Sydney). p.8

[7] Kruno Kukoc (2012) First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, "Speech Notes, Australia's Migration Program: Integrity, Flexibility and Reform" 2012 CPD Immigration Law Conference, Immigration Lawyers Association of Australasia p.4 http://www.immi.gov.au/about/speeches-pres/_pdf/2012/2012-03-16-integrity-flexibility-reform-speech.pdf

1.10 Training benchmarks

1.10.1 Training benchmarks for the 457 visa program are currently under consideration by the Ministerial Advisory Council for Skilled Migration, on which this union is a representative member. We support the work of this Council in attaching stronger training obligations and benchmarks to the use of temporary skilled migration. If we do not tie training obligations to the opportunity afforded by fast tracking the visa process and reducing the eligibility requirements, we are not creating the infrastructure to train our future workforce. *We will become increasingly dependent on overseas labour to fill the growing void created by neglecting the training of our young people. Temporary migration schemes should be a stop gap only* while measures are put in place to ensure we create a permanent skilled local workforce. No-one gains by taking the easy path and poaching overseas labour which may or may not fulfil our needs.

11. Impact on training and apprenticeships

1.11.1 The temporary migration scheme has a negative flow on effect on training as it decreases the need or imperative for 457 sponsoring employers to train.

1.11.2 The 457 visa scheme is essentially an employer-demand driven visa. An applicant cannot get a visa without an employer sponsor. There is no cap on the number of visas that can be issued or an annual government target for the 457 visas. Employers can sponsor a temporary migrant on a 457 visa as long as the migrant has the experience or qualification the employer decides are adequate for the job and as long as the employer attests that the job is at a trade level or above. The 457 visa scheme provides an attractive alternative to investing in training by employers faced with the skills shortage. Rather than investing in training or taking on apprentices, employers can simply poach trained employees from overseas.

1.11.3 We have anecdotal evidence of young people keen but unable to get apprenticeships. We have anecdotal evidence of a huge demand – 100s of young people lined up for hours - for limited apprenticeships on offer with large employers. Employers sponsoring 457 visa workers do not as a rule train apprentices. *Allowing these employers to continue to import more and more labour from overseas penalises those local employers who do train and do take on apprentices.* When the Government talks about the cost to the employer of sponsoring overseas workers, it does not take into account the cost savings being made by Australian employers who are failing to invest in training or the social cost incurred by the Australian community by this training not taking place.

1.11.4 This is why there should be a "levelling up" between those who do and those who don't. Sponsoring employers should contribute to the training effort if they are not going to train workers themselves or take on apprentices. The privilege of

sponsoring 457 visa workers or being granted EMAs and RMAs should be tied to obligations to train or invest in the training of local workers. Allowing the import of more and more workers on temporary visas will simply increase the pressure on an ever diminishing pool of apprenticeships on offer. And the flow on effect is an ever decreasing pool of tradespeople trained to Australian standards, leading to a skills gap needing to be filled by overseas workers. Unless we stop the cycle now – it will continue to get worse.

1.11.5 There is little monitoring of the sponsoring employer's commitment to training in the local market. The bulk of "monitoring" involves the employer filling in a form giving a very brief outline of their history of investment in training and history of training. They are not required to submit documentary evidence of their investment in training. They are not required to submit evidence of the number of apprentices (if any) they have employed for a period of time prior to the visa application. Currently, the employer is not required to substantiate any of their claims unless investigated by DIAC.

1.11.6 Those employers who are monitored are only required to fill in a form saying they are training and what their training commitment is. A flat figure on training expenditure plus a brief outline of training provided and future training to be provided is all that is required. No real detail about the nature of the training or who is doing it is provided. DIAC includes a warning that the "department may seek evidence" of this training effort but clearly no real evidence is required at this stage, and in most cases is never required.

1.11.7 *We support the union proposal to the Ministerial Advisory Council to strengthen the current training obligations* by requiring payment by employers of 457 visa trade workers of an amount equivalent to what an employer would have received in Government incentive payments had they employed an apprentice. We also support the proposition that for every 10 or more 457 visa workers sought by the sponsoring employer, Australian apprentices should make up at least 25% of the sponsor's trade workforce. These are concrete proposals with a definable outcome which will impact positively on training.

2. 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;

2.1 Labour market testing

2.1.1 Under the 457 visa program there is no requirement for the sponsoring employer to conduct any form of labour market testing or analysis. Along with the ACTU and other unions, the CEPU continues to be concerned about the lack of rigour and scrutiny applied to the application process for EMAs, RMAs, the 457 visa program as

well as labour agreements. Employers have no obligation to source Australian labour before applying for 457 visa workers. With one exception, the visa rules do not require employers to undertake any labour market testing to see if there is local labour to do the work. In 2006, DIAC Deputy Secretary explained the reason for this, 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."*[8]

2.1.2 At the 2007 Senate Estimates, DIAC Deputy Secretary, Mr Rizvi explained further the reason for the dumping of labour market testing as follows:

"The assumptions on which the labour market testing were abolished were that accessing high-skill, high-salary labour from overseas is generally significantly more expensive than accessing it locally. If the local labour was readily available at those high skill levels then most Australian employers, as they as they have demonstrated to us repeatedly, would prefer to access it locally.".[9]

2.1.3 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.

2.1.4 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.

2.1.5 Tim Colebatch, recently wrote in the SMH[10], 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 they 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

[8] The May 2006 Senate Estimates Hearing
[9] Senate Standing Committee on Legal and Constitutional Affairs Estimates (Additional Budget Estimates) Proof Committee Hansard, 12 February 2007, p.34 per Mr Rizvi.
[10] Tim Colebatch (2013) "The books are being cooked on 457 visas" Sydney Morning Herald, 19 March 2013.

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.

2.1.6 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.

2.1.7 All this highlights the need for greater scrutiny of visa applications, the scheme itself and improvements to the assessment process.

2.1.8 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*.

2.1.9 *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.* 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.

2.1.10 To be eligible for an EMA, prospective sponsoring employers have only a general requirement to demonstrate their commitment to ongoing recruitment efforts. For skilled occupations there is no requirement for any form of labour market testing of analysis. With respect to semi-skilled occupations, they need only do a limited form of labour market analysis. Currently, all that is required is a statement from the

employer that skill shortages exist in the relevant semi-skilled occupations and there were no local workers available. This is not enough. Major project owners and 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;
- 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.

2.1.11 We agree with the proposition of 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.

2.1.12 Further, as pointed out by the ACTU in its submission to this inquiry, 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, we agree with the ACTU that 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.

2.1.12 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.

2.2 Regional Agreements & Testing

2.2.1 A form of labour market testing supposedly applies to employers in regional Australia who are seeking exemptions from the 457 minimum skill level. The spread of this exemption is greater than might be thought from the term "regional

Australia". All areas of Australia are classed as "regional" except Brisbane, the Gold Coast, Newcastle, Sydney, Wollongong & Melbourne. This leaves all of Western Australia, South Australia and all of the other States outside the main metropolitan areas within the scope of "regional Australia" and subject to the exemption.

The advantage for an employer located in regional Australia who chooses to use the direct entry RSMS is that they will have access to a broader range of occupations at ANZSCO 1–3 skill level occupations and reduced application fees. The skill requirements for prospective migrants are relaxed such as not requiring them to have extensive work experience in the nominated occupation. Previously, they did not have to meet relevant training criteria but from 1 July 2012, Listed RSMS trade occupations without Australian qualifications will now be required to do skills assessment to establish their skill level. We support this initiative. Once granted, the successful visa holder needs only *live and work in a regional area for 2 years.*

2.2.2 The "regional" labour market testing takes the form of a statement (form 1404) from the Regional Certifying Board that there is a need for a paid employee in the position, the position cannot reasonably be filled locally and the terms and conditions of employment are no less favourable than would be paid to an Australian citizen doing the same work in the same location. What this so-called test means in practice in unclear as there are no guidelines as to how the local labour market may be tested. It seems to be sufficient that in the opinion of the RCB the position can't be filled.

2.2.3 The CEPU believes there should be an objective basis for the RCB deciding the position can't otherwise be filled, and whether going market rates will be paid. We have briefly inspected the types of bodies that are representative of a typical RCB and have found they are a mixture of bodies. In some States they are Government bodies comprising in part representatives of local/regional business people, local councils or local chambers of commerce or local business development boards whose charter is to foster local businesses. We have some concerns about RCBs. First, we believe there is a conflict of interest in having the certifying body comprise representatives of many of the same businesses that may apply for sponsorship. They have a vested interest in approving local business applications for sponsorship. Their mandate is to help local business develop and grow. It is not in their interest to refuse an application by a local business for 457 certification. Second, we are concerned about the veracity of certification from a RCB that the wages and working conditions are market rates. Once again, such an assessment is well beyond the scope of expertise of such bodies. Such an assessment is especially tricky in rural and remote areas experiencing economic decline. It requires specialist industrial relations knowledge and experience well beyond the capabilities of regional business development boards.

2.3 Genuine shortages must be demonstrated not just in the occupation but in the geographic area where the jobs are located

2.3.1 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.

2.3.2 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.

2.4 The Jobs Board

2.4.1 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.

2.4.2 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.

2.4.3 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.

2.5 Assessment of Qualifications

2.5.1 Unlike skilled migration in the permanent resident visa program, 457 applicants do not have their qualifications assessed by an Australian accrediting body such as the

Local or Central Trades Committees of Trades Recognition Australia which operate with respect to trade visa applications. This is of particular concern to the CEPU especially in view of the fact that the growth in visa approvals in the trades in growing much higher than the scheme average.[11]

2.5.2 During the October 2006 Senate Estimates in response to a question by Senator Carr as to how DIAC ascertains whether visa holders who claim to hold certain skills actually hold those skills Deputy Secretary Mr Rizvi replied:

> ***"Mr Rizvi****—there are a number of things that we will look at as to whether the applicant has the skills relevant for the position that they will be filling …. When the visa application is made we will look at the information provided by the visa applicant to test whether the skills of the applicant match the skills of the position and the skills described in ASCO.*
>
> *There are a number of ways you can do that. Firstly, you might look at the qualifications that the people hold. Secondly, you might look at an assessment that has been done in respect of the applicant by an appropriately registered organisation as to whether they hold those skills. A third thing that can be looked at is whether an appropriate skills assessing body has made a determination in respect of the applicant and whether the applicant holds such a determination. Finally, and in particular where the employee asserts that they have various levels of skilled work experience, the matter can be referred to one of our overseas posts that will undertake an investigation. That might be an investigation simply by ringing the relevant employer to check those things or they may actually do a site visit of the employer to check whether the person indeed has the skilled work experience that they say they have."*

2.5.3 This sounds good in theory but when this statement is more closely examined none of the things listed may in fact have occurred. There is no requirement that an "appropriately registered organisation" has assessed the skills of the visa holder or has made a determination. When this is removed from the assessment equation it becomes clear that the assessment of occupational matching is largely done within DIAC by DIAC officers <u>with information provided by the employer</u> and to a lesser extent, by the visa holder.

2.5.4 The limited skills assessment arrangements for 457 visa holders is of a significantly lower standard than the skills testing for permanent skilled migration because weight is mainly put on the employer's own assessment of the visa holders skills. With respect to applicants for visas for migration using the points tested categories, DIAC relies on independent skills assessment bodies.

2.5.5 All 457 visa applicants should be required to undergo a skills assessment from the relevant independent accrediting occupational authority as is the requirement for

[11] Kinnaird (2006) p.56

those who apply under the points tested visa class. Currently 457 visa holders need simply satisfy their sponsor they have the skills required.

2.5.6 The CEPU submits, particularly with respect to electrical and plumbing workers, that skills assessment by the relevant independent accrediting authority should be mandatory. The same skills assessment that applies to the GSM applicants should apply to all visa types. Once 457 applicants are granted their visa, they can circumvent the assessment process upon applying for permanent residency as there is no requirement that they be "reassessed" once they apply for the permanent visa. It is taken as given that the qualifications etc satisfy Australian standards. This is a loophole that should be fixed. All applicants for visas should be independently assessed. Qualifications gained overseas and held by temporary overseas workers should meet the qualification and licensing standards required by Australian workers.

3. 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;

3.1 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. 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 seems to take little account of the state of the labour market.

3.2 A further problem arises with the Regional Sponsored Migration Scheme (RSMS). Only available to employers in regional, remote or low population growth areas of Australia, all occupations above the trade level are eligible – not even what Birrell and Healy[12] call "the minor restriction" of the Consolidated Sponsored Occupation List applies. The Government has recently increased the share of visas within this program going to the RSMS. Well over half of the principal visas issued went to occupations which were not on the SOL in 2011-12. Since SOL includes all the professional and trade occupations central to the construction phase of the resources boom, Birrell and Healy argue the figures support their view that there is a "poor fit between the ENS program and crucial skills needs in Australia".

[12] Birrell and Healy (2012) p.13

3.3 Under enterprise migration agreements, employers on large resource projects to be granted upfront approval for migrants with skills not eligible under the standard visa programs. The occupations include semi skilled occupations which may not even be on the very broad CSOL.

3.4 In the past, DIAC would consult with the unions as stakeholders and consult on the numbers and occupational groups for the skilled migration program. If a shortage was verified, that occupation would go on CSOL. However, despite being a major source of industry intelligence we are now "out of the loop".

4. the process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes;

4.1 The 457 visa scheme involves a considerable amount of self regulation. DIAC monitored fewer 457 employers in 2005-2006 than in 2004-2005 despite the number of 457 visas granted growing from 28,000 to 37,527.[13]

4.2 The CEPU believes the current level of monitoring is insufficient. There is no doubt that the majority of employers can be relied upon to at least be paying the 457 visa holder the relevant pay rate and to be employing the visa holder to work in the occupation for which they sponsored them. However, there is equally no doubt that a number of employers cannot be relied upon for their honesty and that number will be growing.

4.3 The 457 visa program is supposed to be limited to skilled workers. Putting aside our problems with the lack of proper skills assessment, once the visa holder is here there is no real control or monitoring over what they do. Site monitoring is ad hoc and paper based monitoring simply requires that the employer fill out a form. No further follow up is required unless something about the form raises alarm bells with the DIAC officer checking off the form. Yet somehow the most public of cases of employers abusing the system involves workers such as kitchen hands, farm hands and labourers, all positions which are either not eligible under the 457 visa scheme or have been allowed as a regional or special exemption and should therefore be monitored more closely because they are an exception to the general rule.

4.4 The bulk of compliance monitoring comprises paper-based monitoring with sponsoring employers receiving a tick box form questionnaire[14] to fill in and return. Some documentary evidence regarding pay rates is supposed to be attached to the

[13] The Senate Standing Committee on Legal & Constitutional Affairs; Senate Estimates 30 October 2006, p.27 per Mr Rizvi
[14] Form 1110

form[15] and the form warns the employer that they "may" be required to show evidence that their employees have a licence, registration or relevant membership if this is a requirement of their stated occupation. However, the information relies on the honesty of the employer and the documentary evidence may never be required.

4.5 As part of the monitoring process, site visits are made by DIAC compliance officers where the employer is not only given advance warning of the visit but a meeting time is organised prior to the visit based on a mutually agreed time between the DIAC compliance officer and the employer. The visa holder is only given notice of the visit if the visa holder is also going to be interviewed[16]. The CEPU believes the employer should not be forewarned of these visits. Advance warning of the visit allows the employer to get organised and remove potentially incriminating paperwork and even ensure the 457 visa holder is off site for the day. The Department claims it is more efficient to give the employer advance warning of a visit so the employer can ensure the necessary paperwork is available for the compliance officer at the visit. The CEPU however, believes that the convenience of the compliance officer is less important than getting a true picture of the employment situation. This is best achieved by not allowing the employer to prepare for the visit. This will make the monitoring potentially slower but less open to "cover-ups".

4.6 DIAC should also be interviewing the visa holder as part of the monitoring process. It is not sufficient to be satisfied that all is well purely on the say-so of the employer. Given that a site visit is to check on the *employer's* compliance with his/her sponsorship undertakings the visa holder should also be given notice that the site meeting is to take place. This will provide the visa holder with an opportunity to come forward if there is a problem without having to independently approach DIAC which may be quite daunting for some.

4.7 Interviewing both parties will lead to a more accurate picture of the conditions under which the visa holder works. This is an additional reason for not giving advance warning of a visit. Advance warning allows the employer to "prepare" the 457 visa holder to only say what the employer wants him or her to say. The ever present threat of deportation will ensure the visa holder toes the line.

4.8 As has been discussed elsewhere in this submission, it is vital that the interview with the visa holder is not conducted in the presence of the employer. The visa holder is not likely to complain or criticise the employer in his or her presence.

[15] The last 2 pay slips and the most recent PAYG payments summary or a bank statement can be provided as evidence of remuneration being paid. A proper check would involve checking the time and wages records going back further than 2 pay periods.

[16] Senate Estimates 30 October 2006 p.28 & p.41

4.9 CEPU members working in the electrical contracting industry will be working on sites which are geographically separate from the employer's office. It would be appropriate for the DIAC compliance officer to visit the visa holder at the site rather than the employer's office. This is because the employer's office bears no relation to the conditions under which the visa holder works.

4.10 DIAC does not have the same power as the Fair Work Ombudsman to demand access to examine a company's books[17]. The CEPU believes that DIAC should have the same powers as the FWO to demand access to company information particularly where it relates to pay rates and conditions.

4.10 The bulk of the monitoring relies on a potentially unreliable employer ticking a box to say they are complying with their undertakings. Unless a sponsored employee comes forward with information or a complaint is made through some other avenue such as the union, a non-complying employer could slip through the cracks for years.

4.11 *The rapid growth of the scheme makes it inevitable that abuse of the scheme will also be growing. This is why we believe that monitoring of the scheme needs to be greatly improved and the number of site visits greatly increased*.

5. the adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities;

5.1 For a sponsorship to be granted, a sponsoring employer must attest they have a strong record of, or a demonstrated commitment to employing local labour and non discriminatory employment practices. The attestation requirement is not binding and DIAC has no power to refuse an application if it is not genuine. There is also nothing the Department can do by sanctioning or barring the sponsor where there is evidence they are employing 457 visa holders in preference to Australian workers.

5.2 The CEPU believes the attestation is inadequate and pointless if it cannot be enforced. The Department must be given the power to first make the attestation legally binding and enforceable and the power to continually monitor the situation and take action in the event of a breach. The Department must have power to refuse an application where it believes the attestation is not genuine or where the employer shows a preference to employing 457 visa labour. Failing to enforce these obligations will impact on local employment opportunities.

[17] Senate Estimates, 30 October 2006, p.31

6. 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;

6.1 The CEPU supports any measure to improve long term forecasting to reduce our reliance on temporary visas. Temporary visas are a stop gap measure not a solution. The solution lies in planning for skills acquisition and training by properly resourcing and supporting training institutions and employers willing to train Australian workers and in particular, employers willing to take on apprentices. Although there will always be peaks and troughs in the labour market, the key to levelling out those peaks and troughs is an ongoing commitment to training. We echo the concerns of the ACTU over the cuts to TAFE training. Cuts to TAFE training and low apprentice wages will not assist in creating a skills base for the future.

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

7.1 The CEPU believes that DIAC is vastly under-resourced. DIAC has only a limited capacity to inspect 457 visa workplaces. In 2011-12 (up to 30 April) there were only 37 inspectors available for this purpose Australia wide, who visited less than 4% (of about 22,000) of those employing visa holders. Clearly the system is ripe for abuse. A key improvement to the system would be to increase the resourcing of DIAC's inspection and compliance capability.[18]

7.2 Despite the best of policy intentions, without better monitoring and compliance enforcement the temptation on the part of many employers is see the 457 visa as cheaper labour. For the most part, they will get away with breaking the rules, paying less and violating workplace rights. This is compounded by the problem of the visa worker being dependent upon the employer for their ongoing employment and their longer term desire to gain permanent residency. If they rock the boat they have 28 days to leave the country. So workers who may know they are underpaid or working in unsafe conditions may choose to do nothing about it. Where abuses are uncovered, it is likely that those abuses are the tip of the iceberg. The difficulty of finding 457 visa workers willing to speak out about their sponsoring employer makes abuse a systemic issue.

7.3 We support the submission of the ACTU that:

- There should be new sponsor obligation to inform every 457 visa-holder in writing of the terms and conditions of their employment; and
- All 457 visa-holders should be provided with a hard copy version of their worker rights under Australian workplace and immigration laws, outlining the role of the various relevant agencies in pursuing their rights

[18] Senate Estimates Hearings Hansard, Legal and Constitutional Affairs Legislation Committee, 22 May 2012.p.68

7.4 We also welcome the Government's recent announcements that FWO inspectors will have a stronger compliance role under the 457 visa program and cooperative arrangements have been established for the exchange of information and data matching with the Australian Tax Office.

7.5 DIAC compliance officers do not have the same investigative powers as many other officers in similar government agencies such as the FWO, the various Offices of Fair Trading and so on. Its mobile strike teams in effect act as referral agencies to gather information and refer the investigation onto the relevant agency that is responsible to investigate a potential breach of that agency's area of responsibility.[19]

> *"For example, if from the answers we have received there is a concern that there is underpayment, that the workers are being required to work excessive hours, that there is an occupational health and safety issue, or that there is an issue of deductions being inappropriately made and they do not meet the requirements of the relevant fair trading agency, we would refer that matter to those agencies to then investigate."*[20]

Of concern to the CEPU are the delays inherent in referring various parts of an investigation to different government agencies. According to DIAC Deputy Secretary, Mr Rizvi;

> *"the cooperation we get from the Office of Workplace Services is excellent. They are very responsive and very quick in keeping us up to date with how they are progressing. With other agencies it varies from case to case. In a number of instances the agencies have indicated to us: 'Thank you for the referral. We will investigate,' and they will decide whether they will actually let us know the outcome of their investigation or not." [emphasis added]*

DIAC do not currently see it as the Department's responsibility to ensure that problems referred to other agencies are followed up and appropriately dealt with. If there is a breach of another agency's laws the primary responsibility rests with that particular agency and DIAC seems to eschew any further responsibility to the visa holder[21]. In some instances, such as a referral to the Tax Office, DIAC has been advised by those agencies that the relevant agency cannot provide DIAC with the outcome of their investigations.

This is plainly inadequate. It is incumbent on the Government to ensure:

- investigations are fast;
- government agencies fully cooperate
- that investigation are not broken up into compartments and parcelled around various government agencies without DIAC having overall responsibility. It's not good enough for a matter to be referred on and that

[19] Senate Estimates, 30 October 2006, p.31
[20] Senate Estimates, 30 October 2006, p.31 per Mr Rizvi, Deputy Secretary
[21] Senate Estimates, 30 October 2006, p.34 per Mr Rizvi

is the end of things as far DIAC is concerned. There is no accountability in this process and no impetus on the other government agency to proceed swiftly with its investigations.

- That progress reports are made back to DIAC; and that
- No 457 visaholder is deported while investigations are on-going.
- There are adequate protections in place for whistleblowers.

The CEPU strongly supports the imposition of fines on employers who breach their undertakings and otherwise abuse their 457 visa privileges. Infringements should be met by a revocation of the sponsor's right to employ 457 visa workers and no other application should be granted unless the employer can give good reason for the revocation to be reviewed.

8. The role of employment agencies involved in on-hiring subclass 457 visa holders and the contractual obligations placed on subclass 457 visa holders;

8.1 *We have strong concerns about labour agreements covering employment agencies and on-hiring 457 visa holders*. Monitoring of compliance is hard enough under a system of direct employment but once 457 visa workers are on hired it becomes even harder.

8.2 We have had input into the ACTU Submission concerning the requirement to comprehensively reform *the labour agreement process. It is deficient both in terms of the process for consultation and the matters upon which labour agreement proponents must consult on*. Reform of this area is vital especially if the agreements are to be used as a backdoor route by major resource companies wishing to access overseas labour but wanting to avoid the current EMA consultative process. We are not confident that employers and labour hire companies wishing to employ 457 visa labour will first do all they can to employ and train the local workforce. In consultation with the Unions, The ACTU has identified a list of matters that should be included as formal consultation requirements under the labour agreement program. This includes;

- the numbers and occupations of the temporary skilled workers to be sponsored over each of the years of the agreements and the specific role they will perform;
- the specific locations in which they will be working;
- the employing entity;
- the wages and conditions under which they will be employed and the proposed industrial instrument which will prescribe their wages and conditions;
- how those wages and conditions compare to equivalent Australian worker and the market rate for the industry or occupation;
- a commitment to exhaust all avenues for sourcing appropriate local labour;
- evidence of recent and ongoing local recruitment efforts (providing details);

- specific commitments by the company directed at addressing the skills shortage by providing training in the occupations for which the overseas labour is sought;
- a workforce profile which shows the proportion of overseas workers to Australian workers;
- information on the process for settling the 457 visa workers including assistance with accommodation and expenses;
- a commitment to notify the ACTU and relevant unions before employing temporary overseas workers and provide the unions with access to the workers within the first month to ensure compliance and that they know their rights;
- measures to ensure the ongoing testing of skills demand during the term of the labour agreement to ensure local labour is not displaced.

9. the impact of the recent changes announced by the Government on the above points; and

We support the creation of the Ministerial Advisory Council on Skilled Migration (MACSM). MACSM is a positive initiative which involved all the stakeholders in improving skilled migration. It is dealing with many of the concerns raised by the CEPU in this submission.

10. Other matters

10.1 Don't tie temporary migration to permanent migration

Calling the 457 visa scheme a temporary migration scheme is a misnomer. It is in fact a pathway to permanent migration and used by the majority of visa holders as a fast track path to permanent residency. By the 2000s about half of those originally gaining a 457 visa have after 5 years gained a permanent residence visa. The CEPU believes that the link between the temporary scheme and permanent residency should be severed. In this way the 457 program would be much more the scheme envisaged by the Government than it actually is – ie a scheme responsive to the short term needs of industry.

The Chairman of recruitment specialist T2, Andrew Banks, pointed to the success of a specialised immigration program used by Norway in the 1970s. According to Mr Banks the Norwegians allowed thousands of people in on very short term work permits. "They got the job done, got the oil out of the ground and they are now the richest nation on the planet – then they sent everyone home". Mr Banks believes workers should be brought in on strict visas and possibly be prevented from applying for permanent residency.

10.2 We should guard against "visa hopping"

The CEPU believes that the 457 and other short term visa programs should not be used as a back door into permanent residency. The entry requirements for those seeking entry under the GSM scheme are tougher than those under the 457 visa scheme. Once approved for a 457 visa, employers can sponsor a 457 visa holder under the permanent entry sponsorship program on concessional terms. Further concessions post mid-2012 mean that the English proficiency requirements are less. The 457 visa holder seeking permanent entry does not have to undergo another English test or an assessment of their qualifications by the relevant occupational authority. All that is required is that the 457 visa holder has been employed for 2 years by the sponsoring employer. Those seeking permanent residency under other visas must have a skills assessment and achieve a higher level of English proficiency.

There should be tougher rules for semi-skilled workers and correspondingly, for access to EMA and RMAs. The justification for importing such workers is weaker than it is for skilled workers. There is often clear evidence that there are domestic workers available for that work and the amount of training needed to prepare for such jobs is limited.

CONCLUSION

The expansion of the 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 and the processing of enterprise and regional agreements needs greater scrutiny and reform. Otherwise the interests of domestic workers will continue to be at risk. Clearly, there is an impact on local employment opportunities, training of local workers and the uptake of apprentices. 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.