

Committee Secretary
Senate Legal and Constitutional Affairs Committee

Dear Honourable Members,

I beg to differ from the frequent claims that there is no significant rorting of s457 visas, so seek to bring a few relevant items to your attention. While all are a matter of public record, some may be matters that have not previously come to the Committee's attention.

Previous Reports

A number of reports have been issued on this subject:

1. (2007) Joint Committee on Migration - Inquiry Into Temporary Business Visas
2. (March '11) Temporary Migrant Labour in Australia
3. Skilled Migration: temporary and permanent flows to Australia
4. Immigration Overshoot
5. Visa subclass 457 integrity review (the Deegan review)

In 2005 we had the Migration Amendment (Employer Sanctions) Bill 2006, which created civil offences of allowing or referring an unlawful non-citizen to work. Senator Vanstone – the Bill's sponsor – wrote in the Explanatory Memorandum:

"2. The incidence of illegal work in Australia is a significant problem that denies Australians the opportunity to gain employment and can result in the exploitation of non-citizens. It is also a concern to the Government because of its close association with cash economy industries, which are characterised by abuses of Australia's tax, employment and welfare laws.

3. The absence of effective penalties for employers of illegal workers also encourages people smuggling and trafficking activities for the purpose of illegal work. Victims of trafficking may be forced to work illegally in conditions of forced labour, sexual servitude or slavery."

Note that once Julia Gillard started criticising the s457 visa scheme, Senator Vanstone had sudden amnesia:

"The unions have never liked this visa. Especially the unions that are backing Julia Gillard. She is not doing well in the polls and, either in return for the continuing support of some key unions or to shore it up, the Prime Minister announces a crackdown on the visa they dislike. Whoopee. Former and current union officials who feel the need to look powerful can tell all their mates that they "told the PM what she needed to do". But the jobs of Australian workers in companies that cannot get the skills they need to thrive are at risk.

Where are the examples of rorting of this visa? Labor tightened it up a few years ago . . . did they mess this up? Surely with the mining boom drawing skilled workers out of capital cities, we can understand that there will be skill shortages."¹

In 2009 we had the Migration Legislation Amendment (Worker Protection) Act 2008 (sometimes erroneously referred to as the "Worker Protection Act 2009") which amended the Migration Act 1958 and Taxation Administration Act 1953.

¹ Visa campaign exposes hypocrisy in PM's office

To quote from the visa subclass 457 integrity review of 2007: "The Review found that concerns about exploitation of 457 visa workers were well-founded."

General Points

In claiming that more than 80% of employer-sponsored permanent skilled visas are granted to people already in Australia, the federal opposition scored an own goal – it thus acknowledged that there was nothing temporary about such visas since there was clearly no effort whatever to replace the foreign worker with a domestic one.²

It means nothing that employers seeking access to a 457 visa labour agreement are required to consult with unions about introducing foreign workers into their industry. Employers are advised by the Department that the union has no control over the decision; union views are typically ignored by the employer.

Far too few inspectors are available to seriously police these schemes. [As at 2013] the Department had 34 active inspectors to investigate compliance. In 2011-12 there were over 22,000 active sponsors. Yet by their nature the employers will feel far greater freedom to oppress and exploit foreign workers than they would risk with a local.

As a British trade union official wrote regarding similar issues in the U.K.:

"If eastern Europeans are being paid below the minimum wage, it is hardly their fault; the blame lies with employers breaking the law. If they are living in overcrowded expensive sub-standard accommodation, it is the fault of slum landlords who are profiting from their inability to find a decent home. And if they are bussed over from their homes by the promise of good jobs at good wages and end up in jobs where they do not even enjoy legal minimum standards, it is the fault of our system of labour-market regulation [and our politicians' refusal to fund proper enforcement]."³

Specific examples

- using foreign cabin crews on domestic flights at foreign (lower, of course - need I say that?) rates of pay;
- FWO is also prosecuting for employing cadet pilots on NZ individual contracts for work that was exclusively in Australia and covered by a domestic award.
- Filipinos electricians being paid \$25 p/h, typically 60 hours p/w with no penalty rates, no holiday pay, no sick leave, one month off per year and accommodation is 12 to a house.
- using American locomotive drivers on holiday visas over the Summer of '12
- AMWU experience is that Chinese workers brought here suffer absolutely abominable conditions.
- In the immigration detention sector (i.e.), British prison guards were brought in and given management jobs, discriminating and excluding qualified and experienced Aussies from high and middle management jobs. Top down and bully management style creating toxic workplace and culture.
- Security service provider saves money by employing 457 visa foreign workers, mates and detainees.
- in March '12 188 IT employees of were replaced by hundreds of Indians flown in, existing full time staff told, sorry 'asked' to perform "knowledge transfer" and train them up, then made redundant. Said Indians will return to India to teach their colleagues, who will be paid far less than Australian employees.
- Indonesian and Filipino fishermen who earned \$400 per month – on an Australian boat, in Australia.
- "A very successful West Australian company uses almost exclusively 457 workers (unskilled in the product until trained in Australia) employed manufacturing items using the product carbon nano-tubes - in industry circles known as the next asbestos [if shorter than a certain length]. After a few years they will all be sent home with carcinogenic fibres in their lungs and the multi million dollar company and their insurers will dodge all their legal liabilities."

² Gillard backs 457 visa 'crackdown'

³ Stop blaming migrants - exploitation is the problem

- repeat above, but substitute subbie s457 workers and asbestos.
- Twenty-one casual female Chinese employees – none fluent in English - underpaid a total of \$359,963 between 2006 and 2009 at a NSW mail sorting business.
 - In June 2011, a local metalwork company - - was fined \$123,000 and its managing director a further \$24,600 for underpaying five Chinese workers who were on temporary visas. The migrants worked up to 11 hours a day, six to seven days a week, were paid less than \$3 an hour, and were underpaid by \$28,000 to \$69,000 each during their time at Kentwood in 2006 and 2007.
 - CFMEU national secretary has pointed out that the Department of Immigration and Citizenship's own figures showed that 16% (8-16,000) of workers in the construction industry were illegal workers.
 - Four Estonian martial artists have been charged with “debt bondage” extortion where migrants they brought in were forced to work for almost nothing until they'd repaid the massive fee they were charged.
 - one 2006 case was 40 Filipino workers brought in who weren't paid penalty rates or sick leave. Though charged \$175 per week for accommodation, the house had eight people and they'd had to build their own beds at the factory out of steel frames. Three workers were apparently sacked for joining a union and another five allegedly threatened with dismissal.
 - The Australian Nursing Federation has found 457 nurses have been paid inferior wages to equivalent Australian-trained nurses.
 - a Melbourne “start-up” company that didn't make money was created just to secure a cheap foreign worker for other duties.
 - Low-skilled jobs have been dressed up as high-skilled ones with one company winning permission to bring in administrators who were really unskilled security guards.
 - Pay levels have been especially manipulated in the IT industry in Melbourne.
 - A very recent example would be typical – a backpackers hostel housing s457 and holiday visa backpackers was found to be accommodating 180 when the owner's licence was for 110 (with some having to pay \$100/week for a tent next to rubbish bins); the owner evicted the group of backpackers that blew the whistle. [V6]
 - When sacked 106 workers in May '13 (nearly a third of the workforce), it retained six PNG workers brought in on s457 visas as diesel fitters. Yet contrary to the employer's claims, most of the sacked tradesmen had several qualifications, while the PNG workers had next to none.
 - In Feb '11 a Sydney subcontractor had paid less than half the industry standard to up to 50 Chinese workers at the site, many non-English speakers and on either 457 or holiday visas. Industry standard was between \$28 and \$32 an hour, plus benefits - some were only receiving \$12 with no superannuation, workers' compensation or long-service leave.
 - WA builder was fined \$174,000 in March '08 for demanding that 15 s457 visa holders from the Philippines and Ireland not date the AWAs when they signed them. He gloated that the employees would sign anything because they were frightened of being sent back.
 - a doubling of 457 visas in the hospitality sector and pressure from the Australian Hotels Association to reduce the \$51,400 minimum salary so employers could use the scheme more extensively.
 - much of the growth in FY12 applications by working holiday maker and student visa holders were for occupations and regions which are not experiencing real skills shortages, inferring that usage is increasingly to extend residency.
 - In Perth, a welding supervisor blew the whistle on a Mornington workshop that would only employ workers from China on lower rates.
 - In Canberra, the courageous stand of another ex-employee led to a group of Koreans on 457 visas protesting against underpayment of wages and entitlements received CFMEU support, and ensured the workers were paid what they were owed.

Schemes are being hatched for nanny sweatshop labour, which will suffer exactly the same abuses. Third World nannies/servants/household workers the world over suffer years of hard work, low pay, and exploitation by both host government and host employer, all preying on the immigrant's hope for a First World passport that means a future for themselves and a lifeline for their family back in the Third World. Its typically oppressive nature is obvious from the fact that even in Australia "nannying" is notoriously poorly paid and vulnerable.

It should be obvious that if there is serious roting then a lot of wealthy employers are benefitting from those rorts so will be very very determined to protect them. A well-managed industry would not be affected by a clampdown.

Thought for today: If cutting wages, taxes and prices really made everyone better off, we'd be wanting to do it here, too, and Balinese would be holidaying to Australia instead of the other way around. Good pay and conditions are an absolutely repeat absolutely essential basis for social inclusion, stability, and successful assimilation.

Yours sincerely,