Electrical Trades Union of Australia

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Senate Education and Employment References Committee

Submission

Inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders

April 2015

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Executive Summary

The Electrical Trades Union (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 workers electrical and electronics workers across the country and the CEPU as a whole represents approximately 100 000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to submit to the Panel on matters relating to the current inquiry into the effect of temporary work visas on the Australian labour market.

We believe that a wide ranging inquiry is timely given the government has undertaken reviews and has implemented, or is considering, policy changes across a number of areas such as all classes of temporary visas including 457 subclass visas, Enterprise Migration Agreements, Designated Area Migration Agreements and Free Trade Agreements. While Australian unions have had long-standing and well-documented concerns with the operation of the temporary 457 visa program, it is clear to us that the problems extend to a range of other temporary visa types where overseas workers can find themselves in vulnerable situations. The broader context needs to be considered in detail and we therefore welcome the fact the Inquiry encompasses all temporary work visa types.

Currently there are more than 1.8 million temporary visa holders in Australia, including New Zealanders, and up to 1.3 million of these visa holders have work rights. This equates to around 11% of the total Australian labour force of over 11.6 million.

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At a time when unemployment remain stubbornly above 6% and youth unemployment is more than double that, the Australian community needs to have confidence that such a large and growing temporary work visa program is not having adverse impacts on employment and training opportunities for Australians, particularly young people.

We believe the first priority for any Australian Government must be to protect and support jobs and training opportunities for Australian citizens and permanent residents.

We support a diverse, non-discriminatory skilled migration program. Our preference is that this occurs primarily through permanent migration where workers enter Australia independently, but we recognise there may be a role for some level of temporary migration to meet critical skill needs.

However, there needs to be a proper, rigorous process for managing this and ensuring there are genuine skill shortages and Australian workers are not missing out.

We believe the elements of successful temporary migration schemes and policies are:

- Maximising jobs and training opportunities for citizens and permanent residents of Australia regardless of their background and country of origin.

- Ensuring that citizens and permanent residents have the first right to access Australian jobs.

- Ensuring overseas workers who are employed under the 457 visa program to meet genuine skill shortages that can't be filled locally.

- Ensuring that 457 visa workers protected from exploitation, are safe in the workplace, receive full and proper entitlements on a par with their Australian colleagues and are able to they are able to seek remedy just as Australian workers can do should this not happen, including by accessing the benefits of union membership and representation.

In order to achieve this, we make the following recommendations:

Recommendation 1

A tripartite body comprised of employers, unions and government be established to provide reports, advice and recommendations on the current and future operations of temporary work visas and any other instrument that facilitates the use of overseas workers in the Australian labour market.

Recommendation 2

Introduction of a requirement for trades and technical occupations that only employers who can demonstrate that a minimum of 25% of their workforce are domestic apprentices can engage overseas workers.

Recommendation 3

All 457 visa applications be temporarily suspended for industries where unemployment levels exceed 5% unemployment (as per official ABS data) until such time as unemployment returns to under the 5% threshold.

Recommendation 4

The domestic training requirements on employers be doubled from existing levels in order to maximise opportunities for Australians in the face of record unemployment levels. This is particularly relevant to addressing the current high levels of unemployment in the youth labour market.

Recommendation 5

For high risk trades and technical occupations, such as energy and health, the higher language standard of IELTS 6 required for the permanent General Skilled Migration visa stream be applied to the 457 visa program.

Recommendation 6

That employers who meet or exceed their obligations to labour market testing an domestic employment and training be rewarded through the introduction of fee reductions via a sliding scale linked to performance targets in the areas of labour market testing, wages and training.

Recommendation 6

Unions should form part of the Ministerial Advisory Council on Skilled Migration.

Recommendation 7

The Australian Government should not enter into any free trade agreements that trade away the right of the Australian Government and the Australian community to require that labour market testing occur and Australian workers are given first right to Australian jobs.

Recommendation 8

Increase training through trade apprenticeships, traineeships and graduate degrees in the specific occupations allegedly in short supply (eg the occupations in which 457 visa workers are being approved on the basis that no qualified Australian workers are available).

Recommendation 9

Increase the cost of accessing 457 visa workers relative to the cost of training Australian workers, especially for entry-level positions that usually attract younger workers.

Recommendation 10

Responsibility for compliance and monitoring should be transferred from the Department of Immigration and Border Protection to the Fair Work Ombudsman

English Language Competency

Health and Safety should be paramount in every workplace, but particularly so in industries that carry inherent dangers, such as the energy industry. It is unequivocal that appropriate English language standards that allow for clear communication is the only way to ensure proper workplace health and safety standards.

Minimum English language competency requirements are critical to the health and social wellbeing of workers by:

- Ensuring good workplace health and safety practices;
- Reducing potential for exploitation;
- Clearly understanding workplace rights and responsibilities;
- Facilitating effective workplace performance;
- Providing an ability for overseas workers to pass on their skills to fellow workers;
- Optimising employability and mobility; and
- Allowing participation in the community in which they live and work.

To allow lower English language standards in order to facilitate easier access to large numbers of overseas workers is a flawed proposition that simply panders to some sectors of the employers lobby and run against the fundamental tenants of the 457 program.

The ETU recognises the importance of English language standards for overseas workers under the 457 visa program, and we submit that the standard of IELTS 6 required for the permanent General Skilled Migration visa stream should apply to the 457 visa program.

Skills Assessment

Currently, 457 visa holders need only satisfy their sponsor that they have the skills required and are not required to be independently assessed.

The ETU believes that the skills and qualifications of 457 visa holders and other temporary visa holders should be formally assessed by an independent body against occupational requirements and other relevant Australian endorsed standards.

An independent and transparent process for both skilled and semi-skilled temporary migrants is essential to ensure that qualifications gained overseas and held by temporary overseas workers meet the contemporary requirements of Australian qualifications and licensing arrangements. This is in the interests of both the worker and the employer.

Priority must be placed on increasing domestic training and apprenticeship opportunities and it is essential that there be no risk of undermining by unscrupulous employers who seek to bolster skilled migrant workers numbers at the expense of domestic training and apprenticeships.

While every effort can made to ensure technical equivalency with Australian standards it is almost impossible for foreign workers have the knowledge/experience with the Australian standards required to work in a safe and compliant manner.

Electrical regulators are especially concerned that the gap be addressed in regulated trade vocations such as electrical, refrigeration and air conditioning, electricity linework and cable jointing, where the work context may differ markedly in overseas countries and where such differences could endanger lives, infrastructure or systems.

While skilled migration programs allow employers to meet short term skill demand, investment in skills forecasting and workforce development programs which emphasise trade training, will provide more sustainable and longer term solutions.

We submit that the mandatory skills assessment that applies to all permanent General Stream Migration applicants should be the standard applied to all visa types.

Workplace Rights

The ETU believes that skilled migrants make a valuable and substantial positive contribution to Australia's economic, social and cultural fabric and must treated with equity and respect -particularly with reference to wages and industrial conditions - as compared to Australian citizens.

We believe it is of utmost importance for skilled migrants, in sectors where there is a clear and demonstrable need, that the industrial, human and civil rights of temporary migrant workers must be urgently improved and rigorously enforced to ensure parity with their non-migrant colleagues.

Movement and migration of people around the globe is a by-product of our global economic system. But people are not a by-product of an economy and their basic human rights should be upheld and respected. Supporting people's rights requires more than remedial protection in response to corporate exploitation and opportunism.

All temporary workers should have the right to join and be represented by a trade union and also have the right to be treated fairly and equitably which includes not being dismissed unfairly or discriminated against for reasons of race, religion, sex, pregnancy, sexual orientation, disability or for trade union membership.

Unfortunately there are still many employers who seek to exploit overseas workers or not uphold their responsibilities to Australian workers. The nature of the instances include:

- workers being engaged where skilled and qualified Australian workers were available to do the work;
- Breaches of employer sponsorship obligations;
- Under-payment of workers;
- Excessive working hours;
- Workplace bullying;
- Debt bondage;
- 457 visa workers nominated to work in skilled occupations and then being required by their employer to perform unskilled work on a regular or permanent basis;
- Employers offering to sponsor workers for permanent residency for a fee up to $50 000
- Exorbitant charges and interest payments on loans for 457 visa holders to be placed in jobs;
- Salary deductions to pay for migrant agent fees on the promise of getting permanent residency
- Threats from employers to not join a union, including contracts that 457 visa workers are forced to sign stipulating they can be sacked for talking to a trade union;
- Attempts by employers to recover costs such as accommodation and food;
- A number of cases where overseas workers have uprooted themselves to come to Australia only to find after a short time (or immediately in some cases) the job is no longer there.

Case Study – Schneider Elevators Australia Pty Ltd[1]

Whilst following up a claim from an electrician regarding non-payment of wages by their employer Schneider Elevators Australasia Pty Ltd, the ETU has uncovered a much larger problem.

It was discovered that a group of 457 visa workers were forced to sleep on an office floor after being left high and dry by their employer in Melbourne. The workers (11 Filipino and 1 British) were owed six weeks' pay by Schneider Elevators and were left with no money, no job, nowhere to live and no way to get home. The majority of the 457 visa workers are Filipino, except for one from England, and were brought into the country during December 2014 to January 2015.

These workers have were not only been underpaid on their normal weekly wages, but were also not been paid for many hours of overtime that they have worked on a number of projects in Melbourne. It was estimated that Schneider Elevators owed approximately $172 000 to employees.

Both the ETU and AMWU held discussions with the manager at Schneider Elevators Australasia, who claimed no monies were outstanding to the workers.

These workers were brought to Australia on the promise of good wages and conditions of employment, yet what transpired in reality was the opposite where they were paid well below local industry standards, lived in backpacker accommodation and when their money ran out they had to ask to sleep on the office floor because they had nowhere else to go.

[1] http://www.theage.com.au/national/workers-in-visa-row-forced-to-sleep-in-office-union-claims-20150320-1m3v7q.html

The workers also revealed that Schneider Elevators had been deducting its government sponsorship fees and 457 visa fees from their wages. It left them with amounts between $150 and $500 per week in cash.

There were also 5 Australian workers (2 of whom are electricians) who also find themselves in the position of not having been paid for 6 weeks.

The relevant authorities were been made aware of the situation.

When ETU and AMWU who work for Kone Elevators found out what was happening to these 457 workers, donated just over $12,000 to help support them through this terrible situation and unions found the workers temporary accommodation.

The ETU condemns the immoral exploitation of these vulnerable workers by Schneider Elevators and it serves as a salutary reminder of why temporary visa classes and workers need the government to provide a practical, effective and enforced regulatory environment.

Free Trade Agreements

Currently under legislation, the government of the day (via the relevant Minister) has the power to decide that the labour market testing condition does not apply if it would be inconsistent with any international trade obligations as determined by the Minister.

The first example of this type of exemption to Labour Market Testing was issued by the in November 2013 when the labour market testing provisions came into

operation. It established a host of exemptions based on the terms of the free trade agreements in force at the time. The Department of Immigration and Border Protection currently provides the following summary of the exemptions that apply under that original legislative instrument of November 2013:

"International trade obligations"

LMT will not need to occur where it would conflict with Australia's international trade obligations, in any of the following circumstances:

- The worker you nominate is a citizen of Chile or Thailand, or is a Citizen/Permanent Resident of New Zealand.

- The worker you nominate is a current employee of a business that is an associated entity of your business that is located in an Association of South-East Asian Nations (ASEAN) country (Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam), Chile or New Zealand.

- The worker you nominate is a current employee of an associated entity of your business who operates in a country that is a member of the World Trade Organisation, where the nominated occupation is listed below as an "Executive or Senior Manager" and the nominee will be responsible for the entire or a substantial part of your company's operations in Australia.

- Your business currently operates in a World Trade Organisation member country and is seeking to establish a business in Australia, where the nominated occupation is listed below as an "Executive or Senior Manager".

- The worker you nominate is a citizen of a World Trade Organisation member country and has worked for you in Australia on a full-time basis for the last two years.

One of the challenges with these labour market testing exemptions is to guard against attempts to manipulate the classification of workers so they fall into the exempted categories eg. mid-level employees 'dressed up' as executives and senior managers under the intra-corporate transferee's category.

Our position in relation to free trade agreements and labour market testing is clear.

There is no objection to overseas workers being used provided there is genuine, verifiable evidence through labour market testing that the employer has not been able to find a suitable, qualified Australian to do the job. However, we cannot support this fundamental obligation on employers to support Australian jobs first simply being waived as part of the cost of pushing through a free trade agreement.

In our view the Australian Government should not be entering into any free trade agreements that trade away the right of the Australian Government and the Australian community to require that labour market testing occurs and Australian workers are given first right to Australian jobs, and trade agreements should not be used for the purpose of widening exemptions to labour market testing.

Enterprise Migration Agreements (EMAs) and Designated Area Migration Agreements (DAMAs)

EMAs and DAMAs were originally predicated on the idea of a booming resources sector, particularly in resources sector construction projects and the effect this was then having in luring workers away from other industries in regional Australia, resulting in growing skills and labour shortages in the regions.

However, it is generally accepted the boom period for the resources and resources construction sector is now over. Our affiliates and their members who have lost jobs in the sector over the past 12 months or more have first-hand experience of this.

The Australian Workforce and Productivity Agency in late 2013 released its third annual report into the skill needs of the resources sector. It found that the skill shortages predicted for the resources sector in recent years have now eased considerably and the proportion of occupations in shortage is at its lowest level since 2007.

In terms of future projections it found that as the resources sector transitions from the construction phase to the operations phase, the requirements for skilled trades workers in particular will be substantially reduced. On the most likely scenario, AWPA projections indicate that employment in resources project construction will peak at 83 324 workers in 2014 and fall off dramatically to 7 708 workers by 2018.

We also note again that the Roy Hill iron ore project in the Pilbara, which was given in-principle support for the first EMA in 2012 requiring more than 15000 overseas workers on concessional 457 visa (i.e. on top of standard 457 visa workers) has now indicated it can meet its workforce needs locally. This was backed by evidence from

DIBP in a Senate estimates hearing that no EMAs were being sought because projects could meet their workforce needs using Australian workers.

Considering these factors we consider that any argument used in the past as a basis for justifying the need for EMAs and DAMAs is now well and truly gone under any objective assessment.

Supplementary Confidential Information

Please be advised that the potential exists for supplementary information to be provided to the committee in relation to the individual circumstances of some of our members.

Public Hearings

The ETU would welcome the opportunity to appear before the Committee at one of its public hearings.