



Submission No. 51
Date Received.....

Minister for Commerce
Minister for Finance
Minister for Industrial Relations
Minister for Ageing
Minister for Disability Services
Leader of the Government in the Legislative Council

Mr Don Randall MP
Chairman
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

16 FEB 2007

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BY: mig

Dear Mr Randall

I write in response to your correspondence to the Premier, The Hon Morris Iemma MP, inviting the New South Wales government to make a submission to the inquiry of the Parliamentary Joint Standing Committee on Migration into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas. The Premier has asked me to respond on his behalf.

The New South Wales government remains deeply concerned about the increase in approvals of temporary work visas by the federal Government given the increase in reported instances of abuse of subclass 457 visas in particular. The number of subclass 457 visas grants has increased from 27,350 in 2004/05 to more than 40,000 per year currently. The greatest increases in these visas are for workers from the Philippines (136% increase in first quarter of 2006/07 compared to the same period in 2005/06), Malaysia (61%) and India (53%).

457 Visas and Work Choices

It is the view of the New South Wales government that, while temporary skilled migration can play an important role in helping to meet genuine skill shortages in the short term, this should not be at the expense of the employment and training of Australians. In addition, the use of Subclass 457 visas should not contribute to the continued decline in workplace conditions and protections for all workers which was initiated by the federal government through its Work Choices legislation.

Work Choices has significantly reduced the safety net of protections for workers, particularly for workers entering into a new employment arrangement post the 27 March 2006 commencement. This poses the risk of Australian market rates being undercut, resulting in visa workers being exploited and Australians being overlooked for jobs.

Before Work Choices commenced, there were decent minimum standards that could be enforced. Nurses on 457 visas employed by the NSW Government have pay and conditions supported by a state award, backed up by access to an effective arbitration and dispute resolution system. In contrast, workers who fall under the

Commonwealth's Work Choices system have virtually no safety nets, no independent umpire and no way of negotiating genuine Australian pay rates and conditions

Compliance and enforcement

New South Wales is also concerned that the level of compliance activities conducted by DIMA is inadequate. In 2005-06, DIMA reported in its annual report that only 65.2 per cent of 457 visa sponsors were monitored for compliance with visa conditions, down from 96.9 per cent the previous year and falling well short of the target of 100 per cent. For all visas, only 33 sanctions were issued where there was a breach of visa or sponsorship conditions identified.

Increasing use of labour agreements

Labour agreements are available to employers or industries to recruit a number of overseas skilled workers. They allow the requirements that generally apply to 457 visa applications to be varied. The New South Wales government is concerned that labour agreements are increasingly being promoted by the federal government to undercut the existing limited protections for workers and market rates.

New South Wales has been approached by the federal government to support labour agreements for 457 visas in the call centre, meat and transport industries, however we have made it clear that we will never provide endorsement for labour agreements that allow basic industrial protections to be jeopardised. These labour agreements would have allowed the federal government's own Minimum Salary Level to be undercut. In addition reliable evidence was not presented to demonstrate genuine skill shortages in these areas which might require foreign labour in preference to Australian workers.

The use of labour agreements is also being examined by the Commonwealth State Working Party which is reviewing the integrity of temporary skilled migration arrangements at the request of the Council of Australian Governments (COAG).

New South Wales has made it clear that it will not participate in labour agreements as a regulator. We will only participate as an employer who can deliver guaranteed fair and decent conditions for employees.

Labour market testing

New South Wales is not convinced that the testing of the local labour market required by DIMA is adequate to ensure that genuine skills shortages exist. While meat workers are being made redundant in Cowra, for example, employers are seeking to import foreign workers in Casino. According to the federal Minister, "the Commonwealth considers that the best way to deal with this situation is via a labour agreement".¹ New South Wales considers it more appropriate to examine strategies that encourage employers to seek workers in other Australian locations before seeking workers from overseas.

¹ Correspondence to the Hon Morris Iemma MP, Premier from Senator The Hon Amanda Vanstone, October 2006.

Further, labour market testing does not adequately consider the occurrence of very short-term or cyclical labour shortages.

Abuse of 457 visas

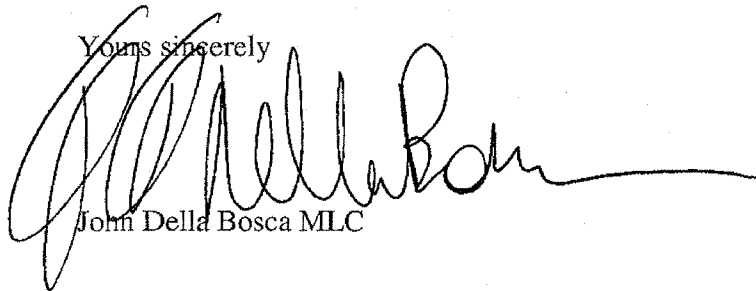
There have been many reported cases in the media of alleged situations where 457 visas have been abused by employers. Examples have included underpayment of wages or no payment for overtime, discrimination on the basis of union membership, workplace safety and training requirements not being met and 457 workers being used as strike breakers.

There have also been reported examples of foreign labour-hire companies signing contracts with temporary migrant workers that impose conditions on their stay in Australia, such as union bans and a requirement that a fee is deducted from their wages. Such conditions may be illegal in Australia, but immigration authorities have no access to these contracts. It is also extremely difficult for state workplace safety regulators to follow up workplace safety breaches in these cases. The conditions under which offshore companies can use 457 visas need to be tightly controlled.

The New South Wales government generally supports the Committee's efforts to examine the 457 visa scheme and address these and other issues. All Australian jurisdictions have dedicated significant time and resources to the work of the Commonwealth State Working Party which is being undertaken under the auspices of the Ministerial Council on Immigration and Multicultural Affairs (MCIMA) following COAG's decision in July 2006 to work cooperatively on this issue.

The Committee is encouraged to consider the recommendations of the Working Party when they become available and recognise the significant steps that have been taken to identify and implement cooperative measures to improve the effectiveness, fairness and integrity of the temporary skilled migration arrangements.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Della Bosca', with a long horizontal flourish extending to the right.

John Della Bosca MLC