



Submission No.....	399.....
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BY: MIG

Joanne Towner  
Committee Secretary  
Joint Standing Committee on Migration  
Parliament House  
Canberra ACT

Dear Ms Towner

**RE: Inquiry into Temporary Business Visas**

I refer to the ACTU submission and our appearance before the Committee on 14 March 2007.

At the time of our appearance the ACTU undertook to provide some additional information to the Committee. Having had the opportunity to read the transcript of our appearance there are some additional matters of clarification that we would also seek to make.

*1. Rates of pay for 457 visa holders & market testing*

At page M5-M6 Senator Polley asked the ACTU about problems associated with rates of pay for 457 visa holders. The ACTU seeks to make it clear that it is our view that, the failure to require market testing for jobs prior to approval of sponsorship for 457 visa holders means that utilisation of 457 visa holders at the gazetted minimum rate may well be below the market rate for that particular work in that area. That there is no requirement to seek local employment at the rates of pay demanded by the market enable a 'false rate' to be established by the employment of 457 visa holders gazetted rates of pay.

This means that employers can utilise the 457 visa system to pay 457 visa holders below the actual rate of pay generally paid in the market.

The removal of the requirement to not have to undertake any market testing as part of the sponsorship approval process means that employers are not required to see if they can attract local labour at the actual rates paid in the market. This is, in our submission, a major deficiency in the system.

## 2. *Alleged v proven allegations of mistreatment*

At page M7 Senator Parry reminded that ACTU that whilst there were allegations of mistreatment of 457 visa holders, until they were proven they remained allegations.

The ACTU certainly accepts that this is the case but reminds the Committee members that there have been numerous circumstances where the allegations of 457 visa holders have been upheld. A sample of these are:

- the Office of Workplace Services in the case of restaurant employees in ACT<sup>1</sup>,
- the Office of Workplace Services in the case of Aprint in Victoria.<sup>2</sup>

While it might be argued that the resolution of matters, particularly through the Office of Workplace Services, proves that the compliance system does work, the ACTU would argue that it appears that cases taken forward by the OWS are those that are given a high public profile and that there is no evidence on the OWS website that they have pursued companies for a breach of the relevant laws when there has not been some level of public exposure of the matter in the first instance.

There are, in our view, strong arguments in favour of a re-think of the requirements of the system. Regardless however of what is put in place there is also a requirement that there be adequate resources for compliance purposes, that there be access by the 457 visa holders to support and advocacy services through unions and community groups (at least), and that there are adequate sanctions imposed on employers who breach the provisions of the legislation.

## 3. *Deportation period following loss of employment*

At paragraph 92 of our original submission and at page M8 of transcript the ACTU suggested that the international conventions specify that a migrant worker should be granted three months in which to find alternative employment.

The ACTU has re-checked this issue and finds that we have inadvertently misled the Committee.

The relevant conventions are International Labour Organisation (ILO) Convention 143 and the UN Convention on the Protection of Rights of All Migrant Workers & Their Families. Both of these conventions clearly

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<sup>1</sup> See OWS - [http://www.ows.gov.au/asp/index.asp?page=media\\_releases\\_ows&cid=5231&id=533](http://www.ows.gov.au/asp/index.asp?page=media_releases_ows&cid=5231&id=533)

<sup>2</sup> See OWS - [http://www.ows.gov.au/asp/index.asp?page=media\\_releases\\_ows&cid=5231&id=528](http://www.ows.gov.au/asp/index.asp?page=media_releases_ows&cid=5231&id=528)

state that a migrant worker should be provided with "sufficient time" to find alternative employment where the employment ends for reasons other than the normal cessation of employment by the contacted time coming to a conclusion.

Article 8 of ILO Convention No. 143, states that "(1) On condition that he (*sic*) has resided legally in the territory for the purposes of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit".

Paragraph 30 of the accompanying ILO Recommendation (No. 151), which can be used to provide a more detailed view of provisions in the C143, states that regularly admitted migrants ought not be expelled on the grounds of their lack of means or the state of the employment market and the loss of employment should not, in itself, imply the withdrawal of residency permission. Paragraph 31 of the same Recommendation stipulates that migrants who lose their employment should be allowed "sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorization of residence should be extended accordingly".

The practice of specifying a period of time and insisting that temporary migrants return to the home country upon completion of this period, is not in itself, in contradiction of the Convention.

The ILO Committee of Experts has, however, drawn attention to the fact that Article 8 of Convention No. 143 extends beyond permitting migrants to reapply for a new work permit, and expressly requires that permission to reside in the State should not be revoked where the migrant loses his or her employment prematurely. Article 8(1) of Convention No. 143 states that the loss of employment should not "in itself" lead to revocation of work or residency permits.

Article 49 of the UN Convention is also of interest. It reads as follows:

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.
2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.
3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at

least for a period corresponding to that during which they may be entitled to unemployment benefits.

The Committee should not that both the ILO Convention and Un Convention are written in terms that apply to both permanent migrant workers and to temporary migrant workers.

The critical argument in our view then is what the definition of "sufficient time" is. In this respect it is the ACTU's view that at least 3 months should be allowed.

4. **Contracts barring union membership  
(Note material provided on a confidential basis)**

The ACTU attaches for the information of the Committee two contracts used to employ labour. Both of these contracts provide that grounds for termination of employment include engagement of union activities and prohibition of engagement in union activities (Contract A – clause 13(a), and Contract B clause 3 on page 5).

5. **English language requirements**

The Committee sought the ACTU view on allowing temporary skilled migrant workers to enter the country on the basis that the gain English language skills whilst here (see page M9).

While the ACTU understands the reason for proposing such an approach, it does again raise the question of compliance monitoring by the department. It also raises the question of who pays for the English language training, what action is taken (and against whom) if English language skills are not gained to the level expected. The greater and more important issue of the inability of a temporary skilled migrant worker, with a lack of English language skills, to access services and be able to participate in society outside the workplace remains as a live issue.

On balance, because of the problems of potential exploitation and the severe disadvantage a 457 visa holder is placed in without any English language skills, the ACTU could not support such a proposition.

6. **Average wages**

The ACTU and Senator Parry had an exchange on average wages for temporary skilled migrant workers (page M11-M12).

The ACTU quoted average weekly ordinary time earnings in our submission of \$1026 (at March 2006) or over \$52,000 per annum.

Senator Parry suggested that the average wages for 457 visa holders compared favourably with average weekly ordinary time earnings with the average wages for 457 visa holders at \$66,200. The Senator suggested we compare like with like.

Unfortunately the Senator's comparison of wages fails this test. We know that the use of 457 visas is restricted to certain classifications within a limited number of occupational groupings (ASCO 1-4 in the main with some limited exceptions in other ASCO levels). If we are to undertake a forensic examination of 457 visa salaries then the comparison should be against the full time adult ordinary time earnings of just those classifications within occupations and industries where 457 visas are approved.

It is of note that neither the 'Visa Subclass 457 Business (Long Stay) State/Territory Summary Report' attached to the submission of the Commonwealth nor the information provided on the Departments website provide a breakdown of salaries on occupation/classification basis. In this respect any direct comparison becomes very difficult.

It is the ACTU's view that the average weekly adult ordinary time earnings (as at November 2006 now \$1058.60 or \$55047.20 per annum) would under estimate the earnings of the like group of Australian workers as it includes workers in low and un-skilled occupations and workers in industries where the 457 visa program is not utilised (eg shop workers, elementary clerical workers etc).

The point we make however is that even without allowing for the underestimation, the gazetted rate for 457 visa holders, and the non-adjustment of the rate for a particular visa holder once established, is an inequity in the system that provides opportunities for wages to be driven down.

## 7. Deduction of legal fees

Senator Parry requested evidence of the deduction of legal fees from the salaries of 457 visa holders (page M12).

The ACTU attaches for the information of the Committee a copy of a contract used by World Workers Pty Ltd. Clause 4.3 requires payment by 457 visa holders of 8% of gross wages for "professional fees". Whilst noting that this deduction must be approved by the worker it does illustrate the point of deduction for "legal" fees.

Press reports relating to the Printers employed by Aprint also indicate that legal fees were being deducted from pay (see Attachment A).

The report from the OWS (see n. 3 above) does not indicate if the recovery of money owed to the workers included deductions inappropriately made. Even if this is not the case the OWS report suggests that further legal action is pending. Attached for the information of the Committee is the press report of this matter. The tabled produced at the end of the story indicates deductions were made for "legal" fees.

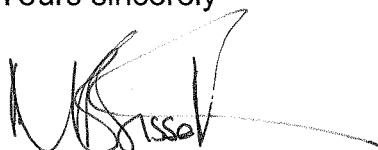
Whatever the deductions are the ACTU reiterates our view that it is the transparency of the processes that are of concern to the ACTU. In this respect workers have a right to know what they may be obliged to pay.

8. Maxi-trans

The Committee sought additional information from the ACTU with respect to the casual workers at maxi-trans in Ballarat and the extent of their training, their willingness to be trained and the effect on their employment of the decision by their employer to take on 457 visa holders. This information is in the process of being collated and will be provided as soon as possible.

The ACTU trusts this information assists the Committee. We would be happy to expand on it should the need arise or if it were to be of further assistance to the Committee's deliberations.

Yours sincerely

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

Michelle Bissett  
**Industrial Officer**

ATTACHMENT A

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**Wednesday 06 September 2006**

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# THE AGE

## **Underpaid, sacked, evicted: guest workers who've had enough**

Author: MICHAEL BACHELARD

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### EXCLUSIVE

A HAWTHORN printing company has used the Government's temporary migration scheme to use four Chinese men like indentured labourers. The men say the firm, Aprint, worked them up to 60 hours a week, and deducted \$10,000 from their pay.

One of the men, Jack Zhang, told The Age he was summarily sacked two weeks ago as soon as the \$10,000 was fully deducted, in what one senior union official has described as the worst abuse of the temporary skilled visa system he has seen.

The money was removed from Mr Zhang's pay packet at \$200 a week over 50 weeks. His contract was for four years.

The money was paid to the men's employer, Dor Tu, the owner of the printing company.

After Mr Zhang was sacked, he was immediately replaced by another worker brought in from China, whom Mr Zhang said was also paying money to Mr Tu.

Mr Tu confirmed to The Age he had removed the money from the workers' pay for "lawyer fees". He confirmed another worker was on his way from China to start work next week.

Under the rules of the 457 temporary migration visa, Mr Zhang must find another job with a registered sponsor of temporary migrants or be out of the country in 28 days. His time expires at the end of the month.

Mr Zhang revealed that before he came to Australia, he was charged 60,000 yuan (\$A9817) by an agent in China, which included his air fare. Mr Zhang said the agent was a friend of Mr Tu.

And he has shown The Age documents that another \$120 a week was deducted from his pay to rent a house owned by Mr Tu.

The house, which is 200 metres from the Aprint factory in Lynch Street, is run down and unheated, and accommodates the four Chinese temporary migrant workers, who each pay \$120, or \$480 in total, a week.

Property records show Mr Tu bought the house last year in the month he was recruiting workers in Shanghai. Mr Zhang said he had since extended it to accommodate up to seven people.

Mr Zhang's pay slips show he was earning \$751.92 a week in ordinary time earnings. He said, and Mr Tu confirmed, that his standard working week was 60 hours or five 12-hour days. This puts his hourly earnings at below the federal minimum rate of \$12.75 an hour.

When he worked overtime, he was paid at a flat rate of \$12 an hour. The award demands double time for weekend work.

Australian Manufacturing Workers Union printing division secretary Jim Reid said Mr Zhang was underpaid at least \$388 a week compared with the award rate and a massive \$1123 a week compared with the industry standard rate and more on the weeks he worked overtime.

The union will put in a claim for the shortfall over a year.

Mr Zhang's story appears to reveal numerous gross breaches of the Government's temporary visa system. Mr Zhang's visa requires his employer to pay him \$42,000 a year or the award rate, whichever is higher; and the payment of fees in China and to Mr Tu is illegal.

Mr Tu did not deny the facts of the case, but said the interpretation was wrong. After being questioned by The Age, he walked to the house, let himself in and angrily evicted Mr Zhang, telling him to leave on the weekend.

Mr Zhang said he could not sleep or eat because of the trauma.

"I feel this is the end of my work. I thought Australia was a place with human rights, you can stand up for yourself, which you can't get back in China," he said.

"This is the other side of what is in Australia. I was better off in China."

He could not afford a lawyer to fight the case, but the AMWU has been trying to find him a job at another printing firm.

"This is the worst case I have seen. To see an employer exploiting someone who was only looking for a better life is an absolute disgrace," Mr Reid said.

Opposition Deputy Leader Jenny Macklin said Mr Zhang's exploitation was an abuse of all the rights Australians held dear and **ACTU** president **Sharan Burrow** said she was concerned the case showed that the migration laws were creating a second class of Australian workers.

Mr Tu defended his practices, telling The Age that the company had spent



the \$10,000 Mr Zhang had paid him on "lawyer fees, over \$4000, travel, everything costs the money".

The \$9800 for the agent in China paid for "ads in newspaper, \$10,000 each".

Mr Tu said \$5000 of the money taken from Mr Zhang was "on deposit" with him, and he had promised to refund it. Mr Zhang denied this.

Mr Tu said Mr Zhang was unqualified to operate the large Heidelberg printing press he was required to. When this became clear, he had wanted to send Mr Zhang back immediately, but Mr Zhang had pleaded to stay. He had spent his year's employment labouring.

Mr Tu said the \$12 an hour for overtime was the same as he would pay a casual. Mr Zhang owed this time to the company, Mr Tu said, because he was not working in the occupation for which he was being paid.

Another employee (and former director) of Aprint, John Salvucci, said: "Rather than being the perpetrators, we're the victims."

Table :

ACK ZHANG'S WEEK	
60 PLUS FIVE HOURS OVERTIME	
BASE EARNINGS:	\$751.92
OVERTIME (five hours):	\$60
TOTAL:	\$811.92
DEDUCTIONS	
LAWYER FEE:	\$200
RENT:	\$120
TAX:	\$177
HEALTH INSURANCE:	\$35
NET WEEKLY INCOME:	\$279.92

THE AWARD	
BASED ON THE SAME HOURS	
BASE EARNINGS:	\$1140
OVERTIME:	\$152
TOTAL:	\$1292
DEDUCTIONS	
RENT:	about \$120
TAX:	\$318
HEALTH INSURANCE:	\$35
NET WEEKLY INCOME:	\$819

Caption :TWO PHOTOS: Sacked and evicted Chinese temporary worker Jack Zhang and his former employer and Aprint owner Dor Tu. PICTURES: ANGELA WYLIE

Headline: Underpaid, sacked, evicted: guest workers who've had enough  
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