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Submission No. <u>209</u>
Date Received <u>Brian Daley</u>

Liquor, Hospitality
& Miscellaneous
Union



ABN: 5272 8088 684

18 June 2007

MS
The Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
CANBERRA ACT 2600

RECEIVED
18 JUN 2007
BY: MIG

By Email: jscm@aph.gov.au

Dear Madam/Sir

The Liquor, Hospitality and Miscellaneous Union appeared in the inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas on Wednesday May 16 2007.

Find enclosed our answers to the questions on notice arising out of our appearance.

Please contact National Legal Officer Joseph Kennedy on 02 8204 3019 or josephk@lhmu.org.au should you want to discuss any aspect of this matter further, particularly those cases which have not been acted on.

Yours faithfully,

Tim Ferrari

TIM FERRARI
ASSISTANT NATIONAL SECRETARY

**THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION'S
RESPONSES TO QUESTIONS ON NOTICE BY THE PARLIAMENTARY
JOINT STANDING COMMITTEE ON MIGRATION'S INQUIRY INTO
TEMPORARY BUSINESS VISAS**

1. Opening note

- 1.1.** Following are the responses by the LHMU to the questions taken on notice resulting from the appearance at the inquiry on Wednesday 16 May 2007.
- 1.2.** The LHMU would also like to note (as it failed to do so in its appearance) that we wholeheartedly support the submission of the ACTU, which our submission is designed to complement.

2. Clarifying 'countless examples' in paragraph 6.2 of our submission

- 2.1.** It was requested by the committee that the LHMU provide evidence to support the contention made in paragraph 6.2.
- 2.2.** The LHMU believes this contention is expressly supported by the figures we cite in paragraph 7.6 of our submission.

3. The source of the figures cited in paragraph 7.6 of our submission

- 3.1.** The LHMU was asked by the committee to provide a source for the figures cited in paragraph 7.6 of our submission.
- 3.2.** On 14 June 2006, as seen on page 155 of the Senate Hansard for that sitting (notice no 1669), as a part of a larger question, Senator Penny Wong asked the then Minister for Immigration and Multicultural Affairs, Senator Amanda Vanstone:

For each year since 1996, and for each state and territory, how many '457' visas have been approved:

- (a) below the gazetted minimum salary level;*
(b) at the gazetted minimum salary level;

- 3.3.** In response, the Minister provided the table which can be found on the following page.
- 3.4.** As evidenced by the table, from November 2003 and February 2006 there were 61 479 total visas granted. Of that total, exactly 18 314 visas were granted by the department at a salary level equal to or below the legislated minimum. This amounts to around 30% of all visas for that period. The LHMU finds these figures both astounding and difficult to comprehend – if there is a legislated

minimum salary level, how can the department be consistently granting visas at a level below it?

- 3.5. We believe these figures are heavily symptomatic of the way DIAC has administered this program in recent years. Significantly poor implementation outcomes raise justifiable questions regarding the intent of the department to actually enforce regulation in this area.

2(a) nominated salary less than minimum salary level			
State/Territory*	1 November 2003 - 30 June 2004 primary 457 visa grants	1 July 2004 - 30 June 2005 primary 457 visa grants	1 July 2005-28 Feb 2006 primary 457 visa grants
ACT	234	381	171
QLD	568	1123	610
NT	29	111	78
TAS	15	35	30
VIC	908	1566	306
SA	70	206	174
NSW	2512	3737	363
WA	224	526	195
Total	4560	7695	1929

* Note: based on location of visa processing.

2(b) nominated salary equal to the specified minimum salary level			
State/Territory*	1 November 2003 - 30 June 2004 primary 457 visa grants	1 July 2004 - 30 June 2005 primary 457 visa grants	1 July 2005-28 Feb 2006 primary 457 visa grants
ACT		11	102
QLD		82	1062
NT		2	62
TAS			3
VIC		124	552
SA		7	94
NSW	1	361	1079
WA		21	567
Total	1	608	3321

* Note: based on location of visa processing.

2(c) nominated salary greater than the specified minimum salary level			
State/Territory*	1 November 2003 - 30 June 2004 primary 457 visa grants	1 July 2004 - 30 June 2005 primary 457 visa grants	1 July 2005-28 Feb 2006 primary 457 visa grants
ACT	328	1026	939
QLD	573	1514	2526
NT	100	217	237
TAS	38	61	188
VIC	2247	4260	3924
SA	270	320	393
NSW	5263	8831	4973
WA	574	1548	2213
Total	9293	17977	13395

* Note: based on location of visa processing.

4. Numbers of employees who are on 457 visas falling within areas of LHMU coverage

Primary grants of 457 visas 2005–06

Industry sector	Primary grants of 457 visas 2005–06
(1) Accommodation, cafes and restaurants	2220
(2) Cultural and recreational services	910
(3) Health and community services	5690
(4) Personal and other services	2730
(5) Property and business services	4890
TOTAL VISAS OF POTENTIAL LHMU COVERAGE	16440
TOTAL VISAS FOR THAT PERIOD	39 530

Source: Answer to Question on Notice no. 80, Budget Estimates, Immigration Portfolio, 22 May 2006

NB – these statistics may be relatively misleading, as they are not broken down into occupation, and the LHMU coverage is not universal in each industry sector (for example we share coverage in health with a number of other unions). Our primary areas of coverage that may be relevant are Aged Care, Child Care, Cleaning, Security, Hospitality & some Manufacturing.

5. Additional evidence of outstanding cases including underpayments and illegal payroll deductions

5.1. The LHMU was asked by the Committee to provide additional evidence of outstanding cases where employers have been abusing the temporary business visa program.

5.2. Firstly we note that in the inquiry, the Committee was not interested in hearing anything regarding the ACT restaurant industry. It is important to realise that the numbers of breaches in this area in the ACT are numerous. Although, thanks to the work of the ACT branch of the LHMU, these are being acted on, we see no reason for these matters to be disregarded. We see them as clearly indicative of the systems failure to date, and we are able to provide affidavits, payslips and discrimination claims if the Committee so desires.

5.3. As clearly stated in our submission, the current monitoring and enforcement regime is unsatisfactory. If DIAC wishes to purport to regulate the use of temporary business visas, then the system needs overhauling and a large increase in funding. Until this occurs, it will fall to unions like the LHMU to provide complainants with an avenue to address their vulnerable situation. The LHMU has had to repeatedly lobby and use political pressure to force the OWS to prosecute any cases. Whilst we have a history of fighting for all workers rights and are proud of this history, we do not see how the government can say it is

attempting to aid these workers in any way. There is no complaints system, no monitoring and no enforcement.

- 5.4. The QLD branch of the LHMU has been assisting two workers who have been exploited under the 457 visa system. Mr [redacted] and Mr [redacted], both of whom formerly held visas with [redacted] trading as [redacted] have been severely underpaid. Both employees were forced to work on average around 70 hours per week. We estimate the underpayments for both respective workers range from \$650 to \$900 per week of employment.
- 5.5. Considering the barriers to workers even approaching a union about issues such as these, the LHMU is as concerned about the numbers of employees who aren't speaking up, as those who do. We submit that all visa holders should be given information about their relevant union on their arrival, in order to provide them with a direct avenue of complaint and representation at the workplace.
- 5.6. Examples of this reluctance surround 457 visa workers employed at [redacted] trading as [redacted]. We have been advised by employees themselves that they are being grossly overworked and underpaid. Those complainants are extremely fearful of the employer, and of being deported. One worker is fearful of his permanent residency request being denied if he makes a complaint about his working conditions or wages. The current complaints regime does nothing to address these workers fears, or barriers to reporting breaches of the system.
- 5.7. We are also aware of workers on 457s working at [redacted] in Canberra. We have been advised that they may also being underpaid, but the department do not seem willing to investigate, and the employees are reluctant to lodge a formal complaint.
- 5.8. Our Victorian Branch has been contacted by the Uniting Church by a worker on a 457 visa from [redacted]. Like many others, he is scared to come forward for fear of being deported. [redacted] a Uniting Church Minister can be contacted on [redacted]
- 5.9. Cases like these above have come to the attention of the LHMU on a number of occasions. Unfortunately, we cannot go into detail about these and others without the permission of the employee making the complaint. It is a great pity that the department assumes that if a union or individual worker does not bring a matter to their attention, then it does not exist. It is the responsibility of DIAC to either monitor the employers involved in the 457 program, or allow unions to do so as a cooperative measure.

6. Relevance to the cleaning industry

- 6.1. The LHMU was asked to supply information regarding the relevance and possible use of 457 visas in the cleaning industry.

- 6.2.** The LHMU is unaware of any evidence of the use of 457 visas in the cleaning industry. This is obviously due to the fact that the industry is not eligible for the granting of such visas. That said, we are able to provide some relevant insight to the committee about the situation in Western Australia specifically, to which Committee Chair Mr Randall directly referred. During our appearance he stated:

“as you have raised cleaning, a delegation came to see me in Perth the other day, from the Building Service Contractors Association of Australia, representing cleaners, amongst others—ground maintenance—and they say that currently in Perth, and I am talking about not being able to find workers, they have a 40 per cent undersupply of workers to do the jobs”

- 6.3.** The LHMU does not dispute that there is worker shortage in Western Australia in particular. We strongly believe that in such an environment, it is rational, reasonable and logical for employers to have to increase wages in order to attract workers to their particular industries. However, this has not been the case in Perth.
- 6.4.** Many contracting cleaning companies in Perth have made full use of WorkChoices to cut the conditions and wages of their workers in recent years. Many cleaners are working on AWAs, where the hourly rate varies from \$14.00 to \$14.75 per hour. There are no allowances for penalty rates, toilet allowance, annual leave loading, overtime, or public holiday loadings. There is no guarantee of ongoing work or certainty in rosters. Most cleaners work around 2 hours a night. Obviously this is not enough to support themselves or their families and so many work 2 or 3 other jobs.
- 6.5.** Comparatively, this is an hourly rate that is significantly lower than in any other capital city in Australia (when part-time loadings and shift penalties are taken into account).
- 6.6.** With this in mind, the LHMU finds it difficult to comprehend how an employer organisation such as the BSCAA can take issue with the government about being unable to attract workers whilst its members keep wages at an outrageously low level, cut conditions and make the signing of AWAs that achieve as much a condition of accepting employment.
- 6.7.** The LHMU strongly believes that expanding the 457 visa program to include occupations such as cleaning explicitly allows employers to avoid paying wages that the market is clearly dictating. In turn, this effectively deprives Australian workers of the chance to earn wages at a level commensurate with an inflating CPI on goods and services. In short, such a move would be unacceptable.
- 6.8.** If the BSCAA wishes to attract workers to the cleaning industry in Perth, then it should start implementing measures to encourage its members to pay cleaners adequately, provide them with secure rewarding jobs and stop attempting to slash what are essentially the minimum safety net conditions contained in the award.
- 6.9.** The LHMU will restate what it has previously submitted: Proposals to allow employees from overseas on short-term visas to address certain shortages only

form a highly questionable short-term fix (when one considers the lack of monitoring and enforcement) and serve to provide the employers with an avenue to avoid paying the wages which the market is demanding.

7. Comment on the submission by the Restaurant and Catering Association

- 7.1.** Finally, in their submission to the inquiry, the RCA contend that monitoring of 457 visa holders should be left to the respective employer association, in addition to comments made regarding their Labour Agreement. The submission of RCA was raised during our appearance in the inquiry.
- 7.2.** Such a contention regarding monitoring seems to ignore the inherent conflict of interest that exists in such a relationship. RCA has clearly failed to police the area even in its own industry to date, considering the multitude of cases that have occurred in restaurants, some of which have involved direct human rights abuses by its members.
- 7.3.** Further, the LHMU finds it disappointing that as a representative of workers in the industry, we were not engaged in the development of the Labour Agreement. We believe RCA needs to realise that a cooperative relationship with the LHMU will ensure the business visa area is policed properly, with responsibilities well known and enforced. Until this is developed, we will continue to receive complaints from visa holders being exploited under this system by members of RCA.

DATED: 18 June 2007