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9 February 2007

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



Dear Ms Towner

**RE: Inquiry into Temporary Business Visas**

The ACTU is pleased to provide the following submission to the Inquiry into Temporary Business Visas.

In essence the ACTU submission calls for a total overhaul of the current long term temporary business visa program (457 sub-class) and abolition to the trade skill training visa (471 sub-class).

The need for substantial review of the visa programs stems from a concern about the use of the visas by employers where there is not a demonstrated skill labour shortage, the abuse of workers who come to Australia on such programs, the use of such programs to attempt to drive down Australian wages and working conditions and the lack of a strategic approach to training and the development of broad based skills amongst Australian workers.

The ACTU would welcome the opportunity to expand on our submission in person before the committee.

Any inquiries should be directed to:

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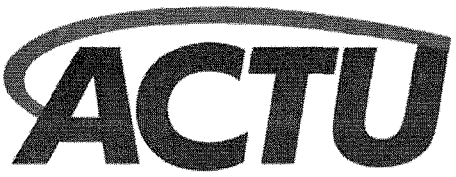
Yours sincerely

Michelle Bissett
**Industrial Officer**



# ACTU Submission

# Joint Standing Committee on Migration

# Inquiry into Temporary Business Visas

February 2007

D No. 1/2007

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## Introduction

1. The ACTU welcomes the opportunity to make a submission to the Joint Standing Committee of Migration on matters relating to temporary business visas.

2. Whilst the terms of reference for this inquiry are brief they do provide an opportunity to further explore critical issues that go to the use of temporary business visas by Australian employers, the suitability of the use of the visa and the treatment of workers brought to Australia under the visa program/s.

3. It is the ACTU's submission that the current business visa programs require a substantial overhaul.

4. To the extent that it is argued that the 457 visa program is justified to meet skill requirements, the ACTU believes that the current and future skills needs of Australia can be best met through a strategic and joint approach to:

    - skill development including increased investment in training, support for higher level qualifications, support for training and retraining of existing workers and support for broad based qualifications;

    - effective labour market planning and forecasting tied to industry development planning;

    - the use, where appropriate, of permanent migration.

5. The current temporary business visa programs do nothing to address the on-going need for a skilled Australian workforce.

6. The ACTU has two major areas of concern with the current temporary skilled migration program. First is the unprecedented growth in the use of temporary business visas as a means of

overcoming the claimed skilled shortage, and hence the relationship between the use of temporary business visas and investment by business and government in the training and skill development of the Australian workforce. Evidence of true labour and skill shortages – and evidence of a commitment by firms to training – must be rigorously pursued to ensure that the 457 visa program is not being used by employers to mask a lack of investment in real training and/or used to drive down wages and conditions of employment.

7. Secondly, the conditions of employment afforded to temporary visa holders and the treatment of those visa holders as participants in the Australian workforce is of critical concern to the ACTU. Many cases have been brought to light in the last 12-18 months exposing appalling treatment of business visa holders by some employers. These cases highlight the need for a greater degree of monitoring and enforcement of standards afforded to the visa holders through relevant departments of government.

8. A consideration of the matters associated with the operation of temporary business visas necessarily requires consideration of suitability and behaviour of employers in applying to become sponsors but also requires consideration of the ability of temporary skilled overseas workers in meeting the skill requirements necessary to undertake the work they are sponsored to undertake.

9. This submission goes specifically to those matters relevant to the business long stay visa (sub-class 457) and does not address any issues is relation the business short stay visa (sub-class 456).

10. The ACTU notes that recent stories have emerged with respect to the operation of 442 visa sub-class. This visa category is primarily a trainee category. Reports of exploitation of trainees through demands for exorbitant fees, the use of trainees to undertake non-supervised work and the non-delivery of training adds further weight to evidence of the abuse of the temporary working visa programs. This adds weight to calls for an overall review of temporary business visas.

11. Whilst the details are not specifically addressed within this submission it is the ACTU's submission that the temporary migrant apprenticeship program (visa sub-class 471) should be abolished.

## Overview and summary of recommendations

12. Demand for increased use of skilled migration is, in part, driven by claims of a shortage of skilled workers in Australia.

13. The ACTU considers such claims to be simplistic and fails to acknowledge high levels of youth unemployment, underemployment and substantial variations in employment levels across states and regions within the country.

14. It is true however that action needs to be taken to address the current and future skill needs of Australian industry. This, in the ACTU's view, can be best achieved through a strategic and joint approach to skill development including:

    - Increased investment in training;
    - Support for higher level qualifications;
    - Support for training and retraining of existing workers and;
    - Support for broad based qualifications; and
    - Effective labour market planning and forecasting tied to industry development planning; and
    - The use of permanent migration where appropriate.

15. With respect to the specific terms of reference of this inquiry the ACTU makes a number of specific recommendations. These recommendations are summarised below and set out in detail in the body of this submission.

*Recommendations*

16. A system be introduced for ensuring that qualifications gained overseas and held by temporary skilled overseas workers meet the contemporary requirements of Australian qualification and licensing arrangements.

17. Minimum English language requirements must be established for temporary skilled overseas workers that enable such workers to operate effectively in the workplace.

18. Strict market testing be required prior to any approval for employers to sponsor temporary skilled overseas workers.

19. An employer not be able to sponsor temporary skilled overseas workers in circumstances where the Australian workers have been retrenched within the last 12 months and the employer failed to provide such workers with the opportunity to be re-trained.

20. The use of temporary skilled overseas workers should not be permitted unless the employer can demonstrate:

    - A history of accredited training;
    - A successful outcome (measured in employment outcomes) of the training;
    - Retention of trained workers within workforce;
    - On-going program of and commitment to training;
    - Demonstrated financial investment in training in the identified skill shortage area.

21. An employer should be barred from access to the scheme if they have been found to have abused the subsidy schemes available to employers for the training of workers.

22. Approval as a sponsor of temporary skilled overseas workers must include, and be subject to audit of, a requirement to enhance the skills of Australian workers through skills transfer and training.

23. The current process for determining rates of pay for temporary skilled overseas workers be abolished and be replaced with a system that is based on the principle of equal pay for equal work.

24. Approval not be granted to an employer to sponsor temporary skilled overseas workers as casual employees. Employment of temporary

skilled overseas workers on casual rates be deemed a breach of sponsorship provisions.

25. A temporary skilled overseas worker should not have any deductions made from their pay for rent or any other living costs without express written agreement of the worker.

26. An employer should not be able to deduct money from the pay of a temporary skilled overseas worker for the payment of airfares, migration or recruitment costs.

27. Temporary skilled overseas workers must receive training in occupational health and safety, employment rights and cultural awareness on arrival in Australia and prior to the commencement of work at an Australian workplace.

28. Temporary skilled overseas workers should be clearly informed that they have the same right to join and participate in a union as an Australian worker consistent with the ILO Conventions on the right to organise and bargain collectively.

29. Temporary skilled overseas workers be given a minimum of three months to find alternative employment should the employment relationship with the sponsoring employer be terminated. During this period the temporary skilled overseas worker should be provided with access to the relevant welfare services and support and employment placement services.

30. Exemptions from skill requirements or wages and conditions of employment based on geographic conditions be abolished.

31. There be no differentiation in requirements for approval as a sponsoring employer or conditions under which 457 visas are granted based on geographic location.

32. The current regional certifying bodies be abolished or restructured to ensure broad community, employer and union representation.

33. A strict code of practice be introduced for migration agents with violation of the code a valid reason for withdrawal of a license.

34. The cost of recruitment of temporary skilled overseas workers be borne by the recruiting employer and not passed on to temporary skilled overseas workers through migration or other charges.

35. Labour Agreements only be available on the basis of tri-partite agreement and have as a minimum requirement:

    - specific site by site approval;
    - a demonstrable urgent need for labour that cannot be addressed locally
    - commitments to and investment in training programs designed to address the identified skill shortage areas;
    - commitment to providing the terms and conditions of employment to temporary skilled overseas workers at the same level as local workers; and
    - operate for a maximum period of 12 months.

36. Information as to their rights, support groups and unions should be provided to temporary skilled overseas workers visa holders in both English and their native language.

37. Where there are large number of temporary skilled overseas workers are proposed for a particular town or city, DIAC should be required to inform relevant community, union and other support groups of details such as the number of applicants, their cultural background, the industry in which they are to work, and the location of the work.

38. Sponsoring employers must maintain records that identify wages paid and bank account deposits made in Australian dollars.

39. Temporary Skilled Workers should be provided with minimum welfare and community support services such as the public health system.

40. Employers who have breached the scheme should be barred from further sponsorship with civil and criminal sanctions applicable where appropriate.

41. There should be increased communication and co-ordination of relevant bodies such as State government authorities such as WorkCover.

42. Where large numbers of temporary skilled overseas workers are proposed for a particular town or city, DIAC should be required to inform relevant community, union and other support groups of details such as the number of applicants, their cultural background, the industry in which they are to work, and the location of the work.

## Growth in Business Temporary Visas

43. There has been a rapid growth in the grant of temporary business visas since 2002-2003. What is more startling however is the unprecedented growth in the number of temporary business visas being used in the traditional trades areas (as opposed to the managerial and professional occupations).

44. The number of temporary business visas granted (to the primary applicant) has grown from 21,076 in 2000-01 to an estimated 40,000 in 2005-06, with total visa grants including family members exceeding 71,000 in 2006-06:

**Table 1: 457 visa grant – primary and total numbers**

| Year | | |
|---|---|---|
| | Visa grants to *primary* applicant[1] | Total visa grants including accompanying family members[2] |
| 2000-01 | 21,076 | 40,493 |
| 2001-02 | 19,569 | 37,597 |
| 2002-03 | 22,155 | 42,363 |
| 2003-04 | 23,992 | 40,633 |
| 2004-05 | 28,030 | 49,855 |
| 2005-06 | 40,000 | 71,100 |

[1] Kinnaird B, (2006), Current issues in the skilled temporary subclass 457 visa, *People and Place*, Vol 14:2, pp 49-65
[2] AMWU (2006), Temporary skilled migration, a new form of indentured servitude. Except for 2005-06 figures which are derived from Kinnaird (2006)

45. This represents a growth over the period of almost 90 per cent of primary visas and 75 per cent on total grants. On either set of figures the growth in the number of visas granted has been extraordinary.

46. Of additional interest is the changing profile of occupations utilising the 457 visa system. The following changes have been seen in some key occupations:

**Table 2: Primary 457 visa grants for selected occupations**[3]

| Occupation | Year | |
|---|---|---|
| | **2002-03** | **2005-06** |
| Slaughtermen | 5 | 950 |
| Welders | 40 | 710 |
| Metal fabricators | 10 | 790 |

47. At the same time of growth in these trade and other areas, the number of reported visas being issued to managerial and professional occupations – the group the visa program was arguably established for – has been moderate[4].

[3] The Age (2006), *'457 visa' entries booming*, 28 September
[4] The Age (2006), *'457 visa' entries booming*, 28 September

## Skill determination and assessment

48. The use of 457 visas is restricted to occupations within the ASCO 1-4 occupational groups, although this can be varied within the regional exemption process.

49. According to material produced by the Department of Immigration (DIAC) a skill assessment of a visa applicant is not necessarily required as a pre-requisite for the grant of a 457 visa.

50. Under the permanent skilled migration program, potential migrants are required to have their skills assessed. Why this is not considered necessary for 457 visa applicants is not clear.

51. The lack of proper skills assessment creates a risk for both 457 visa holders and employers. The 457 visa holder may find they do not have the skills required by the employer and the employer may find themselves having sponsored a worker who does not have the skills the employer requires. Given the costs and time involved in the 457 visa process for both the employer and potential visa holder, to not require skills assessment would appear illogical.

52. A system must be introduced for ensuring that qualifications gained overseas and held by temporary skilled overseas workers meet the contemporary requirements of Australian qualification and licensing arrangements. Such a process will minimise risks and costs to both sponsoring employers and visa holders

53. Temporary skilled overseas workers do not add to the general stock of skills within the Australian workforce. Temporary visa holders enter the workforce, complete their period of employment and then leave the country – taking their (presumably valued skills) with them. They should however be required to actually possess, and have assessed as adequate for the Australian environment, the skills

they are purportedly recruited for. To fail to do so leaves the system, and temporary skilled overseas workers, open to abuse[5].

[5] See for example the case of the Jack Zhang – a printer who came out from China on a 457 visa but who was put on labouring work because, according to the employer – he was not qualified to operate the printing press. (The Age (2006) *Underpaid, sacked, evicted: guest workers who've had enough*, 6 September, p. 5.

## English language requirements for temporary skilled overseas workers

54. The ability to effectively communicate in the workplace is critical at work on a number of levels – workplace efficiency; health and safety and at social level (that is being able to generally discuss and exchange information with other workers about matters not necessarily work related).

55. Minimum English language requirements must be established for temporary skilled overseas workers that enable such workers to operate effectively in the workplace. This means being able to communicate at the levels identified.

56. The current English language requirements must be reviewed to ensure they are set at a level that ensures a 457 visa holder is competent to read and understand technical specifications relevant to the job and work environment, to receive health and safety instructions and induction training, to be capable of receiving and passing on instructions and have the capacity to converse generally with others in the workplace.

## Labour market testing

57. Temporary skilled overseas workers should not be seen as a substitute for a permanent, well trained Australian workforce. Protection for on-going permanent employment for Australian workers is best achieved in this context by ensuring a rigorous process of labour market testing is undertaken prior to approval being given to employers to sponsor temporary skilled overseas workers. Labour market testing is a process by which employers are be required to demonstrate that the labour they require cannot be reasonably sourced within Australia. Such testing should require that positions are advertised at least at the regional level – but preferably more broadly – and advertised at the appropriate skill level under appropriate wages rates and conditions of employment.

58. Current requirements for sponsorship do not require an employer to show that they have carried out any labour market testing.[6] Such a position is unacceptable and opens the system open to abuse by employers.

59. The lack of requirement to undertake labour market testing can and does result in the approval of visas in circumstances where there clearly is labour available. This is evidenced by the approval of visas for meat workers in circumstances where local workers had been locked out in an industrial dispute[7] and the use of temporary skilled overseas workers in circumstances where the employer would not train or provide on-going employment to local workers[8].

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[6] Dept of Immigration & Multicultural Affairs (2005) *Sponsoring a temporary overseas employee to Australia,* Canberra. See also Proof of Committee Hansard, Senate estimates Hearing, Legal and Constitutional Legislation Committee (Budget estimates), Monday 22 May 2006, Canberra, p 70.

[7] See Teys Bros, Naracoorte, SA who locked out workers for refusing to sign AWAs. At the same time the company had workers on 457 visas. While the capacity to lock workers out during an AWA dispute no longer exists, the capacity to lock workers out during an industrial dispute does. It is ludicrous to suggest that an employer should be able to seek temporary skilled overseas workers during such a period. The use of the visa is no more than an attempt to force the permanent workforce to accept sub-standard conditions.

[8] See MaxiTrans in Ballarat, Vic. Local youth unemployment is 18 per cent, local workers were employed as casuals and were not offered the opportunity to undertake training in the area of work offered to temporary overseas workers.

60. The ACTU believes that there should be a requirement for strict market testing prior to any approval for employers to sponsor temporary skilled overseas workers. Such testing must be against the applicable market rate of pay. Advertising positions at the award rate of pay does not produce evidence of appropriate testing of the labour market.

61. Prior to approval to sponsor a temporary skilled overseas worker an employer should be required to demonstrate to the relevant authority that they have sought to fill the vacancy within Australia. Evidence must include advertising the position Australia wide and advertising the position at the market rates, that is the average rate paid by similar employers, or the prevailing agreement rate, whichever is higher. Advertising at the award rates or minimum wage level should not be acceptable.

62. In addition, it should not be acceptable for an employer to retrench local workers and replace such workers with temporary skilled overseas workers in circumstances where the Australian workers were retrenched within the last 12 months and the employer failed to provide such workers with the opportunity to be re-trained. Temporary skilled overseas workers should not be seen as an acceptable alternative to a reasonable obligation on an employer to both train and retrain workers.

## Training requirements

63. Employers are required, as part of their application to sponsor temporary skilled overseas workers, to provide detailed information in relation to their training record and/or commitment to training. This information includes the number of apprenticeships in place in the last two years, recruitment and training for the last two years and annual expenditure on training[9].

64. The use of temporary skilled overseas workers should not be permitted unless the employer can demonstrate:

    - A history of *accredited* training;
    - A successful outcome (measured in employment outcomes) of the training;
    - Retention of trained workers within workforce;
    - On-going program of and commitment to training;
    - Demonstrated financial investment in training in the identified skill shortage area.

65. An employer should be barred from access to the scheme if they have been found to have abused the subsidy schemes available to employers for the training of skilled workers.

66. Approval as a sponsor of temporary skilled overseas workers must include, and be subject to audit of, a requirement to enhance the skills of Australian workers through skills transfer and training. If temporary skilled overseas workers are required they must increase the skill base of Australia by passing on their knowledge and expertise to Australian workers.

[9] Dept of Immigration & Multicultural Affairs (2005) *Sponsoring a temporary overseas employee to Australia*, Canberra

## Wage levels and employment conditions for 457 visa holders

67. The specification of minimum wages through regulations is not, by itself, an appropriate mechanism of determining wages for 457 visa holders. Under current provisions the salary, once set, is not subject to any adjustment and is extremely difficult to enforce. In any event such salary levels rarely reflect market or enterprise agreement rates of pay.

68. The (previous) Immigration Minister was reported as conceding that that the motive of many employers in utilising 457 visas is to suppress wage claims[10]. Any such motivation for the use of temporary skilled overseas workers should be rejected. The use of temporary skilled overseas workers to drive down local wages and working conditions should not be acceptable. Mechanisms must be put in place to ensure this cannot occur.

69. Rates of pay for the work must be established based on the skill requirements of the work to be undertaken. In few if any circumstances are wage rates altered on the basis of the origin or status of the worker. There are no justifiable grounds for differentiating rates of pay for temporary skilled overseas workers from those of their permanent Australian counterparts.

70. The ACTU believes that the fundamental principle of equal pay for equal work should prevail for temporary skilled overseas workers – that is they should not be subject to differential rates of pay from that paid to other workers doing the same or similar work. Temporary skilled overseas workers therefore should be paid the wages and afforded conditions as determined through enterprise agreements. Where no enterprise agreement rate exists then a minimum enforceable rate of pay should be determined that is in excess of the award rate and takes into account the average hourly rate of pay within the local area for the work required to be

[10] The Age, (2006) *Guest workers cut wages: Vanstone*, 8 June.

undertaken. Such a determination, where there is no agreement, should be made in accordance with the principles set out above and by a body independent of government and employers. The underpinning principle in establishing the appropriate rate of pay must be that the wages paid to overseas workers cannot be set in such a way as to undermine enterprise or industry rates.

71. The pay rates of temporary skilled overseas workers must be enforceable and be able to be enforced by the Office of Workplace Services (or other relevant Authority), by unions or by the workers themselves. In any event, no 457 visa holder should be paid below the determined rate.

72. If a rate is determined under these provisions it must be subject to regular adjustment (eg by average annual wage increase in agreements as currently measured by DEWR).

73. The current minimum specified rates of pay for 457 visa holders (non-ICT) as at 1 July 2006 are:

    - Non-regional: $41,850 (up from $39,112)
    - Regional: $37,665 (up from $35,200)

74. The July 2006 rates are payable only to those temporary skilled overseas workers who arrive in Australia *post* 1 July 2006. This means that a 457 visa holder may today be receiving the rate of pay specified a number of years ago, despite movements in wages and the CPI and the minimum specified rate. This process allows employers to hold down the rates of workers under 457 visas.

75. This minimum specified rate compares poorly to current AWOTE of $1026 (March 2006) or over $52,000 per annum.

76. The disparity in these rates and the non-adjustment of these rates reflects an unfair system that leaves 457 visa holders open to abuse and provides employers with the capacity to drive wages down. On

this basis these rates should be abolished in favour of the ACTU *proposition as outlined in paragraph 66 above.*

77. The ACTU understand that, should a 457 visa holder be entitled to (currently) specified rates and the employer fails to pay these rates, the Office of Workplace Services has no capacity to take action to enforce payment of the specified rate unless that rate falls below the award minimum. This makes the gazetted rate meaningless in many enforcement circumstances. Non-payment of the specified rate of pay – however it is derived, must be enforceable through the Office of Workplace Services or by direct action of the temporary skilled overseas worker, a trade union or other body.

78. A temporary skilled overseas worker should not be employed as a casual worker. Such a status contradicts the commitment given by the employer in becoming a sponsor and places the worker is an even more vulnerable position.

79. Any minimum rate of pay payable to 457 visa holders must be based on the specified hourly rate of pay normally paid to workers. 457 visa holders should be entitled to allowances normally paid to workers that are in excess of this specified hourly rate of pay including penalty rates, allowances, accommodation etc. That is the rate of pay struck for a 457 visa holder cannot be an "all in" rate unless this has been established for work at the site through collective bargaining.

80. In addition, 457 visa holders must be entitled to all other benefits an Australian worker would receive with respect to terms and conditions of employment including any rights to 'return trips' to capital cities for remote workers.

81. The ACTU is concerned at continuing reports of temporary skilled overseas workers being forced into employer provided accommodation[11].

[11] The Age (2006), *Underpaid, sacked, evicted: guest workers who've had enough*, 6 September, p. 5.

82. A temporary skilled overseas worker should not have any deductions made from their pay for rent or any other living costs without express written agreement of the worker. Any deductions for rental costs associated with any property owned or controlled directly or indirectly must be verified by the relevant authority as fair and reasonable. A breach of this provision by a sponsoring employer must be considered a breach of sponsorship provisions.

83. Temporary skilled overseas workers must have access to the public health system either through payment of the medicare levy or an equivalent health insurance scheme. Any additional cost of such insurance over and above the standard medicare levy should be met by the employer.

84. An employer should not be able to deduct money from the pay of a temporary skilled overseas worker for the payment of airfares, migration or recruitment costs. The recent reports of a temporary skilled overseas worker having $200 per week deducted from his pay for 50 weeks to cover 'lawyer's fees'[12] is indicative of problems in this area

85. The wages of temporary skilled overseas workers must be paid in Australian dollars by the Australian employer preferably into an Australian bank account in the name of the overseas worker. The employer must be required to maintain wages records that identify wages paid and bank account deposits made in Australian dollars. Such records must be accessible to the temporary skilled overseas workers and their representatives.

86. Temporary skilled overseas workers must receive training in occupational health and safety, employment rights and cultural awareness on arrival in Australia and prior to the commencement of work at an Australian workplace.

[12] *The Age* (2006). *Underpaid, sacked & evicted: guest workers who've had enough.* 6 September. Int his case the employer did not dispute that the money was being deducted from the workers pay to meet costs associated with the recruitment process in China.

87. Establishing an appropriate regime of employment conditions for temporary skilled overseas workers will reduce the chances that such workers are inadvertently or purposefully used to drive down local wages and conditions of employment.

88. The ACTU has sighted contracts required to be signed by temporary skilled overseas workers that purportedly prohibit the worker from joining a trade union in Australia. Such provisions clearly breach ILO and Australian workplace laws.

89. Temporary skilled overseas workers should be clearly informed that they have the same right to join and participate in a union as an Australian worker consistent with the ILO Conventions on the right to organise and bargain collectively.

## Termination of employment relationship

90. The employment relationship between the sponsoring employer and temporary skilled overseas worker can be altered through a range of circumstances – many of which are not be within the control of the temporary skilled overseas worker. These circumstances may include:

    - Withdrawal of approval of employer as a sponsor;
    - Loss of work available from the employer;
    - Termination of the employment relationship;
    - Temporary skilled overseas worker being 'deemed' by employer not to have the necessary skill levels; etc

91. Current provisions implemented by the Department of Immigration provide a temporary skilled overseas worker with a period of 28 days from the time of loss of sponsorship in which they are required to find another sponsor. If a replacement sponsor is not found the temporary skilled overseas worker is subject to cancellation of their visa and is deported (as must any secondary visa holders associated with the primary visa holder). A temporary skilled overseas worker is not entitled to any publicly provided assistance in finding alternative employment

92. International standards provide that temporary entrants should be given 3 months in which to find alternative employment following the termination of employment. This standard should be implemented for temporary skilled overseas workers in Australia with the three month period extended if the worker has workers compensation or employment litigation in place. During this period the temporary skilled overseas worker should be provided with access to the relevant welfare services and support and employment placement services to assist in finding alternative employment.

## Regional variations in the operation of the 457 visa program

93. Under current arrangements Australia, for temporary skilled migration purposes, is separated into regional and non-regional Australia. Non-regional Australia is Sydney, Newcastle, Central Coast, Wollongong, Brisbane, Gold Coast, Melbourne and Perth and surrounding areas. The rest of Australia, for these purposes, is classified as 'regional'.

94. The so-called benefits of being classified as a 'regional area' include the ability to be granted exemption from the minimum skill requirements and gazetted minimum salary requirements[13]. Such an exemption must be based on advice from the Regional Certifying Body[14] (see discussion below at paragraphs 97-105 on the failure of current RCB system).

95. The determination of what is and is not a regional area for the purposes of the temporary skilled migration program places substantial parts of Australia into the regional category. This acts as a de facto mechanism of encouraging employers in these regional areas to use temporary skilled migration rather than employing Australian workers. By allowing the depression of skill and wage requirements in these so called regional areas the Government actively discourages training and true, sustainable skilling and employment outcomes in these areas of the country.

96. In particular there is no justification for exemptions from skill requirements. Unemployment levels in many non-major city areas of Australia are well above 5 per cent (the overall national unemployment rate). Youth unemployment is as high as 40% in some regional areas[15]. In addition under-employment is currently at six per cent of the labour force[16]. These are the people that the

[13] Dept of Immigration & Multicultural Affairs (2005) *Sponsoring a temporary overseas employee to Australia,* Canberra
[14] Dept of Immigration & Multicultural Affairs (2005) *Sponsoring a temporary overseas employee to Australia,* Canberra
[15] ABS Cat. 6105.0 Vol. 2006
[16] ABS, unpublished data

government and employers should be attracting to the positions in regional areas. Enabling employers to take on temporary skilled overseas workers at skill levels below ASCO1-4 and at below market rates does not encourage employers to use Australian labour. While this may not be the intent of the 457 visa program, there is no doubt that it is the outcome.

97. The ACTU believes that there should be no exemptions from basic, minimum requirements based on geographic location. Should the 457 visa program continue it should be on the basis of acceptable minimum standards that apply Australia-wide. In particular there must be no capacity to seek exemption from minimum skill or salary requirements.

98. Employers currently use the specified regional pay rate (see paragraph 69) to pay workers at well below agreement or site rates of pay[17]. This is an abuse of the system and should be stopped.

99. The ACTU does not believe there should be any lower minimum salary requirement based on geographic location. Such a system does not operate with respect to wages generally in Australia and should not be applied to 457 visa holders.

100. Variations in wages due to geographic location or other circumstances are generally reflected through enterprise agreement outcomes. They certainly are rarely reflected in national awards[18]. If temporary skills overseas workers are required to be paid at the 'site' or agreement rate of pay on the basis of equal pay for equal work

[17] See, for example comments of Dick Smith, the Administration Manager for Hanssen Construction who said "engaging people from the migrant side of things, we have to guarantee them, I think it's about $40,000 a year in pay. But likewise if they want to change employer they then have to go back home. So once we have the labour... I suppose, you know, it's not such a captured market, but you know where you are with them. You know that they're going to turn up and you know that they're not going to swap employers.' ('Australian workers passed over for imported labour', PM - Friday, 12 May, 2006 18:10:00). At the same time the actual rates being paid on construction sites in Perth were tens of thousands of dollars higher.

[18] Even if regional differences in pay rates were reflected in federal awards, such variations, under the Workchoices Act, will be required to be removed.

then geographic variations will be reflected in pay to the extent they are reflected generally in wage outcomes for Australian workers.

## Role of Regional Certifying Bodies

101. With proper legislation and regulations in place, the relevant Department (DIAC) should be adequately resourced to undertake verification of applications made by employers when applying to sponsor temporary skilled overseas workers. This verification process should include claims made with respect to local labour market testing and commitment to and engagement in training. Verification should be stringent and undertaken in consultation with relevant organisations including training organisations, State government authorities, unions, employer associations and job network providers.

102. There should be no differentiation in requirements for approval or use or conditions under which 457 visas are granted based on geographic location.

103. The ACTU's view, as already stated, is that there should be no regional exemptions from skill levels of salary requirements. As such the role of determining eligibility for exemptions regional certifying bodies should not longer be required.

104. There may remain however a role for an independent, non-centralised based structure to provide information and advice and to undertake assessment of claims made by employers in sponsorship applications, either to support the work of the relevant department or in circumstances where the capacity does not exist within the Department to do so.

105. The current Regional Certifying Bodies (RCBs) should be restructured, have the same composition regardless of their location, and have a clearly defined area of responsibility such that their role can be properly fulfilled and there can be confidence in the outcomes of their deliberations.

106. The current structure of RCBs is highly inconsistent with such a principled approach. Depending on the State and/or region, the function is currently performed by officers in a State Government

department, undertaken by the local employer peak body or undertaken by some organisation between these two extremes. The size of the 'region' covered by an RCB is also not consistent.

107. In addition to restructuring the RCBs, the role of the RCB must be properly defined. They cannot be a rubber stamp for employer requests to use temporary skilled overseas labour. The RCB must be given the authority to properly check all of the information required to be provided by an employer seeking to utilise temporary skilled overseas workers. Every employer application for the use of temporary skilled overseas labour in the area must be assessed by the local RCB. The implication of this is that a national employer in Brisbane cannot lodge an application in Brisbane for assessment by the Brisbane RCB for the employment of labour in Kalgoorlie. Such an application would have to be assessed by the RCB covering Kalgoorlie.

108. If the RCBs are to continue they should have representation as set out in Table 3, noting the skills and capabilities that each of the identified parties can bring to the process.

109. These re-established bodies must have adequate access to all relevant material held by federal and state governments on skill and labour shortages and supply, employment programs or any other program that may have a bearing on labour availability in an area.

**Table 3: Structure for regional certifying bodies**

| Representative | Perspective |
|---|---|
| Local Council | an overview of local industry and conditions; |
| Employer representative | an employer's perspective or industry |
| Union representation | knowledge of local employment conditions, decline and growth across industries in the area, and broadly, skill availability |
| Employment agency | a knowledge of local employment demand and labour market |
| Training providers | the stock of students in, recently passed, or seeking to enter the training system locally with respect to the skills required, and knowledge of the investment made by employers seeking certification in training |
| State government | a broad state perspective |

## Migration agents

110. Migration agents working in the area of temporary skilled overseas workers must be licensed to do so. A strict code of practice for such migration agents must be established and enforced with violation of the code a valid reason for withdrawal of a license.

111. Migration agents must be prohibited from receiving monies directly or through associated companies for the payment of costs, over and above an accepted standard administrative fee, associated with the recruitment or provision of temporary skilled overseas workers.

112. Migration agents must be prohibited from operating in conjunction with labour hire firms – either directly or indirectly.

113. The only way to ensure that the desire for work does not lead to exploitation is to set the rules and regulations by which migration agents operating in this sphere are allowed to work.

114. Migration agents must be subject to auditing and spot checks.

115. The cost of recruitment of temporary skilled overseas workers be borne by the recruiting employer and not passed on to temporary skilled overseas workers through migration or other charges.

## Investigation of breaches – protocols, sanctions & fines

116. Employers sponsoring 457 visa holders should be required to notify relevant state government authorities and departments (e.g. WorkCover) that they have visa holders working for them. Alternatively, DIAC should be required to notify relevant state authorities of the commencement of temporary skilled overseas workers, including the name and address of the employer. Information provided to State Governments, regardless of source, must include the number of 457 visa workers at a particular employer site, the period of approval of the 457 visa and the skills/classification of those workers. The provision of such information will enable appropriate monitoring of employment arrangements by all relevant agencies.

117. DIAC should maintain a register of 457 visa sponsors, projects and migrant numbers that is accessible to state authorities.

118. The DIAC website should provide links to the State WorkCover sites and set out the various state legislative requirements with their visa application kits. DIAC should also provide individual 457 visa holders with brochures detailing their rights and setting out the various state contact points.

119. The ACTU believes that the rights of temporary skilled overseas workers can be best protected through a high level of co-operation between all agencies involved in monitoring of workplaces, including employment rights, occupational health and safety, wages, visa inspection and so on.

120. In addition it is imperative that a breach of any relevant condition uncovered by any agency of standards that are required to be applied in the workplace and in particular to temporary skilled overseas workers should result in an immediate, unannounced, inspection for compliance with all visa requirements.

121. Co-operation between relevant agencies in investigating breaches must be conducted in an environment where the right to privacy of the temporary skilled overseas are respected and maintained.

122. It is, in our view, important that a temporary skilled overseas worker has access to mechanisms whereby they can raise issues relating to breach of conditions without fear that they will be named by any investigating department. The fear of loss of job (with no access to remedies against unfair or unlawful termination), and hence a requirement to leave the country if no new sponsorship is found, is a major impediment to reporting breaches and/or mistreatment of temporary skilled overseas workers by the workers.

123. Any employer found abusing the system, including exploiting or assaulting temporary skilled overseas workers, should be excluded from further participation in the scheme and be subject to civil and criminal penalties.

## Labour Agreements

124. The ACTU has not seen any evidence of the benefits of the use of Labour Agreements as utilised by the current federal government.

125. Labour Agreements are designed to enable an employer to "meet special circumstances that cannot be covered by standard sponsorship arrangements"[19].They enable an employer to "recruit a specified number of workers from overseas in response to identified or emerging shortages..."[20]

126. This definition would suggest that a Labour Agreement provides an employer with the opportunity to subvert the need to show that they have met the other (albeit poorly designed and enforced) tests required of an individual employer for sponsorship of temporary skilled overseas workers.

127. Whilst in the process of entering into a Labour Agreement an employer is required to "make commitments to the employment, education, training and career opportunities of Australians as part of the Agreement". Such an undertaking must be rigorously enforced if LAs are to have any validity or use.

128. Given the lack of enforcement on aspects of the temporary skilled overseas worker programs, an increased use of Labour Agreements is neither appropriate nor acceptable.

129. Labour Agreements do, we believe, enable on-going recruitment of temporary skilled migration with little or no monitoring by the authorities.

130. Labour Agreements should not be available without substantial overhaul of rules and regulations surrounding their use.

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[19] Dept of Immigration & Multicultural Affairs (2005) *Sponsoring a temporary overseas employee to Australia*, Canberra
[20] Dept of Immigration & Multicultural Affairs (2005) *Sponsoring a temporary overseas employee to Australia*, Canberra

131. In summary however, within the context of our support for a properly regulated migration system, we would support a system of tri-partite agreements on the use of temporary skilled migration that incorporate into the agreements at least requirements for:

- specific site by site approval;
- a demonstrable urgent need for labour that cannot be addressed locally
- commitments to and investment in training programs designed to address the identified skill shortage areas;
- commitment to providing the terms and conditions of employment to temporary skilled overseas workers at the same level as local workers; and
- operate for a maximum period of 12 months.

## Communication with 457 visa holders and sponsors

132. Relevant agencies must establish safe and secure mechanisms of communication between the agency and the 457 visa holder.

133. Systems established to support 457 visa holders must ensure that communications are confidential, that the 457 visa holder can seek advice and assistance or make a complaint about their treatment without fear of the details of the complainant being made available to the employer. The fear of loss of the visa and hence return to the home country can inhibit a visa holder from complaining.

134. A service that advocates on behalf of the visa holder and recognition of the rights of unions and community groups to undertake such advocacy and individual or group representation will assist 457 visa holders in ensuring their rights are protected.

135. Information as to their rights, support groups and unions should be provided to 457 visa holders in both English and their native language.

136. Where there are large number of temporary skilled overseas workers are proposed for a particular town or city, DIAC should be required to inform relevant community, union and other support groups of details such as the number of applicants, their cultural background, the industry in which they are to work, and the location of the work.