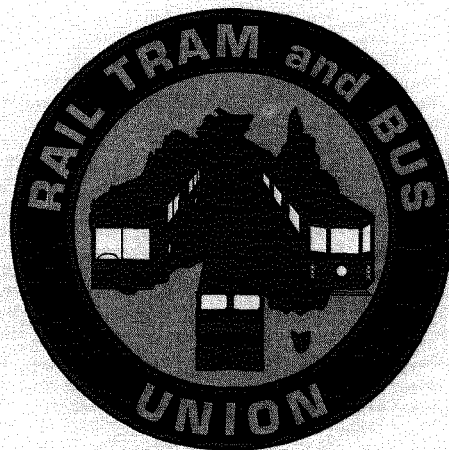


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AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION



**SUBMISSION TO JOINT COMMITTEE ON MIGRATION
INQUIRY INTO TEMPORARY BUSINESS VISAS**

JANUARY 2007

EXECUTIVE SUMMARY

In recent years the number of holders of temporary business visas in Australia has doubled. Together with this significant growth has been the ongoing publication of examples of abuse (or at least criticism) of the temporary business visa system. This has been accompanied by stories of the misuse/abuse of a number of temporary business visa holders. Certainly, the media has reported some events that can, metaphorically speaking, be best described as "horror stories".

The number of "horror stories" reported suggests that the problem is more than skin deep or one or one that is confined to a few bad apples. Certainly the Australian Rail, Tram and Bus Industry Union (RTBU) is unaware of any evidence to show that the incidence of reports in the media overstates the problem. Further, and more worrying, the problem does not seem to be diminishing.

In these circumstances, the decision of the Joint Committee on Migration to hold an Inquiry into Temporary Business Visa is a welcome one.

The RTBU is a union of employees with some 35,000 members employed in both the private and public sectors and across all States and Territories. It is a fundamental objective of the RTBU to protect and advance the wages, conditions and workplace rights of our members. Where they are under attack we will act in the best way possible to fend off such an attack. It is our clear view that the abuse of the temporary business visas represents an indirect attack on our members' wages, conditions and workplace rights. Inherent in our position in this submission is our commitment to the cause of labour regardless of its origin. This submission represents an endeavour by the RTBU to bring our concerns to the attention of policymakers.

The terms of reference of the Inquiry seek that the Committee identify any flaws in the temporary business visa system and also identify ways of improving the procedures.

On the first term of reference, the RTBU submission provides a number of examples that can only lead to the conclusion that the current system is fundamentally flawed and cannot continue in its current form if the Federal Government expects it to be a scheme with any credibility. And, as will be seen, the imperfections in the scheme spread beyond the misuse/ abuse of a particular temporary business visa holder/s.

On the second term of reference, the RTBU looks at the work that has been done by the Union movement through the Australian Council of Trade Unions (ACTU) to suggest a number of actions and procedures that the Federal Government should adopt if it wants to put some credibility back into the scheme. To that end, the RTBU adopts much of what can be found in the submission to the Inquiry by the ACTU.

It is the RTBU's submission that the information in this submission provides ample evidence for the need to act. The RTBU urges the Joint Committee to recommend to the Federal Government that it act in a way that is consistent with the steps set out herein.

INTRODUCTION

The RTBU welcomes this opportunity to contribute to the inquiry by the Joint Standing Committee on Migration into temporary business visas. This inquiry, in our submission, represents an acknowledgement by the Parliament of the need for public debate on this important issue. The terms of reference focus on issues going to the adequacy and effectiveness of the current arrangements and ways and means of improving them.

In recent years, the media has portrayed example after example of employees with temporary business visas being misused/abused by certain employers. These examples clearly show that all is not well in this area. The Joint Committee has, via this Inquiry, an opportunity to positively identify the problems and make recommendations to the Federal Government that can remedy those problems and more clearly align the operation of temporary visas with their proper purpose.

The RTBU is a Union of employees registered pursuant to the Workplace Relations Act 1996 (Cwth). With Branches in each of the States and Territories, the RTBU has a national membership of some 35,000 members. The members are employed by:

- Employers engaged in or in connection with the railway industry;
- Employers engaged in or in connection with the tramway industry;
- Publicly owned employers involved in the operation of public bus systems in Sydney, Newcastle, Brisbane, Hobart, Launceston and Burnie.

The RTBU, like many others unions and organisations, has been concerned for some time about the way in which the temporary business visas are being used in this country. There appears to be little dispute about the existence of what can only be defined as arrangements of misuse and/or abuse. Some may dispute the prevailing incidence of such arrangements, but the fact that they exist is undeniable and that they do so to the extent they have raised serious public concern calls for attention by the relevant authorities.

In this submission the RTBU will address each of the terms of reference in turn. The submission will identify that the RTBU is of the view that temporary business visas have been transformed into vehicles that permit the misuse/abuse of particular workers performing work in Australia. This situation partly stems from a failure by employers and government in this country to prevent a "skills gap" from emerging and then to look for cheap ways to circumvent the consequences of that gap. Other causes lie in the failure of government to properly monitor and enforce its own program and its support for the never-ending desire of employers to obtain labour "on the cheap" and maximise profit. Finally, the submission will advance some ways to improve the use of such visas,

THE ADEQUACY AND EFFECTIVENESS OF THE CURRENT ARRANGEMENT FOR TEMPORARY BUSINESS VISAS

The short answer to the first of the terms of reference is that they are neither adequate nor effective.

That this is the case can be seen from the following examples

- Employees on s457 visas were used to break a strike by Darwin supermarket trolley collectors earning as little as \$9 per hour.¹
- According to the Sydney Morning Herald, “Seungho Yoo came to Australia to work and travel. Instead he says he was ripped off on a building job, unable to travel for lack of funds, assaulted by his boss’s mother when he asked for his money and will be lucky to get his backpay before he returns to Seoul at the end of the month.”²
- According to the Sydney Morning Herald, “A further 21 foreign workers have been authorised to start working on a construction site in western Sydney that was closed after WorkCover and unions issued 39 infringement notices alleging breaches of workplace safety and immigration law. A spokesman for the Department of Immigration said yesterday that the visas had been approved before the allegations came to light.”³
- In the same article the Prime Minister, Mr Howard is quoted as saying that “the Department of Immigration had in July issued the Chinese-owned Hunan Industrial Equipment Installation Company, which supplied the labour, a notice of intention to ‘apply sanctions on a number of grounds, including failure to pay the minimum salary, comply with immigration laws, comply with workplace relations laws, ensure necessary licensing of workers, notify [the department] of relevant changes of circumstances and deduct tax.’”⁴
- According to Workers Online “Manly eatery Ribs and Rumps underpaying three Black South African chefs to the tune of tens of thousands of dollars each. The men took their cases to the Chief Industrial Magistrate’s Court, won sizeable settlements, and were promptly deported by DIMIA.”⁵

¹ Migrant Workers on 457 Visas Used as Strikebreakers: ALP. Workplace Express 20 December 2006, www.workplaceexpress.com.au/news

² O’Malley N., He came to work but not for nix, SYDNEY MORNING HERALD, 18 February 2006.

³ O’Malley N., New foreign work visas issued for unsafe work, SYDNEY MORNING HERALD, 5 September 2006.

⁴ loc. cit.

⁵ Peking Ducks Safety Regs, WORKERS ONLINE, Issue No. 323, 8 September 2006

- According to Workers Online “A guest worker being whipped out of Wagga Wagga base hospital and flown back to South Africa before authorities could speak to him in the wake of a workplace accident that claimed two lives.”⁶
- According to Workers Online “Another three African chefs, from separate Sydney restaurants, filing massive underpayment claims in December 2002. They disappeared and nothing further was heard of their actions.”⁷
- According to Workers Online “A company, associated with the Western Australian Chamber of Commerce and Industry, importing 30 tradesmen – boilermakers, pipe fitters and welders – and paying them less than the (*sic*) half the rates of Australians working alongside them. The men were charged \$5,000 upfront, to get their 457 visas, then slugged 144 percent interest on their loans. They were farmed out to industrial sites across WA. When the AMWU blew the whistle, their employer demanded written indemnities against backpay claims, and threatened individuals with deportation.”⁸
- According to the Sydney Morning Herald, “Halliburton Australia employed a group of Indonesian workers up until last Christmas to dig ditches for its gas extraction operation in the Cooper Basin in the South Australian desert.”⁹
- According to the Sydney Morning Herald, “A printing company has used the Government’s temporary migration scheme to use four Chinese men like indentured labourers, working them up to 60 hours a week and deducting \$10,000 each from their pay.”¹⁰
- According to the Sydney Morning Herald, “Jung Sub Seo entered Australia on a 457 visa to work as a tiler. He was a passenger driving with a work supervisor from Perth to Sydney when the car crashed and rolled. Seo suffered a back injury and was unable to work. His employer refused to pay him or co-operate with insurance processes, and told Seo he would be deported if he complained. Without a wage or access to social security, Seo was dependent on support from family in South Korea. Even before the accident, Seo said, he was not paid overtime, sick pay or holiday pay for a year. The Construction, Forestry Mining and Energy Union is now acting on his behalf.”¹¹

The abovementioned examples are by no means an exhaustive list. They represent the ad hoc collection of information gathered by the RTBU from time to time and from a limited range of sources. It may also be the case that there are instances of the successful operation of the temporary business visa scheme but that is not to the point

⁶ loc. cit.

⁷ loc cit

⁸ loc cit

⁹ O’Malley N., op. cit.

¹⁰ Bachelard M., Workers forced to pay boss \$10,000, SYDNEY MORNING HERALD, 6 September 2006

¹¹ O’Malley N., A nice little earner, SYDNEY MORNING HERALD, September 4, 2006

here. The aim of this submission is to address the fundamental flaws in the system; flaws that have serious negative consequences.

A consistent theme that runs through these examples is one of misuse/abuse of labour. This requires a particular set of circumstances; those based on a balance of power that is totally skewed in favour of the putative employer. The employee is a long way from home, lacks any understanding of local laws, has no support in Australia, is desperate for what little money he/she will earn and arrives in this country with little money or resources. It is unfortunate that the subclass 457-business visa system permits that set of circumstances to exist.

What further emerges from these examples are a number of statements alleging that certain laws have been broken. In that regard, references are made to breaches of occupational health and safety laws, immigration law, tax law, workplace relations law and criminal law.

The type of work being performed by persons on temporary employment visas appears to be diverse but is by no means skewed towards higher skill level occupations. In the abovementioned examples, we see building workers, chefs, metal tradespersons, labourers, printers and tilers. Other examples include workers in abattoirs, bakers, and welders.¹² In many of these occupations, it is difficult to conclude that there is a deficit of persons available locally to perform such work.

The situation is not helped by what can only be regarded as an attitude by certain employers that perceives labour as unworthy of a proper degree of respect and dignity. As O'Malley states:

"Either way, an insight into the thinking of at least one employer was provided by Dick Smith, an executive at the Perth Construction company Hanssen.

'We found that by using this migrant labour... they'd just do it the way we wanted' he told ABC radio in May. 'I'm not saying that they are at a lower level of intelligence...it just seems that Filipinos can do one task and not do anything different until they're told to do something different' "¹³

There is also a downside for the local workforce.

According to a report in the Sydney Morning Herald:

"The program is a disincentive for employers to spend money on training, exacerbating the existing skills shortage, he said."¹⁴

¹² O'Malley N., Aussie jobs go to the world, SYDNEY MORNING HERALD, 20 February 2006

¹³ O'Malley N., A nice little earner op. cit. See also, Hanssen turns to imported labour, WORKPLACE EXPRESS, 15 May 2006.

¹⁴ O'Malley N. A nice little earner, op. cit.

The “he” in this case is Dr. Phillip Toner, a senior research fellow at the University of Western Sydney. The disincentive to train local employees comes from the potential to obtain and pay the employers on foreign business visas a rate less than the local going rate. What has effectively happened is that for the purpose of labour supply, the Australian labour market has expanded to cover any part of the world where an employer can find the labour he/she needs on the conditions he/she is prepared to pay. An employer in these circumstances will have little incentive to train anyone – all that is necessary is a will to search beyond the shores of this country.

In the meantime, the problem of the “skills gap” becomes greater in two respects. Firstly, Australian citizens are denied the right to be trained and to acquire the skills that are necessary for the economy and to provide the employee with meaningful and productive work. Secondly, the economy becomes incapable of training its future workforce as the training ground that exists in the employment relationship diminishes. That is, employers will no longer see any need to train employees; they will simply go to a employment search company to find them the required labour overseas and, ably assisted by the temporary business visa, bring the labour into Australia for as long as they deem it necessary. In the long term this is a recipe for disaster.

The fact that employers utilising these visas are not obliged to pay the Australian market rate is also seen by Toner as:

“...evidence that the Government is using the migration scheme to push down local wages.”¹⁵

This view is shared by Dr. Bob Kinnaird who published research at the Monash University’s Centre for Population and Urban Research, which showed that:

“...about 30% of the visas issued pay rates at the minimum, suggesting local wages were being undercut.”¹⁶

The Minister for Immigration, Senator Vanstone, ably supported this position. Senator Vanstone has stated that part of the opposition to these visas is because:

“...it opens up the industry to other pools of employees, which undermines the unions’ ability to exploit high wages amid the skills shortage.”¹⁷

This, of course, begs the reason for these visas. Is their purpose to permit the temporary entry into Australia of persons who possess skills that are not readily available amongst the local workforce and for which there is work available, or is it a complement to WorkChoices and designed as a means of lowering wage rates in Australia? This quote by Senator Vanstone, strongly suggests the latter. It is also

¹⁵ loc. it.

¹⁶ loc.cit.

¹⁷ Shaw, M. Guest workers cut wages: Vanstone”, THE AGE, 8 June 2006

unfortunate that the Senator chooses to respond so negatively to any position put by a union.

Such motives for the temporary business visa system, as expressed by Senator Vanstone, go a long way to explaining why the current system is a mess. It appears that the motive of Senator Vanstone is shared by a number of employers who have then taken up the opportunity to pay lower wages. The abovementioned examples are a representation of what can and does happen when a Government holds, at best, ambiguous views on the reasons for such visas and then does little to monitor and police what is happening in the labour market. Only when the system has gone out of control does it consider whether something needs to be done.

In summary, the current temporary business visa system is one that is ripe for misuse/abuse by employers willing to behave in that manner. It is not only ripe for abuse: the above examples show that abuse is occurring and occurring to an unacceptable degree. All this at a time when the Federal Government has shown itself to be adept at turning a blind eye to the problems. That abuse of the system can lead to labour being used for work that should and can be performed by local workers, that leads to the abuse of workers on temporary business visas, that undermines local wages and conditions and that is counterproductive to the development of a proper skills base in Australia. It is thus unsurprising that the system has received such negative publicity in the media and why members of the Federal Government have had all sorts of difficulties in justifying its operation in its current form

WHERE CAN IMPROVEMENTS BE MADE

The RTBU has had the opportunity to peruse the ACTU submission to this Inquiry. In our view the ACTU submission provides for a number of productive ways to replace a flawed system with a system that is designed to permit persons with skills genuinely in demand in Australia, to utilise those skills in the country for a temporary period.¹⁸ The RTBU adopts the position set out by the ACTU.

It is not our intention to repeat chapter and verse the submission of the ACTU. As we read it, the submission makes the following points:

1. That a system be introduced to ensure an applicant has the requisite skills (and at the requisite level) to perform the work required by the local employer.
2. That the applicant be able to understand and use the English language to the extent he/she is able to receive occupational health and safety training, be able to receive and give instructions and to communicate generally.
3. That prior to the issuance of any temporary business visa, the labour market be tested to ensure that the demand for a specific type of labour cannot be met locally. Using the going rate for the work in question must form part of the testing.
4. An employer seeking approval to sponsor a temporary business visa holder must demonstrate that he/she has exhausted all avenues to find locally qualified employees.
5. Where an employer has retrenched employees in the past 12 months, he/she shall be precluded from sponsoring such temporary business visa holders.
6. An employer should not be permitted to sponsor a temporary business visa holder unless he/she has a demonstrated commitment to recruitment and training local employees.
7. An employer who utilises a temporary business visa holder must establish a program for the transfer of the skills held by the employee with the temporary business visa to local employees.
8. A temporary business visa holder must not be used to undercut local wages and conditions. Two mechanisms are recommended in this regard with respect to wages. Firstly, if there is an enterprise agreement for the work that is the rate to be used. Secondly, in the absence of a minimum enforceable rate, one should be

¹⁸ Australian Council of Trade Unions, ACTU SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION INQUIRY INTO TEMPORARY BUSINESS VISAS, Australian Council of Trade Unions, Melbourne, 2007

- struck. The rate should be in excess of award rates and take into account the going rate in the area and be adjusted on an annual basis.
9. A holder of a temporary business visa cannot be employed on a casual basis.
 10. A holder of a temporary business visa cannot have any deduction made from his/her pay in the absence of his/her express authority or as otherwise provided by law e.g. income tax.
 11. A holder of a temporary business visa shall have access to the public health system and the employer shall meet the cost of health insurance.
 12. The cost of airfares or other migration costs shall not be deducted directly from the wages of the temporary business visa holder.
 13. The principle of equal pay for equal work shall apply.
 14. All components of the wage shall be identified separately e.g. wage, shiftwork penalties, weekend penalties, overtime payments etc. There shall be no "all-in" payment.
 15. A holder of a temporary business visa shall enjoy the same rights and entitlements as other employees in the same company.
 16. A holder of a temporary business visa shall have the right to join a union.
 17. The holder of a temporary business visa shall receive appropriate training in occupational health and safety, cultural awareness and employee rights.
 18. The holder of a temporary business visa shall be paid in Australian dollars and preferably into a Australian bank account in the employee's name.
 19. There shall be no variations in employment conditions based on different regions.
 20. All migration agents shall be licensed and subject to the operation of a code of practice. They shall not receive monies directly or through associated companies over and above the recompense of reasonable expenses.
 21. The Federal Government shall establish a strong and effective investigatory process.
 22. Where the employment of a holder of a temporary business visa has his/her employment terminated for reasons beyond his/her control, he/she should be allowed a period of 3 months in which to find alternative employment.

23. Labour agreements should not be used except in limited circumstances and where the agreement is on a tripartite basis.

These points, appropriately detailed by the ACTU, provide a system that permits the use of temporary visas for the utilisation in Australia of skills that are unattainable or unavailable on the local labour market. Importantly, they are designed to avoid the potential for misuse/abuse and to close off the current flaws in the system. They are predicated on a system that is designed solely to fill short-term gaps in the local skills base whilst action is taken on the home front to equip local workers with the skills.

But, for so long as enormous differences exist amongst the labour markets in the international community and there exist people prepared to use those differences to their advantage, problems will ultimately remain. The British journalist, Gary Younge, in looking at the problem of migrant labour in the United States, took note of the words of the British Booker Prize winner, John Berger:

“It is not men who immigrate, but machine minders, sweepers, diggers, cement mixers, cleaners, drillers etc,” wrote John Berger in *Seventh Man* in 1975. “This is the significance of temporary migration. To become a man (husband, father, citizen, patriot) a migrant has to return home. The home he left because it has no future for him.”¹⁹

Younge continues by saying that until the problem is addressed on an international level:

“... the desperate will roam the globe, moving from one marginal experience to another, seeking sustenance and sensing alienation.”²⁰

In summary, to properly address the problems identified with the current operation of the temporary business visa system, a multi-faceted approach is required.

- It should be made clear that the aim of the system is to overcome temporary gaps in the skills base in the local economy.
- Concurrently, steps need to be taken on a local basis to ensure that the skills gap is only a temporary phenomenon and not an ongoing one.
- The system must contain measures designed to prevent abuse and/or exploitation.
- The federal government must work at an international level and on a multi-lateral basis through such agencies as the United Nations and the International Labour Organization to improve the conditions of labour generally across the globe.

¹⁹ Younge G., *Unwanted Guests*, THE GUARDIAN WEEKLY, Feb.24-Mar.2 2006, p.15

²⁰ *loc.cit.*

SUMMARY AND CONCLUSION

In this submission, the RTBU has endeavoured to show by way of a number of examples that the current system of temporary business visas is fundamentally flawed. If the Federal Government desires to have a system that will have some semblance of credibility it cannot permit this system to continue in its current form.

The RTBU has sought to identify how some temporary business visa holders have been misused and abused and that it is the current system, combined with inaction by the Federal Government that allows it to occur. To make matters worse, the system is permitting those employers with the will to do so, to avoid their responsibility to train current and future employees in the skills that will be necessary for an effective and efficient economy.

The RTBU has also sought to outline a number of ways that the system can be improved. What they show, however, is that it is not simply a matter of tinkling at the edges. It requires a wholesale change to the system. In our view, nothing short of these changes will suffice if the system is to be effective.

It is also important to note that the RTBU view of a temporary business visa system is to allow for the utilisation of persons with skills that either do not exist within Australia or exist in insufficient numbers at present. Hence, the use of the term, "temporary". What this means is both government and employers must accept their responsibility to contribute to the development of the necessary skills and put into place the training and infrastructure necessary to impart those skills to members of the local workforce. To the extent that the skills are available locally the use of temporary business visas will diminish.

The RTBU seeks that the members of the Inquiry should give favourable consideration to our submission and recommends the necessary steps to pull the system out of its current quagmire.

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