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The Committee Secretary
Dr Kate Sullivan
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Department of House of Representatives
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CEPU

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Dear Dr Sullivan

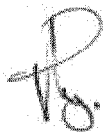
**CEPU Submission to the Joint Committee's Inquiry
into temporary business visas**

Please find attached a supplementary submission from the CEPU to the Committee. This supplementary material is provided in response to questions from the Committee and in particular, Senator Parry, at the Committee hearing in Brisbane on 16 April 2007. You may recall that I undertook to provide this material at the time of the hearing.

I hope this helps the Committee in its deliberations.

If you have any further questions, please don't hesitate to contact me.

Yours faithfully



Peter Tighe
NATIONAL SECRETARY

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attach.

TRIM File 2007/0031

**CEPU Supplementary Submission
to the Joint Standing Committee on Migration
Inquiry into Temporary Business Visas**

QUESTIONS ON NOTICE

References are to the Proof Committee Hansard Transcript for Monday 16 April 2007 in Brisbane.

Senator Parry at p.M33 asked for the “gazetted minimum rate” for an electrician working in the Northern Territory:

Senator PARRY—That leads to my next question, which comes back to Mr Tighe speaking earlier about the minimum wage and the market rates. You have a table here quoting the industry market rates and the gazetted minimum salary for 457 workers. So that we have a comparison, *what is the gazetted minimum wage, referred to in paragraph 3.15 on page 11 and the third dot point under ‘Wages’ on page 4 of your submission?* (emphasis added)

Mr Tighe—DIAC determines an MSL,

Senator PARRY—You are talking about the 457 minimum salary level. *Forget 457; what is the standard within your industry—the gazetted rate you referred to in the two paragraphs?* (emphasis added)

Mr Tighe—For an electrician working in the Northern Territory?

Senator PARRY—Yes.

Senator PARRY—*Not the market rate, the minimum gazetted wage.* (emphasis added)

Mr Tighe—The minimum rate?

Senator PARRY—Yes.

Mr Tighe—The minimum award provision that applies up there is probably equivalent to around \$40,000.

Senator PARRY—So it is slightly below the minimum salary level for the 457 visa. *Can you also provide that on notice—the actual minimum rates for award?* (emphasis added)

Mr Tighe—I will give you that, yes; that is no problem ...”

ANSWER:

Gazetted minimum rate

- 1.1 The gazetted minimum wage referred to in our Submission at point 3.15 under the title "The Impact of Workchoices" is the Federal Minimum Wage set by the Federal Government's Fair Pay Commission established under its Workchoices legislation.
- 1.2 The current Federal Minimum Wage is \$26,616 (\$13.47 per hour). In May 2006, the same time the MSL was reviewed and increased to \$41,850, the minimum wage was \$25,194 (\$12.75 per hour).
- 1.3 This is the rate we refer to as the "gazetted minimum". There is only one Federal Minimum Wage gazetted. There is no separate FMW paid in the Northern Territory for electricians.

Interaction of minimum rate and 457 visa rates

- 1.4 Workchoices created a new type of individual Australian workplace agreement (AWA). Our point about the FMW is that a Workchoices AWA can undercut both award rates and market rates. A person working under an AWA only has to be paid the Federal Minimum Wage.
- 1.5 The fact that an employer can legally pay a rate to 457 visaholders which is so much lower than the rate that would be paid to local labour to do the same work, inevitably pushes down local rates. This is compounded by the fact that a Workchoices AWA rate can legally be so much lower than either the award rate or the MSL, which in turn is much lower than actual market rates paid under local enterprise agreements.

Regulatory gap

- 1.6 In addition to this impact on wage rates, there is a regulatory gap created by the operation of AWAs which pay only the Federal minimum wage.
- 1.7 Even though under an AWA the employer can pay the visa holder less than either the "award rate or the MSL", there is no government agency that can pursue the employer for underpaying his or her employees because strictly speaking the employer is complying with the law provided they are paying at least the minimum wage.
- 1.8 The Office of Workplace Services can only investigate complaints relating to the underpayment of wages under an industrial instrument under the Workplace Relations Act. Although an AWA is such an instrument, provided the AWA rate meets the minimum requirements of the Act, there is no underpayment and the OWS has no jurisdiction.
- 1.9 In addition, under the Migration Act there is nothing the Department can do because the Department cannot take action to recover underpaid wages. The Department can only censure the employer. It has no jurisdiction to do anything else.

- 1.10 Even if the employer is paying more than the FMW but less than the award rate or MSL the same reasoning applies.
- 1.11 The other point about AWAs is that they are not subject to scrutiny or checking when lodged with the Office of the Employment Advocate. Thus an AWA containing inferior rates and conditions can only be investigated if the employee raises a complaint.

2. Senator Parry at M34 asked for the actual minimum award rates applying to an electrician working in the Northern Territory

Senator PARRY—So it is slightly below the minimum salary level for the 457 visa. *Can you also provide that on notice—the actual minimum rates for award?* (emphasis added)

Mr Tighe—I will give you that, yes; that is no problem ...”

ANSWER:

Minimum award rate for the Northern Territory

- 2.1 The minimum award rate for a licensed electrician working under an award in the Northern Territory is about \$32,000-33,000 per annum. This is based on rates contained in the Electrical Engineering and Contracting Industries (Northern Territory) Award 2002 which is the major award covering electricians working in the Territory.

Not only are award rates even lower than minimum salary level (MSL) set by DIAC for 457 visaholders but they are way below industry market rates. The attached table shows the gap between the minimum award rates and the market rates using typical enterprise agreements as a guide to the market rates.

Updated Table

- 2.2 The table referred to at p.11 of the CEPU Submission under 3.14 has been expanded to include rates of pay from all the States bar Tasmania. The DIAC Minimum Salary Level (MSL) is compared with award rates of pay for metropolitan and regional areas where applicable. It also compares the award and MSL rates with the industry or market rates inferred from the rates paid under typical collective enterprise agreements.
- 2.3 This is why we disagree with DIAC when the Department says it is more expensive to bring in workers from overseas. Clearly, it is cheaper to pay an electrical worker under the s.457 visa program the MSL rate than the market rate expressed in a typical enterprise agreement. In industries in which CEPU members work, market/industry rates are well above award rates. Few CEPU members are paid the award rate under the National Electrical Contracting Industry Award. This is because of its lack of relevance to what is being paid in the market. This in turn is due to the rise and growth

of enterprise agreements in favour of awards with the result that award rates have, over time, lost market relevancy. The award exists purely as a safety net.

- 2.4 The expense of bringing workers in from overseas varies depending on the occupations being considered. The CEPU believes that it may be a cheaper option for an employer to bring in *trade* labour from overseas with all the benefits to the employer of having a more compliant workforce. This explains why the visa program is growing exponentially and why it is so attractive to employers.

Rates of pay for an Electrician (Grade 5 - Licensed)
Working in the Electrical Contracting & Construction Industry

Rates as at 1 July 2006

MSL & Typical Award Rates	Metropolitan	Regional	Remote
DIAC 457 visa Minimum Salary Level (MSL)	41,850	37,655	37,655
VICTORIA Award rate - workshop	35,178 ¹	n/a	n/a
VICTORIA Award rate – Construction	36,280 ²	n/a	n/a
NORTHERN TERRITORY Award rate – workshop	DIAC classifies all of the NT as regional so the rate should be compared with the regional MSL rate	32,043 ³	
NORTHERN TERRITORY Award rate - construction	DIAC classifies all of the NT as regional	33,114	n/a
INDUSTRY/MARKET RATES Based on average enterprise agreements rates as a "market' guide			
VICTORIA – Service Work/Maintenance	55,130	48,750	n/a
VICTORIA – Construction Contracting	59,744		n/a
QUEENSLAND – Service Work/Maintenance	45,705 ⁴	50,309 ⁵	54,600 ⁶
QUEENSLAND - Construction Contracting	49,046 ⁷	54,423	58,713
NEW SOUTH WALES – Service Work/Maintenance	51,000		
NEW SOUTH WALES – Construction Contracting	57,780	57,780	
WESTERN AUSTRALIA –Construction Contracting⁸	66,655	66,655	130,780 ⁹
WESTERN AUSTRALIA – Service Work/Maintenance ¹⁰	54,600	54,600	
SOUTH AUSTRALIA - Construction Contracting	DIAC classifies all of SA as regional so the rate should be compared with the regional MSL rate	46,800	
NORTHERN TERRITORY – Construction Contracting	DIAC classifies all of NT as regional so the rate should be compared with the regional MSL rate	56,060 ¹¹	

¹ Based on the National Electrical Electronic and Communications Contracting Industry Award 1998. Note the Victorian rates are the highest of all the States covered by the Award. Note too that this rate includes all industry allowances, tool allowance and licence allowance.

² Includes the industry allowance paid to compensate for the disabilities associated with on-site work.

³ Based on the Electrical Engineering and Contracting Industries (Northern Territory) Award 2002. Rates varied to March 2005 to include only the May 2004 Safety Net Review decision.

⁴ Based on a range of typical enterprise agreements. These are base rates only. The actual rates may be higher in some areas to accommodate skill shortages and remote localities.

⁵ Based on basic workshop maintenance rate at Gladstone – not construction work

⁶ Based on basic workshop rates maintenance at Mt Isa – not construction

⁷ Does NOT include a site allowance which would be typically paid to workers on site.

⁸ Work is largely project based in WA with no real difference between the rates being paid for working on large projects in Perth and outside of Perth making it difficult to estimate a different regional and metropolitan rate.

⁹ Based on being a local employee working out of Karratha and working 4 weeks on/1 week off at 60 hours week.

¹⁰ Same comment applies as in fn 8

¹¹ Rates based on the Nilsen Electric (NT) Pty Ltd – Contracting Division Union Collective Agreement 2006 which is a typical agreement in the industry.