THE AUSTRALASIAN MEAT INDUSTRY EMPLOYEES' UNION

(Federal Council)

A.M.I.E.U. SUBMISSION

Parliament of Australia – Joint Standing Committee on Migration

INQUIRY INTO TEMPORARY BUSINESS VISAS

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INTRODUCTION

The AMIEU supports and adopts the submission of the ACTU to the Joint Standing Committee on Migration (hereafter "the Committee"). This submission aims to avoid undue repetition and seeks to amplify key points made in the ACTU submission as they relate to the Australian meat processing industry.

The Committee's specific terms of reference are as follows:

> *"1. Inquire into the adequacy of the current eligibility requirements (including English language proficiency) and the effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas, particularly Temporary Business (Long Stay) 457 Visas and Labour Agreements.*
>
> *2. Identify areas where procedures can be improved."*

There has been a remarkable and rapid growth in the use of sub-class 457 business (long stay) visa holders (hereafter "temporary visa workers") in the industry. Rather than replicate the figures, the Committee is referred to the tabular material on pages 6-7 of the ACTU submission.

Currently, the use of temporary migrant labour in the Australian meat processing industry is regulated by:-

(i) ss.140E – 140G of the *Migration Act 1958*;
(ii) rr. 120C-120IA, 457.1 – 457.7 of the *Migration Regulations 1994*; and
(iii) Ministerial Gazette notices signed on 8 June 2005 and 15 June 2006.

Several employers in the Australian meat processing industry are using these provisions to sponsor migrant employees.

The use of temporary visa workers in the industry has been the subject of much public controversy. The AMIEU maintains that several employers in the industry are exhibiting low levels of compliance with key requirements in the existing legislative framework, particularly eligibility issues.

As such, the industry must receive particular attention from the Committee.

This submission will therefore be divided into 2 parts to address the issues raised in the terms of reference.

Part 1 of this submission gives (in as concise form as possible) a brief overview of the skills profile within the industry. The AMIEU maintains this information is essential for members of the Committee as a basis for understanding the current state of play concerning temporary visa workers in the industry.

Part 2 of this submission outlines the current situation in the industry as they relate to issues of eligibility, effectiveness of monitoring, enforcement and reporting arrangements.

Throughout Part 2, when discussing particular issues, the AMIEU will make its submissions on where procedures can be improved.

Part 1 – A Skills Profile of the Meat Processing Industry

1. Work in the meat processing industry is repetitive, monotonous and labour intensive. Typically, the workforce of any meat processing facility can be divided into two clear groups:-

    (a) skilled employees such as slaughterers, boners and slicers. Some of these employees gain accreditation for their skills through an AQF III certificate.

    (b) Semi-skilled labourers. Often little training is required and even the most highly skilled jobs only gain accreditation at AQF II certificate level.

2. The breakup of numbers of the two groups (in a facility that both slaughters and debones product) is approximately 30% in the first group and 70% in the second. These figures are not only the AMIEU's estimation, they have also been advanced by employers in the industry before the Australian Industrial Relations Commission ("AIRC"). For instance, note the following paragraph from a major decision of the AIRC relating to the meat processing industry:

    "…..Only boners, slicers and slaughterers, typically 30% of the workforce in a plant, are engaged as tally workers. The balance of the employees are paid for the hours they work - known as time work."[1]

3. Within this broad estimation of 30%, the number of slaughterers, boners and slicers tends to be generally equivalent; i.e. 10% of the employer's workforce will be slaughterers, 10% will be boners and 10% will be slicers.

4. The work of skilled employees is based almost exclusively on a "Fordist" style of production, whereby each task in the production process is isolated and can be preformed repetitively by a single employee for an indefinite duration, whether that is one day, one week or indeed many years.

Training Lead Times

5. In the case of skilled employees, the theoretic training for AQF III certificate level typically consists of one years' duration. This is a however a very different issue to the practical component of training. Added to this is the practical reality that many

[1] *Federal Meat Industry Decision* Print R9075, Giudice J, Munro J and Leary C, Sydney, 24.09.99 at **[10]**

employees currently working in the industry in the classifications of slaughtering, boning and slicing do not have and do not need AQF III certificate accreditation.

6. Due to the Fordist style of production in the industry, it is quite possible for an employee in training to become competent gradually across the range of skills necessary. However, when competent in just one single aspect of the skills, the employee concerned can fulfill a fully productive role on the production line.

7. The upshot is that due to the style of production, it is not necessary to be fully competent in a classification to be able to fulfill a fully productive role.

8. The industry enjoys a significant advantage in this respect. It is well placed to quickly address any short term skills shortage. It also severely diminishes any argument that there is an immediate skills crisis which cannot be addressed due to lead times in training.

9. Practical training arrangements across the industry vary. On one end of the scale are the establishments that have "learner chains", which operate at reduced production speeds whilst practical training is given. The intermediate situation are "buddy" or "tutor" systems, where practical training is given by a skilled employee on the production line to learning employees. At the lowest end of the scale are establishments that have no structured practical training regime in place.

10. The AMIEU has also had informal and formal training agreements with major employers. These arrangements speak much of the true lead times for practical training within the industry and also demonstrate that full practical competency in one aspect of production can be achieved in a very short duration of time.

11. In respect of the only current arguable business activity nomination for a temporary migrant worker in the industry, ASCO classification 4511-15 "Slaughterperson", it should be also noted that the simplified award[2] in the industry recognizes a trade qualified Slaughterer and then goes on to make provision for the notion of a Slaughterer in the industry[3]. Within the second classification there are three skill levels within the classification:-

> ***3.7.7*** *A **Slaughterer Class 1** is an employee who performs the indicative tasks set out in classification 3.2 in Table B of Appendix A of this award.*

[2] The *Federal Meat Industry (Processing) Award 2000*

[3] The AMIEU maintains that the ASCO classification description of a Slaughterer is akin to the notion of a trade qualified "solo" Slaughterer. The notion of a Slaughterer in the award regulation in the industry is not commensurate to this; it is broken down into 3 separate task classifications based on skills. Employers in the industry (particularly the peak council, the Australian Meat Industry Council) have opposed vigourously any argument that a Slaughterer in the award regulation is the equivalent of a trade qualification.

3.7.8 *A **Slaughterer Class 2** is an employee who performs the indicative tasks set out in classification 3.7 in Table B of Appendix A of this award.*

3.7.9 *A **Slaughterer Class 3** is an employee who performs the indicative tasks set out in classification 3.9 in Table B of Appendix A of this award.*

12. It is also the case that the award makes provision for a trade qualified Slaughter in A Slaughterer Class 3 is the equivalent of the old "C Rate Butcher". These tasks typically comprise anywhere between 15-30% of all tasks on a slaughter floor.

13. The AMIEU maintains that the lead times to train an employee to Slaughterer Class 3 level are minimal, to say the least.

14. On the point, the AMIEU is content to adopt the following views of Mr. John Hughes, the current MINTRAC Chairperson who has well over 40 years experience in the meat industry from the shop floor up to senior management level.

15. In giving evidence to the *Meat Industry Enquiry*[4], Mr. Hughes was specifically asked to comment (under oath) on the practical training required to bring a person up to competency in certain C Rate butchering tasks (now Class 3 slaughterer). The advocate leading the evidence was Mr. John Salter, current Human Resources Manager for the Teys Bros group of companies. The following excepts from the transcript are most instructive:-

> "[Mr. Hughes]….*Now, if you compare that with some of the tasks that are now called C grade butcher's tasks, you know, there are virtually no skills. Say, removing feet from the- on the chains. For a long time, I actually ran the slaughter floor, and one of the jobs we had at that stage, we'd employ casuals if people were away, pick someone up from the gate who never set foot in a meatworks, put them up and get them to – say, right, there's the foot, these are the hock cutters, put it over, press the button, bang, it knocks the foot off, and their C grade butchers.*
>
> [Mr. Salter] *How long would it take before he's able to do that task properly?*
>
> [Mr. Hughes] *Providing he wasn't completely stupid, probably five minutes.*

16. Even on the more highly skilled positions within the industry, it is the AMIEU's view that full practical competency can be achieved within an effective practical training program within 6 weeks and certainly no longer than three months.

[4] Print K3313, Melbourne, 17 June 1992.

PART 2

2.1 – Eligibility

2.1.1 Is there a skills shortage in the meat processing industry?

17. It seems to be a fundamental preliminary issue of eligibility that there is a demonstrable need for the use of temporary migrant workers.

18. However, reliable statistical evidence that verifies the existence of a skills shortage in the meat processing industry (or many other industries) is difficult to obtain.

19. Currently, it appears the anecdotal evidence of the employers within the industry is being relied upon heavily as the principle source of evidence.

20. The AMIEU does not dispute that in certain areas, employers in the industry are experiencing difficulties. In particular, the mining industry in Central Queensland appears to have made recruitment extremely difficult for employers who draw their labour requirements from the region.

21. On the other hand, there have been examples of the large scale use of migrant labour in circumstances which are dubious to say the least, such as areas with high regional unemployment rates or where the total number of migrant workers utilized at an establishment outstrips the total number of skilled positions within the establishment.

22. The AMIEU also highlights the success of the South Australian Meat Industry Workforce Development Group ("the Workforce"). A salient example of the success of this Workforce comes from the experience with Primo at Port Wakefield. This company sought the approval for 50 migrant workers in or about March 2006. Through the efforts of the Workforce, local labour was recruited and the company withdrew its application for the additional 50 visas. This example leads the AMIEU to conclude that it may be highly questionable as to whether there is actually a skills shortage in other areas.

23. The AMIEU calls for a detailed analysis of labour market trends within the meat processing industry to be undertaken by the Department of Employment and Workplace Relations ("DEWB"). The purposes for such an investigation are twofold:-

(a) to determine the full extent and nature of the alleged skills shortage in the industry before implementing short term policy responses; and

(b) to enable all stakeholders- the industry, the government and the AMIEU- to be fully briefed on the full extent of the issues facing the industry so that long term policy measures in respect of training and/or migration can be safely implemented.

24. Similar arrangements could of course be implemented in respect of other industries where skill shortages are alleged.

AREAS WHERE PROCEDURES CAN BE IMPROVED #1

1. A detailed analysis of labour market issues (current and historical) within the meat processing industry to be undertaken by DEWB. Such an analysis to cover the issues of labour availability, labour mobility and other relevant labour market trends within the Australian meat processing industry.

2. These principles should be applied to all other industries that are currently said to be experiencing "skills shortages".

2.1.2 Business Activity Nomination

25. An essential threshold prerequisite to obtain sponsorship[5] is that the sponsoring employer may "nominate to the Minister an activity in which the individual is proposed to be employed by the (employer) in Australia"[6]. The nominated activity "must correspond to the tasks of an occupation specified in a Gazette Notice" for the purposes of the regulations.

26. For the meat processing industry, the only nomination that might arguably be made is that of ASCO classification 4511-15, "Slaughterperson".

27. The AMIEU submits it is only "arguably" as it is not totally clear that the detailed classification description of a slaughterperson in ASCO[7] corresponds with the tasks of a slaughterperson in the meat processing industry.

[5] This applies whether standard sub-class 457 sponsorship is sought or "regional certified employment".
[6] See r.120G of the *Migration Regulations 1994* (Cth.)
[7] For further details, see footnote 3.

28. Be that as it may, there is a widespread practice of meat processing employers making this nomination and then utilizing sponsored employees in clearly impermissible activities such as boning (ASCO classification 9213-13) and slicing (ASCO classification 9213-13).

29. Employers currently engaging in this practice include, but are not limited to:-

(a) Australia Meat Holdings Pty Ltd;
(b) Teys Bros Group of Companies[8];
(c) Nippon Group of Companies[9];
(d) Kilcoy Pastoral Company Ltd;
(e) T & R Pastoral Pty Ltd;
(f) Tatiara Meat Co. Pty Ltd;
(g) Luturn Pty Ltd (T/A Primo Australia Port Wakefield Abattoirs);
(h) P & M Quality Smallgoods Pty Ltd (T/A Primo Australia Scone Abattoir);
(i) Wagstaff Cranbourne Pty Ltd;
(j) G & K O'Connor Pty Ltd;
(k) Tabro Meat Pty Ltd;
(l) Pyramid Hill Pty Ltd; and
(m) Ashton Pty Ltd (Swan Hill);

30. Further, the AMIEU is prepared to name the following companies as having utilized 457 visa holders in unskilled labouring work:-

(a) T & R Pastoral Pty Ltd;
(b) Wagstaff Cranbourne Pty Ltd;
(c) Luturn Pty Ltd (T/A Primo Australia Port Wakefield Abattoirs);
(d) Kilcoy Pastoral Company Ltd;
(e) Pyramid Hill Pty Ltd; and
(f) Western Exporters Pty Ltd.

31. Of particular concern is that some employers have claimed to the AMIEU that they secured the prior approval of the Department of Immigration, Multicultural and Indigenous Affairs ("DIMIA") to utilize sub-class 457 visa holders in activities such as boning and slicing.

32. The AMIEU has written to the Minister requesting an investigation into this claim[10]. If this claim is correct, then a significant contributing factor to the current

[8] Teys Bros (Biloela) Pty Ltd; Teys Bros (Beenleigh) Pty Ltd; Teys Bros (Central Queensland) Pty Ltd and Teys Bros (Naracoorte).
[9] Oakey Abattoir Pty Ltd and Thomas Borthwicks (Australasia) Pty Ltd.
[10] See Appendix "B" of the accompanying material

situation is maladministration by DIMIA. As at the date of this paper, no response has been received from the Minister.

33. Of greater concern is that an independent investigation into allegations concerning the misuse of 457 visa holders by the T & R Pastoral Pty Ltd company was conducted (in part) through the auspices of the National Meat Industry Training Advisory Council Ltd ("MINTRAC"). As at the date of this paper, the final report had not been released by DIMIA and as such is unavailable for comment.

34. The report referred to above was completed and made available to DIMIA in or about July/August 2006. The reasons why it has not been released for over six months are not clear. As part of its processes, the AMIEU urges the Committee to investigate this situation and as a bare minimum, call for the production of the report before the Committee.

AREAS WHERE PROCEDURES CAN BE IMPROVED #2

1. The Committee should, as part of its activities, seek information from DIMIA as to why employers within the industry who were found to have made false business activity declarations and/or to have wrongly utilized sub-class 457 visa holders in impermissible business activities have not been held accountable for their actions by way of prosecution and/or other sanctions available to the Minister for non-compliance under the *Migration Regulations 1994* (Cth.).

2. The Committee should make an investigation into why a report currently held by DIMIA clearly relevant to compliance with eligibility requirements has been held internally for a period of over six months. As a bare minimum the Committee should insist on the production of the report.

3. Should it emerge that from this report that DIMIA were involved in maladministration concerning eligibility requirements, the Committee should call upon the current Minister to report on what corrective actions are proposed.

2.1.3 - Credible and Independent Assessment of Migrant Workers' Skills

35. An area of extreme difficulty in the meat processing industry is migrant workers being accredited to the requisite AQF qualification for nomination when in practice the worker does not truly posses the skill level.

36. Currently, practices exist whereby Registered Training Organizations ("RTO") may operate for commercial gain by assessing and accrediting overseas workers.

37. This has led to some questionable outcomes. The AMIEU is aware of overseas workers being given accelerated vocational training by RTOs to the requisite AQF III certificate level.

38. The salient example is the Warnambool College of TAFE. The Warnambool College of TAFE has been paid $500,000 to $600,000 by some Australian labour hire companies to train and assess overseas workers in China to AQF III certificate level.

39. The AMIEU has learned that other TAFE colleges have been offered similar jobs in China to train workers to AQF III certificate- with a time frame of two weeks. Those colleges (rightly) refused on the grounds that it was not possible.

40. The Warnambool college of TAFE asked MINTRAC[11] for approval of this work in China but MINTRAC refused to endorse it. Added to this is that the workers concerned were accredited on one species (Pigs) over this accelerated training period.

41. The net result is that the workers inevitably need further training when they arrive in Australia to become actually and practically competent for beef slaughtering – begging the question as to why this process could not have been undertaken using the existing workforce or those recruited from the local labour market.

42. The practices are to be deprecated and make a mockery of the carefully implemented and established qualification frameworks.

43. Given assessment and accreditation regimes are almost exclusively State based responsibilities, the AMIEU calls for Commonwealth legislative prescription in the Migration Regulations providing for strict remedial action where RTO's and their assessors are associated with subsequent skills assessment failures.

AREAS WHERE PROCEDURES CAN BE IMPROVED #3

1. The Commonwealth Government should set amend the migration regulations to make provision for the immediate cancellation of the visa of a worker who is associated with an "on-shore" subsequent skills assessment failure.

2. Further, the regulations should be amended to make provision for the suspension of all other visas granted on the basis of a qualification given by an RTO/assessor until a subsequent on shore reassessment is undertaken..

[11] National Meat Industry Training Advisory Council

2.1.4 Maintaining the Integrity of the Legislative/Policy Regime

44. In light of the public controversies concerning the use of migrant labour in the industry, the AMIEU became aware in or about July 2006 that negotiations were already well advanced between DEWB, DIMIA and the Australian Meat Industry Council ["AMIC"] for a Labour Agreement.

45. The AMIEU was opposed to this as a vehicle for addressing the issues facing the industry. It is the position of the AMIEU that the Commonwealth Government ought not to be placing itself in a position where it is seen to be condoning non-compliance, or even rewarding or legitimizing arrangements that have been reached through non-compliance, much less be seen to negotiating with those who have engaged in such practices.

46. The AMIEU advocated this position in its policy paper to the responsible Ministers at the time. A copy of this policy paper is available at www.amieu.asn.au, towards the bottom of the page.

47. Despite this, the Commonwealth continued the process of negotiations. Over the ensuing six months, the AMIEU was not directly involved in the negotiations for the Labour Agreement but did receive limited opportunities for input via the delivery of its policy paper to the responsible Ministers and meetings with officers of DIMIA and DEWR.

48. The process has resulted in Labour Agreements being reached in a couple of States. However the AMIEU maintains its original position that the Commonwealth Government should never have embarked on the process.

AREAS WHERE PROCEDURES CAN BE IMPROVED #4

The Commonwealth Government should set a policy position that it will not enter into Labour Agreements with industry associations where there are low levels of compliance within the industry with the existing migration regulatory framework.

2.1.5 Greater Accountability - Eligibility

49. Currently, to obtain sub-class 457 sponsorship for up to four years, it is as easy as filling in a form online. An employer only has to make a submission demonstrating

how "Australia benefits" from the use of overseas labour and the "commitment" of the employer to training Australian workers[12].

50. There is no explicit requirement to demonstrate that the job vacancy cannot be filled from the local labour market.

51. Curiously however, in the case of "regional certified employment", there is a legislative requirement to demonstrate that the position "cannot reasonably be filled locally"[13].

52. The rationale for the distinction, with respect, seems elusive. As a matter of fundamental economic and social policy it should surely be a requirement that the vacancy for which nomination is sought must be one that cannot be filled from the local labour market.

53. Once the nomination is approved, no serious investigation of the information provided by the employer is undertaken. No serious monitoring of how the employer is living up to its promises occurs.

54. DIMIA indicate that monitoring of the employer's standard undertakings may occur through "site visits". In reality, what happens after the employer sponsored visas are granted is that a standard form is sent by DIMIA to employers occasionally where an employer is invited to tick various boxes indicating that they are complying and merely send this form back to DIMIA.

55. The current situation demonstrates that DIMIA do not have the resources and, with the greatest of respect, the expertise, to police the current regime as it applies to the Australian meat processing industry.

56. The AMIEU proposes that as a precondition to obtaining (or continuing) sponsorship, an employer in the Australian meat processing industry must satisfy the Minister that:-

(i) In order to obtain (or continue) sponsorship of migrant workers, the employer must demonstrate to the Minister that they cannot meet their skilled labour requirements from upskilling and training its existing workforce or from the local labour market.

(ii) No employer shall be permitted to access migrant labour where they have laid off Australian workers in last 12 months.

[12] See generally r.120D of the *Migration Regulations 1994*
[13] See r.120(1)(a)(iii)

(iii) In the event that the initial criteria is met, the employer must demonstrate they have a detailed training plan in place that will ensure its existing workforce will be given a full opportunity to be upskilled and trained to address the employer's needs in the near future.

(iv) The employer must also demonstrate a strong record of training Australian workers.

(v) The employer must demonstrate a satisfactory level of compliance with existing Australian laws and industrial regulation, including but not limited to the existing migration legislation, the *Workplace Relations Act 1996* (Cth.) and any industrial instruments that have or currently apply to the employer.

(vi) Every three months the employer must submit to the Minister a detailed written report outlining progress that has been made in training and upskilling of its existing workforce and local recruitment. In particular, the follow must be detailed:

- What opportunities have been offered to existing employees to become trained to at least AQF III certificate level;
- The number of Australian workers being trained on an ongoing basis and what timeframes are expected to eliminate the need for the use of migrant labour;

(vii) Whilst the day to day administration of these matters can be handled by delegates of the Minster within DIMIA, any documentation submitted by an employer shall be forwarded to designated officers of DEWR for the purposes of allowing those officers to determine whether DEWR may be able to assist the employer with specific labour market initiatives under the auspices of DEWR.

57. It appears to the AMIEU that the Commonwealth Government may have been slightly naive in setting up the current regulatory framework, perhaps believing it would achieve certain policy ends. A mitigating circumstance is the Commonwealth Government may have been unaware of the lawless tactics that employers in the Australian meat processing industry were prepared to employ in order gain advantages in a highly competitive market.

58. Be that as it may, the AMIEU suggests that the situation demands new measures of accountability of the type suggested above to be implemented.

AREAS WHERE PROCEDURES CAN BE IMPROVED #5

Greater legislative measures of accountability must be imposed upon employers apply for or continuing to use migrant labour. In particular, the AMIEU calls for the following preconditions/measures of accountability to be imposed in any new regulatory regime:

1. In order to obtain (or continue) sponsorship of migrant workers, the employer must demonstrate to the Minister that they cannot meet their skilled labour requirements from upskilling and training its existing workforce or from the local labour market.

2. No employer shall be permitted to access migrant labour where they have laid off Australian workers in last 12 months.

3. In the event that the initial criteria is met, the employer must demonstrate they have a detailed training plan in place that will ensure its existing workforce will be given a full opportunity to be upskilled and trained to address the employer's needs in the near future.

4. The employer must also demonstrate a strong record of training Australian workers.

5. The employer must demonstrate a satisfactory level of compliance with existing Australian laws and industrial regulation, including but not limited to the existing migration legislation, the *Workplace Relations Act 1996* (Cth.) and any industrial instruments that have or currently apply to the employer.

6. Every three months the employer must submit to the Minister a detailed written report outlining progress that has been made in training and upskilling of its existing workforce and local recruitment. In particular, the following must be detailed:

    - What opportunities have been offered to existing employees to become trained to at least AQF III certificate level;

    - The number of Australian workers being trained on an ongoing basis and what timeframes are expected to eliminate the need for the use of migrant labour;

7. Whilst the day to day administration of these matters can be handled by delegates of the Minster within DIMIA, any documentation submitted by an employer shall be forwarded to designated officers of DEWR for the purposes of allowing those officers to determine whether DEWR may be able to assist the employer with specific labour market initiatives under the auspices of DEWR.

2.1.6 The Introduction of Capping on the Amount of Approved Sponsored Migrant Workers

59. As demonstrated above, there is typically a consistent number of skilled employees in any meat processing establishment. The number is generally 30%.

60. If the view is taken that ASCO classification 4511-15, Slaughterperson, is a current valid business activity nomination (which is not conceded), then even so, as a general proposition an employer should not require more than 10% of its total workforce to be skilled migrant workers. Even this figure of 10% would only be reached if every skilled position on a slaughter floor is being filled by a migrant worker.

61. However the AMIEU maintains strongly some effective measures must be introduced to prevent the "overfilling" of an employer's skilled labour needs.

62. This stance is justified on the basis that if the majority (or all) of the skilled positions in the meat industry are filled with migrant labour, the only positions remaining for the local labour force are labouring or semi-skilled labouring roles. With respect, it reduces Australian workers to second class citizens. It will also significantly reduce the attraction of the meat industry as a career, which will have compounding problems.

63. The problems lies with the current regime whereby pre-approval can be obtained of up to a given number.

64. With respect, this pre-approval is a major disincentive to training. The moment the employer secures this assurance it has migrant labour "on tap", all incentives to train and upskill its existing workforce disappear.

65. Many examples of this claim exist. The AMIEU invites DIMIA to audit those meat processing establishment with sponsored employees, and compare the raw numbers of sponsored employees with the number of skilled positions in such establishments. There are many current examples where the number of sponsored employees exceed the number of total skilled positions in the establishment. There may well even be pre-approval for more to follow.

66. There is no justification for allowing an employer pre-approval. It is at best a speculative guess as to future labour needs and it is currently being misused to overfill employers' skilled labour needs.

67. The AMIEU argues that approval should only be granted to the number of sponsored employees the employer can demonstrate it has the need for.

AREAS WHERE PROCEDURES CAN BE IMPROVED #6

1. The Migration Regulations should be amended to end the current practice of allowing pre-approval for a set number of sponsored employees.

2. The Regulations should be amended so that an employer can only obtain approval for such numbers of sponsored employees as it can demonstrate are necessary for its immediate needs.

2.2 Enforcement

2.2.1 Minimum Salary Levels – Enforcement, Suitability and "Regional Certified Employment"

68. Minimum salary levels for a sponsored employee are stipulated by legislation and Ministerial gazette. The policy purpose of fixing a minimum salary for migrant workers is best expressed in the (then) Minister's[14] press statement of 1 May 2006:-

> *Minimum salary levels have been reviewed annually by the Department of Immigration and Multicultural Affairs and the Department of Employment and Workplace Relations since being introduced in 2001 to deter employers from recruiting unskilled and low-paid overseas workers to the detriment of Australian workers.*

69. Unfortunately, there is a complicated and ambiguous framework as to which stipulated standard applies to a sponsored employee. The situation appears to be:-

(a) Standard sub-class 457 visa:

(i) employee sponsored on or after 9 April 2005: Ministerial gazette notice dated 8/6/05 specifying a minimum salary level of $39 100 per annum; and

(ii) employee sponsored on or after 1/7/06: Ministerial gazette notice dated 15/06/06 specifying a minimum salary level $41 850 per annum <u>for a 38 hour week</u>.

[14] Sen. the Hon. Amanda Vanstone MP, Minister for Immigration and Multicultural Affairs.

(b) – "Regional Certified Employment"[15]:

(i) employee sponsored prior to 1/7/06: the remuneration required by Australian law and any applicable industrial instrument; and

(ii) employee sponsored on or after 1/7/06: Ministerial gazette notice dated 15/06/06 specifying a minimum salary level $37 665 per annum for a 38 hour week.

70. The Ministerial gazette notice dated 15/06/06 was an obvious attempt to plug a deficiency. The previous gazette notices stipulated a minimum salary per annum but did not specify whether the earnings were to be ordinary time earnings or a gross of all amounts paid to the worker, whether though overtime payments or the like.

71. It was quite possible for an employer to work a sponsored migrant worker for an oppressive amount of hours each week and reach the minimum salary level stipulated per annum- an artifice that is contrary to the intent of stipulating such a minimum salary.

72. The AMIEU holds a reasonable suspicion that several meat industry employers are not complying with the various requirements imposed by this complicated framework. The AMIEU has detailed its concerns to the Office of Workplace Services ("OWS") and requested an investigation.

73. The investigation into the matters raised by the AMIEU is extant and for that reason will not be canvassed at length or repeated in this submission. The important point however is that the situation has highlighted three major policy deficiencies:

(a) the minimum salary levels stipulated by gazette notice appear to be only enforceable via civil action on the part of the migrant worker- a daunting proposition for a migrant worker in a foreign country for a limited duration of time with (presumably) no knowledge of the local legal system and perhaps without a basic command of the language; and

(b) The OWS has undoubted jurisdiction to investigate alleged non-compliance with formal industrial instruments and

[15] See r. 120GA of the *Migration Regulations 1994* (Cth.)

alleged breaches of the *Workplace Relations Act 1996* (Cth.). However its jurisdiction to investigate non-compliance with gazetted minimum salary levels appears questionable, to say the least.

(c) Leading into the next topic (deductions), there is currently a lack of clear guidelines as to what matters that are the subject of wage deductions are to be (or not to be) taken into account in determining whether minimum salary levels have been met.

74. The important point is that the result of this is an **extremely fragmented regime of regulation that is not readily ascertainable or clearly enforceable**.

75. The AMIEU seriously questions the utility of the current "regional certified employment" provisions of the regulations. The meat processing industry is a good illustration of how this distinction is unjustified.

76. The industry is characterized by its almost exclusively regional base and the fact that all processors compete for the same commodity (livestock), compete in a labour market for the same skilled employees and, generally, all compete for the same markets.

77. There appears to be no good reason in this environment as to why different provisions based on regional/metropolitan distinctions should exist, nor should any labour costs regime (by way stipulated minimum salaries) be the subject of differing regulation.

78. Against this backdrop, the AMIEU submits that the following reforms are necessary.

79. Firstly, in order to make minimum salary levels enforceable, legislative change is required to bring them under the enforcement regime contained in Part 14 of the *Workplace Relations Act 1996* (Cth.) ("WRA").

80. Any one of a number of methods could be used, however the easiest would be to make a simple amendment to the WRA to give these minimum salary levels the same enforceability status as workplace agreements and awards under the WRA. This of course would also tidy up any jurisdictional problems that exist with the OWS.

81. Secondly, in order to more fully buttress the policy objective that migrant workers should not be viewed as a cheap alternative workforce, some further rigidity in the prescription is of minimum salary levels is desirable.

82. The AMIEU welcomes the recent introduction of minimum salary levels based on 38 ordinary hours, but suggests that further refinement is needed in the form of a stipulated as a gross amount per annum rate, a weekly rate based on 38 hours and a minimum hourly rate.

83. The AMIEU also doubts that this prescribed minimum salary levels is in fact commensurate with earnings of skilled employees across the industry, or indeed other industries. The "one size fits all" prescription may not be achieving the objectives behind making such prescription.

AREAS WHERE PROCEDURES CAN BE IMPROVED #7

1. Part 14 of the WRA should be amended to allow minimum salary levels stipulated for migrant workers to be enforced in the same manner that collective agreements and awards may be enforced.

2. Any minimum salary stipulation should be expressed in terms of a minimum annual, weekly and hourly rate.

3. A thorough review should be conducted to determine whether the "certified regional employment" regime is appropriate for all industries, particularly the meat processing industry.

4. A thorough review should be undertaken to determine whether the "one size fits all" minimum salary gazettetal rates are in fact achieving their ends in particular industries, particularly the meat processing industry, and whether higher prescription is justified in respect of any industry.

2.2.2 Deductions

84. The Ministerial gazette notices stipulate forms of remuneration and expenses that are to be excluded from the calculation of the stipulated minimum salary levels.

85. For example, the Ministerial gazette notice of 15/06/06 sets out at point 2 the following:

> *2. SPECIFY a gross annual salary of AUD 41,850 EXCLUDING those items listed in Schedule A to this Instrument, calculated on a 38 hour week, as the minimum salary level for the purposes of the definition of minimum*

salary level in regulation 1.20B of the Regulations, for the occupations listed in Schedule B to this Instrument;

86. Schedule A then sets out the follow items that are excluded from the calculation of the minimum salary level:

SCHEDULE A

- *Salary packaged items; or*
- *Accommodation or rental assistance, board, upkeep, meals or entertainment; or*
- *Incentives, bonuses or commissions; or*
- *Shares or bonus shares; or*
- *Travel, holidays, health care/insurance; or*
- *Vehicles or vehicle allowances; or*
- *Communications packages; or*
- *Living-Away-from-Home-Allowances;*
- *Superannuation contributions (either voluntary employee or compulsory employer contributions); or*
- *Any other non-salary benefits or deductions not included in the above, with the exception of Medicare benefits received as a fee for service by medical practitioners.*

87. The policy purpose of fixing a minimum salary for migrant workers has been identified above. Following from this, the AMIEU infers that the above gazettal provisions that the stipulated minimum salary was not to be reduced or diminished in value by simply deducting a range of expenses and/or including a range of non-monetary benefits to make it up.

88. Unfortunately, the provisions are ambiguous. The AMIEU has raised this with the Secretary of DIMIA and sought his advice on how DIMIA would apply the provisions to a range of practices that currently occur within the meat processing industry.

89. In summary however, the range of practices that are currently occurring within the meat processing industry are as follows:-

(i) Housing/accommodation. A widespread practice is that the sponsoring employer arranges accommodation for migrant workers who then agree to a contractual deduction from their wages each week in payment for the same.

On one (literal) reading of the gazettal notice, these amounts should not be included in the migrant worker's wages for the purpose of determining whether or not the worker has received the gazetted minimum salary.

Further, whilst many employers seek to impose charges for accommodation on essentially a cost/outlays recovery basis, there are instances where the cost of the accommodation that has been charged clearly outstrips the actual cost to the employer. This is naked profiteering of a reprehensible nature.

Other services associated with the provision of accommodation are also the subject of like practices to the above, including electricity and other utility services, furniture rental and transport to and from the provided accommodation.

(ii) Airline/travel expenses. There is a common practice in the industry whereby the cost of travel to and from the country of the sponsored employee's origin is paid for by the employer, however then recouped from the employee via deductions from the sponsored employee's wages over the first 12 months of employment.

The practice appears to be clearly contrary to law at least so far as the cost of return airfares is concerned[16]. Again however, on a literal reading of the gazette notice all deductions for "travel" are not to be taken into account for the purposes of calculating whether minimum salary levels have been met.

(iii) Medical insurance. There is a widespread practice of sponsoring employers arranging medical insurance for sponsored employees and then deducting the cost from the employee's wages.

It seems quite clear from the gazettal notice that such cost is not to be included in the employee's wages for the purpose of calculating whether minimum salary levels have been met.

(iv) Employment premiums/"spotters fees". A deplorable practice exists in relation to employment premiums being imposed by recruitment agencies both in Australia and abroad for the service of finding work within Australia for migrant workers.

One of the most significant examples involves a local Australian company taking an ongoing 8% "skim" from the wages of the sponsored employee whilst the employee works in Australia.

[16] See r.1.20CB(a) of the *Migrations Regulations 1994* (Cth.).

Another involves a $2000 charge imposed by an overseas recruitment agency which is recovered by 40 weekly deductions of $50 from the worker whilst working in Australia.

The practice is deplorable "body hire". It is the subject of some State legislative prohibitions throughout Australia[17]. It is illegal in some States for any of these costs to be met from via deductions from a workers wages, by any means. There appears to be a legislative gap however at the federal level, and extraterritorial issues also place some of these arrangements outside the State legislative framework.

90. The AMIEU is prepared to state publicly that if the range of deductions raised above were not intended to be included in the employee's wages for the purpose of calculating whether minimum salary levels have been met, then compliance with minimum salary levels by employers across the Australian meat processing industry would be very low.

91. The AMIEU estimates that currently up to 40% of the wages being paid to migrant workers in the meat processing industry are lost to such deductions. The estimate may well be conservative in some instances.

92. The essential point commanding recognition is that a clearly articulated policy position is being undermined and diminished by these practices.

93. Currently, there is a system of State legislation across three States that generally prohibits the immoral practice of a recruiting agency charging a worker a fee, commission or premium (however described) for obtaining employment for the worker. Many of the legislative provisions allow for such unlawful payments to be recovered by the worker concerned[18].

94. There appears to be no comparable provisions in the *Trade Practices Act 1974* (Cth.) ("TPA"). It leaves a gap as most of the State legislation deals with transactions as between workers resident in the State and those entities within the State that may be demanding the payment of illegal premiums. Most, if not all, of the recruitment agents who may be engaging in this practice are of course based in overseas jurisdictions.

[17] See footnote 17.
[18] See s.408D of the *Industrial Relations Act 1999* (Q.); s.60Q of the *Fair Trading Act 1987* (NSW); s.36 of the *Employment Agents Act 1976* (WA).

95. The AMIEU takes the fundamental position that any costs associated with the recruitment of migrant workers should be borne completely by the employer. The opportunity for employment is not a commodity to be bartered for or paid for.

96. The AMIEU calls on the Commonwealth Government to implement new legislative provisions in the TPA that ban any constitutional corporation in Australia from being a party to or otherwise involved in such arrangements, whether the constitutional corporation's involvement is:-

(a) Active, i.e. by facilitating it by making deductions and remitting them to any other person or entity; or

(b) Passive, i.e. merely trading with an another person or entity whom the constitutional corporation knows, or should reasonably know, is engaging in practice of charging employment premiums.

97. Further, where a constitutional corporation in Australia is found to have been involved in these practices in any way, a statutory right of recovering any losses resulting to the employee should be conferred.

98. As a good starting point, the basis of the provisions sought could be lifted and adapted from s.60Q of the *Fair Trading Act 1987* (NSW).

99. The AMIEU also takes the position that any other deductions associated with utilizing migrant labour should be borne by the employer, i.e. accommodation, provision of utility services, transport and travel expenses and medical costs.

100. Allowing employers to recover such expenses merely undermines the complete purpose of stipulating a minimum salary. Further, it leaves open the possibility of Australia's international reputation being brought into disrepute when some of the net earnings of workers who migrate to Australia are made known. Finally, if there is need to attract labour from international markets it will not be assisted by practices that leave the migrant worker little or no better off financially through coming to Australia to work.

101. At the very least, some attention is immediately required to make clear what are permissible and impermissible deductions and what deductions cannot be brought into account in determining whether minimum salary levels have been met.

102. Without derogating from its primary position, the AMIEU suggests that if the Commonwealth Government is prepared to allow a range of deductions that are currently in practice to continue being made, it should make provision to prevent

exploitation by stipulating in any new regulatory framework that any expenses agreed to be deducted from a migrant worker's salary should be on a strict costs recovery basis only.

103. As an ancillary to this, a statutory right of reclaiming any amounts deducted above and beyond a reasonable costs basis should be conferred to migrant workers.

AREAS WHERE PROCEDURES CAN BE IMPROVED #8

1. The Commonwealth Government should amend the TPA to make provision to make illegal any involvement or assistance by a constitutional corporation in Australia with any person or entity who are charging employment premiums, commissions or any other like payment for obtaining work for migrant workers in Australia.

2. Further, a statutory right of recovering any such amounts charged or paid should be conferred on any worker who has been the subject of such practices, the recovery coming from the constitutional corporation who was involved with or assisted the transaction.

3. In any new regulatory framework, it should be made unambiguous that expenses arising from the use of migrant workers are to be borne by the employer (including accommodation, provision of utility services, transport and travel expenses and medical costs) and are not to be brought into calculations as to whether minimum salary levels have been met.

4. Without derogating from the above, at the very least some form of regulatory provision is required to prevent charges being made by employers that exceed a reasonable "cost recovery" amount. Ancillary to this would be provision allowing for the recovery of amounts that have been charged that are above and beyond a reasonable cost recovery amount.

APPENDIX A - THE AMIEU POLICY ON THE USE OF TEMPORARY MIGRANT LABOUR

1. No migrant workers should be utilized where there are Australian workers qualified and available to fill a vacancy.

2. Where an Australian worker could be trained in a short period of time to cover a vacancy, this should occur before resort is had to temporary migrant labour.

3. If migrant workers are utilized, it should not be on the basis of bringing them to Australia and then training them to do the job- such a process should have been undertaken with local labour.

4. Migrant workers should not be brought into Australia to perform work which is not regarded as skilled work.

5. The use of temporary migrant labour should be viewed only as a short term means to the ends of assisting in the training of Australian workers to ultimately perform the skilled tasks.

6. No employer shall be permitted to access migrant labour where they have laid off Australian workers in last 12 months.

7. No employer shall be permitted to access migrant labour until they can establish with cogent evidence that they cannot meet their meets by upskilling their existing workforce or by recruiting from the local labour market.

8. No employer shall be permitted to access migrant labour until they can establish they have a training plan in place and a strong history of training.

9. In the case of a clearly demonstrated skill shortage that is likely to continue for a lengthy duration, migrant workers should enjoy some reasonable security of permanent residence.

10. Migrant workers should not be exploited by employers and have the right to the prevailing rate of pay, decent accommodation and fair and ethical treatment in relation to other expenses that arise from their status as overseas workers. If this is

achieved, it will protect the workers concerned and also eliminate a view that they are a cheap form of alternative labour.

11. Overseas workers should not be discouraged from joining the Union and their right to join the Union should be made known to them.