

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 24 March 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE17/249) - Award for non-457 visa holders - Programme 2.3: Visas

Senator Macdonald, Ian (L&CA 37) asked:

CHAIR: Can you help, Minister, from your wide experience in this area?

Senator Cash: Sorry, could you repeat the question?

CHAIR: Non-457 visa holders who work in the fast-food industry or in the fine-dining industry are covered by an award.

Senator Cash: Correct.

CHAIR: I am trying to clarify whether 457 visa holders have a different set of rules but are the same as—

Senator Cash: Correct. You need to employ someone in accordance with Australian law, but the rules and terms of the 457 visa program are more in relation to whether or not there is actually a need for the particular person to come into the country. So you need to actually show the department that there is a demonstrated need.

CHAIR: But having got to that position—

Senator Cash: Yes. Then the salary must then be a minimum of the Temporary Skilled Migration Income Threshold—that is the absolute minimum. So you often find that employers will state, 'It is more expensive to employ someone coming in from overseas than it is to employ a local because of the basic flaw in the salary,' which is obviously much, much higher than the minimum wage.

CHAIR: It could be more, but it could not be less.

Senator Cash: It cannot be less because it is TSMIT or the market rate. If the TSMIT is \$53,000 but the market rate of \$62,000, unless I am wrong you will need to pay \$62,000. You cannot pay less than what the Australian standing next to you is being paid.

Senator WATT: Is that the award?

Mr Manthorpe: The award or the industrial instrument or the—

Senator Cash: Or the market rate. Whatever is the higher.

Senator WATT: There is obviously an important distinction. I could imagine that under a labour agreement people might not be able to be paid below an award rate, given that is the minimum safety net, but it would be conceivable for them to be paid below what an enterprise bargaining agreement pays in a particular workplace.

Mr Manthorpe: I am not sure about that. I think it more pertains to the rate that applies in the enterprise, but this is—as you will appreciate—a technical and complex area. None of us want to mislead you, so I think we are best taking this on notice. I note, in passing, that two or three weeks ago, when we were in the other room, we took on notice a series of questions about providing the actual labour agreements, and we will provide those by the due date. And then all of these details will be evident for all to see.

CHAIR: Could you add to that question on notice by providing me also with the award for non-457 visa holders, so we can make our own assessment on whether they are the same or different?

Mr Manthorpe: Indeed. We are happy to provide the committee with information about that—

CHAIR: Finally, from me, on this—perhaps this is not the right estimates committee to ask this—how long has the current non-457 visa award been in place and who was that negotiated

between? I assume it is the Fair Work Commission and a union. I am, simply, wanting to know which union.

Mr Manthorpe: If we are not talking about the pay rate payable to 457s pursuant to the TSMIT, then you are really outside of this portfolio. You are really into the mainstream of the workplace relations system.

CHAIR: I am, but I am cheating a bit—I see the minister, here, is that minister and I thought she might take it on notice if she cannot tell me off the top, even though it is not strictly this portfolio.

Senator Cash: Let us take it all on notice so we can ensure that the correct information is provided to you—in particular, just for the Hansard record today, noting that these are longstanding programs across governments. Whether it is a Labor government or a coalition government, they are longstanding programs.

CHAIR: You have made that clear.

Answer:

Employees in Australia who are covered by the national workplace relations system – including migrant workers and temporary visa holders – are entitled to the minimum employment conditions contained in the *Fair Work Act 2009*, awards and agreements.

Labour Agreements cannot vary applicable Australian workplace law. As such, Temporary Work (Skilled) visa (subclass 457) holders entering Australia under a Labour Agreement should not be paid below the “Enterprise Bargaining Agreement” in a workplace.

For the fast food industry, the relevant award is the *National Fast Food Award 2010* and the relevant union is the Shop Distributive and Allied Employees Union (SDA). Some areas of this industry do, however, also have their own Enterprise Agreements.