

## QUESTION TAKEN ON NOTICE

### SUPPLEMENTARY BUDGET ESTIMATES HEARING: 30 October 2006

#### IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

#### (163) Output 1.1 Migration and Temporary Entry

Senator Evans (L&CA written) asked:

1. Does the Migration Act provide any protection for 457 visa holders from being sacked for the purpose of forcing them out of the country?
2. Is the Department aware of a 457 worker lodging an unlawful dismissal but being forced to leave the country before the matter was heard?
3. Does the Department provide any assistance/support to 457 workers who claim to have been unlawfully dismissed?
4. Under the Act can the Department take into account an employer's history of unfairly dismissing employees when determining whether to approve them as a sponsor for future 457 visas?

*Answer:*

1. 457 visa holders have the same protections from dismissal as any other worker in Australia; where a 457 visa holder is lawfully dismissed the sponsorship undertakings continue for 28 days after the sponsor notifies the department of cessation of employment. During this time the visa holder has the option to pursue alternate visa arrangements such as finding a new sponsor. The visa holder should also continue to be paid the Minimum Salary Level by the sponsor during the 28 days.
2. DIMA is unaware of a case where a 457 visa holder lodged an unfair dismissal case but was then forced to leave the country before the matter was heard. DIMA is aware of cases where a visa holder left Australia whilst their unfair dismissal case was being heard. These persons can apply to DIMA to return to Australia for the court hearing.
3. If a visa holder advises they have been unlawfully dismissed DIMA will refer the matter to the relevant workplace relations agency. If there are pending unfair dismissal claims officially lodged with the relevant agencies, DIMA will ensure that the visa holder remains on a valid visa for the duration of the case. If the visa holder does wish to leave Australia however, their visa may be administratively cancelled and the visa holder required to apply for a new visa to return to Australia.
4. Yes.