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JOINT STANDING COMMITTEE ON MIGRATION

Reference: Temporary business visas

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JOINT STANDING COMMITTEE ON

MIGRATION

Wednesday, 14 March 2007

Members: Mr Randall *(Chair)*, Senator Polley *(Deputy Chair)*, Senators Bartlett, Eggleston and Parry and Mr Laurie Ferguson, Mrs Irwin, Mr Keenan, Dr Lawrence and Dr Southcott

Members in attendance: Senators Parry and Polley and Mr Randall

Terms of reference for the inquiry:

To:

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; and
2. Identify areas where procedures can be improved.

WITNESSES

Committee met at 9.27 am

BISSETT, Ms Michelle, Industrial Officer, Australian Council of Trade Unions

TATE, Ms Alison, International Officer, Australian Council of Trade Unions

CHAIR (Mr Randall)—I declare open the first public hearing of the Joint Standing Committee on Migration's inquiry into temporary business visas and welcome everyone here today. The committee it inquiring into the adequacy of current eligibility requirements and the effectiveness of compliance arrangements for temporary business visas, particularly the temporary business, long-stay, standard business sponsorship subclass 457 visa and labour agreements. I welcome the representatives from the Australian Council of Trade Unions to this public hearing.

Although the committee does not require you to give evidence under oath, I advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The committee has received your submission and it has been authorised for publication. I invite you to make a brief opening statement if you wish before we proceed to questions.

Ms Bissett—Before I start my statement, I point out that there is a comment in our submission that I think could be misread and misunderstood. At paragraph 76, the last statement, says that 'non-payment of the specified rate of pay, however it is derived, must be enforceable through the Office of Workplace Services.' I think it is actually 'payment of the specified rate of pay' should be enforceable through the Office of Workplace Services.

CHAIR—It is not paragraph 76. Is it 71?

Ms Bissett—Sorry, paragraph 77. The last sentence currently reads, 'non-payment of the specified rate of pay, however it is derived, must be enforceable through the Office of Workplace Services.' It should read, 'payment of the specified rate of pay, however it is derived,' should be enforceable. We want to enforce the payment, not the non-payment.

CHAIR—Would you now like to proceed with your opening statement?

Ms Bissett—Yes, thank you. The ACTU believes that Australia's current and future skills requirements can be best met through a joint strategic approach to training, retraining and up-skilling founded on a recognition of the principles of broad-based qualifications and portability of qualifications, effective labour market planning and forecasting, industry planning and, where necessary, permanent skilled migration. We believe that the issue of temporary skilled migration is intrinsically linked to the question of skills and skill development and industry planning. Beyond this strategic approach, if temporary skilled overseas workers are required, their use must be properly targeted, be founded on sound regulation, and protect both the temporary workers and Australian workers.

We have been concerned for some time about the recent almost exponential growth in both the numbers of visas granted and the change in the categories of qualifications of employees for

which the visas have been granted—so, both the numbers and the types of skills that are required by those employees. It is our view that the current issues arising from the growth of the use of 457 visas cannot be fixed by mere tinkering around the edges of the 457 visa program. In this respect, we believe a full regulatory overhaul of the system is required. Regulation needs to be tightened, not loosened as suggested by some submissions to this inquiry, to protect those who are most open to exploitation through the operation of the system—that is, the temporary overseas skilled workers. Exploitation does occur. The ACTU understands that a number of unions have been invited to appear before the committee, and they will provide specific details to the committee of exploitation of overseas workers in their particular industries.

The other group that suffers through the current unlimited use of 457 visas is the Australian workers who are not given training opportunities and not given access to skills development because the work that they might do is actually being taken by 457 visa holders. Any sound temporary skilled overseas worker program must be attended by proper labour market testing, evidence of specific employer investment in training, and proper regulation of fees and charges. That should include: control of charging of costs back to workers; sound regulation of employment conditions for the overseas workers; appropriate processes for ascertaining the skill levels and qualifications of the temporary overseas workers; improved monitoring and appropriate sanctions against employers who abuse either the workers or the regulatory system that has been established; and no differentiation based on geographic locations in terms of skill levels or salaries paid.

There is one thing to say of regional variations, however, and it is quite important to be understood. We believe that there are regional variations in unemployment rates and under-employment rates, and the Australian Bureau of Statistics figures support that. A critical failure of the current 457 visa system is that once a job is put on to the skills shortage list, the system deems that there exists a nationwide shortage, or treats a category of skill on the skills shortage list as if it were a nationwide shortage, such that it is then open to employers anywhere across the country to apply to bring in workers under the 457 scheme, even if there is no shortage of the skill in the area in which the employer is working. So, the placement of welders, for example, on the national skills shortage list, because of a shortage in Western Australia and Queensland caused by the resources boom, then leaves it open to an employer in Ballarat in Victoria to bring in welders under the program, even though there may be no shortage of welders in Ballarat. So the placement of skills on the skills shortage list then opens it up to any employer, regardless of the skill or labour situation in their particular area, to utilise the 457 program.

In that respect, there is a basis for some regional controls over the use of the 457 visa program. There is, though, in our view no justification for regional exemptions for minimum skill requirements or changes to the salary levels based on regional areas. A failure to attract employees by an employer is a multidimensional issue and requires, in our view, a multidimensional approach to resolving that particular issue. In that respect, the 457 visa program should not be seen as a panacea to the problems of skills shortages or labour shortages, As I said at the beginning of my statement, it should be built into programs associated with proper labour market forecasting, proper industry planning, and appropriate skill development. I should be clear in concluding that, where there is no other option, the ACTU does not oppose the use of temporary overseas skilled workers. Such programs, however, must be subject to sound regulation and compliance.

In terms of two other matters that do float around the temporary skilled migration issue, I should make it clear that the ACTU is opposed to the temporary migrant apprenticeship program, which is the subclass 441 program, and we are most concerned about the recent reports regarding 442 visas, which are traineeship type visas, and the apparent abuse that is occurring within that particular program. We believe there is probably some need for there to be an investigation into the use and abuse of the 442 visa program as well.

CHAIR—Thank you very much for your opening statement. We also note your comprehensive submission to this inquiry; there is much more detail there as well. I will start with a few observations and questions, and then I will leave it open to committee members for their questions. At the outset, it appears to be your contention that the whole system—unless I have misinterpreted you—needs to be taken away and revamped in terms of temporary skill visas. How would you go about this?

Ms Bissett—My understanding is that when the 457 visa program, if I can use that shorthand for it, was first established, it was directed towards resolving issues associated with the IT industry and at the manager and administrator level. It was seen as a program to support what were identified shortages in those probably ASCO I and II levels—the top two levels in the classification scheme. In that respect, you would probably say that, at the time, it was directed at quite relatively high-income earners, certainly white collar, and to a certain extent, people who were beyond what we would call the traditional award system in this country. My understanding is that it had a very clearly defined target.

Since that time, the application of it and the group of skills that it applies to has grown massively. If you look at the skills shortage list that is applicable to this particular program, it has grown at a rate of knots. It seems that a program that was set up to deal with a specific issue has now been given quite general application—

CHAIR—Are you suggesting that there is not a workforce and skills shortage in the more traditional skills? Are you saying it really did not apply to them initially?

Ms Bissett—I think there are some labour shortages in parts of the country, and that is attended, obviously if there is a labour shortage, with a shortage of skills in parts of the country. As I said in my opening statement, one of the problems with this program is that, once a skill gets onto the skills list to which this program is applicable, access to the program occurs nationwide. So it is not actually a targeted program. If there is a shortage of welders in Western Australia, the way the program operates enables an employer in Ballarat, Burnie, Hobart or Sydney, wherever, to utilise the program. There is nothing in the program that says: 'This is about welders in Western Australia. It is about trying to find some solution to the problem in Western Australia.' In that respect, the program is not directional in identifying and trying to find a solution to a problem.

CHAIR—I take your point on that, but we are going to do further checking through the committee just to make sure that DEWR's website and lists, if they are suggesting what you are saying, are looked at as well. My understanding is that they do specify locations and regions in Australia of workforce shortage and skills shortage rather than a national approach as such. That will be interesting for us to cross-reference your concerns.

However, in my state of Western Australia, for example—and I know that we are unique; there is a two-speed economy in this country at the moment—we have projects there which Australian workers would like to be involved in, yet because they cannot have a certain skill set available, some of these projects just cannot get off the ground. That would affect potential opportunities for your workers in regions because one specific group of skills cannot be sourced. By importing temporarily, let us say, welders or sheet metal workers or some other traditional trade to that start-up, that then denies the rest of your workers the opportunity to get a job in that particular project. So, from the Australian Council of Trade Unions' point of view, how do you respond to that?

Ms Bissett—That takes me to the absolutely joined issues of the 457 visas, which is the skilling issue, and the access to training through the vocational education and training system for people who do not have skills but who may like to move into and take up the opportunities that exist at the moment in places like Western Australia and Queensland in particular. It is our view that one of the areas that needs to be examined is the delivery of skills and training to Australian workers. Australian workers should be our first port of call to do the work that exists on our shores.

What we need to do is ensure that we have in place access to proper structured training programs that deliver proper qualifications to work that set up those workers, not just to do the work that is required in the next couple of years but which gives them the capacity to move as the economy moves, and move into other areas where their skills can be utilised as well. The solution to the skills shortage is not to provide short-term enterprise specific skills and training to workers today but to make sure that we are delivering broad-based qualifications and outcomes that will set up those workers for today and for 10 years' time.

CHAIR—I understand that, but the fact of the matter is that, with a national unemployment level of about 4.5 per cent and, as we know, it is at 3.1 per cent in Western Australia, the employers tell me that they are sick and tired of wasting enormous amounts of money advertising either on the internet or in broadsheet newspapers trying to find workers. You are talking about national training, and I understand that is for the future, but these employers have a problem right here and now.

One of the programs that the federal government is currently running is the relocation in areas from around Australia where there are employment black spots, and I think it provides $5,000 to help with the costs in relocating workers from areas where there are higher unemployment levels. That program is there, but I understand it is not being taken up that readily. People may not wish to shift, et cetera, but I have also seen articles in the Western Australian media pointing out people who have shifted.

The problem then, which I extrapolate, is the fact that when they get there, there is not much in the way of accommodation. In saying that, we have a problem—and this current temporary visa would, on the face of it, appear to give a solution. Unless you can correct me, I think we are talking at crossed purposes. You are talking about the long-term training and needs, and I do not think anyone would disagree with you that we need to continue to train and up-skill Australian workers. But the here and now requires an opportunity to bring in workers within, sometimes, a timeframe of one month to satisfy workforce shortages.

Ms Bissett—If there is an immediate need that cannot be satisfied locally, the next step in the process must be permanent migration. No one is suggesting that the resources boom will end next year. I think a lot of people are actually counting on it going for quite some time to come, and the forecasts certainly are that it will continue for a number of years. Permanent migration needs to be the next step in the process. But what I have said is that if the skilled labour is not available now, and permanent migration is not going to solve the problem, then, yes, temporary skilled migration may be a solution. However, we say that it needs to be packaged with the full suite of solutions.

CHAIR—So you are not opposed to 457 visas per se at the moment?

Ms Bissett—No. Not if they are properly regulated, if there is proper compliance checking of the system, and if the workers are protected. But it needs to be done in conjunction with the commitment by those employers to investment in training, so they cannot see that the solution to their problem is a 457 program. They need to see the 457 program as a mechanism of filling the gap until more trained workers can come through the system.

CHAIR—Two things come out of that: one is that you are aware that 457 visas have a migration outcome ultimately if the worker wishes to take up that option? So, after two years and they roll it over, the work history allows them to then apply for permanent residency, which then leads to a migration outcome, unlike, say, a guest worker in Italy who never gets the opportunity to become a citizen of that country. This does allow people to become citizens, and I understand that that is happening in a number of cases. So it does give an outcome for citizenship.

Ms Bissett—Yes. We recognise the absolute difference between the 457 visa program and guest worker programs, which we oppose absolutely. Our concern is that during the four-years that they are on the 457 visa we ensure not only that they are protected but also that the employers do not think that this is the solution to an under-investment or lack of investment in training. They need to be doing both. If there is a shortage, certainly we understand that they may need to fill those vacancies relatively quickly and use something like the 457 program to do it. However, they must also be investing in training.

I am aware that part of the application process to be a sponsor of the 457 program requires employers to show their investment in training. We are not convinced that that monitoring by the department is rigorous enough in terms of the checking that is done on investment in training. We also think that it needs to be more than just their past investment; the 457 approval process has to be in conjunction with ongoing training. The other thing that is not done with the program as a matter of course is a requirement that 457 visa holders pass on some of their skills to Australian workers. We are concerned that the 457 visa holders who come and work for a period and then leave are not actually adding to the skill stock in Australia. We do not necessarily end up any better off. It could be that some of them do pass on their skills, but there seems to be no requirement that I have come across in the program to encourage that.

Senator POLLEY—I would also like to place on the record my thanks for your very detailed submission. You have touched on your concerns in relation to the lack of training. Your submission and others mention concerns about salaries. Can you elaborate on your concerns? Do you have any accounts that you can place on record in relation to the experience of the ACTU?

Ms Bissett—Are you asking about particular problems for 457 visa holders in terms of their rates of pay?

Senator POLLEY—Yes.

Ms Bissett—One of the things that concerns us about the 457 program is the question of labour market testing. It is associated with the rates of pay and the conditions that are then afforded to 457 visa holders. Our concern now is that there is no labour market testing that is required to be undertaken by employers prior to seeking approval for the 457 program. That leads to ludicrous situations similar to that which occurred in Ballarat, where MaxiTrans—I think that is the name of the company—was given approval to bring in welders from China under the 457 program. There was a group of half-trained welders in Ballarat who were not afforded the opportunity to take the jobs.

Part of the problem is that the going rate for welders in Ballarat is well above the minimum salary levels that are established for the 457 program. That means that the welders who came in from China were being paid less than Australian welders who were working in Ballarat. Part of the reason for utilisation in some circumstances—and I need to make it clear that this is not true of all employers—is that employers will see the 457 program as an opportunity to pay less than the going rate. Our system of workplace regulation is very much an enterprise-based approach. That means that there is clearly not a specified rate of pay for welders in Ballarat, but there is a generally recognised rate that is paid because employers need to pay approximately the same to make sure they attract the available workforce. So, we end up with situations where employers can use the 457 visa program to pay less than the market rates of pay.

CHAIR—The market rate might not be less than the award rate, would that be right?

Ms Bissett—The market rate will always be higher than the award rate, absolutely, and may well be higher than the minimum salary level that is specified in the regulations for 457 visa holders. Manipulation of the enterprise rate is the issue. Because we do not have industry rates of pay, they may actually be less. An enterprise may not have a specific enterprise agreement, so it would be paying only the award rate. Sorry, I have confused myself there. The point I am making is that we are concerned about the lack of labour market testing and the requirement of an employer to test the market and see whether labour is available at the rate that is generally paid within the market. Because there is no requirement to show that they have attempted to find labour or that they have attempted to find labour at a relevant rate of pay that leaves the system open to manipulation.

We also end up with situations such as the case of the printers at a company called A Print in Melbourne, for which the AMWU will provide you with specifics. The printers were not being paid appropriate overtime rates of pay and were working longer than the 38-hour week, but not being paid appropriately for the excess hours.

They were having enormous amounts of money deducted from their pay for rent, entertainment—which is what the TV was classified as—and other costs such as electricity and so on. So, through the non-compliance and lack of knowledge on the part of the 457 visa holders about their rights and entitlements, and their access to support and assistance, we ended up with a number of workers who were being exploited, one of whom was then kicked out of the

accommodation when he complained to the union about his treatment and the matter became public. So there is a whole range of issues that are associated with compliance as well as the rates of pay and deductions from pay.

It seems that often 457 visa holders get stuck in a bind where they do not know where to go to get key issues associated with their conditions of employment resolved. They are often afraid to go public because they are in the precarious situation of not having residency and of the employer being able to withdraw sponsorship at any time, which then puts them on a track out of the country, and that places them in a quite vulnerable situation. In our view we need to ensure that we are developing compliance programs and that information is provided to 457 visa holders that gives them the points of access out into the wider protection systems that are available to them that they probably may not know about.

Senator POLLEY—You have highlighted some of the abuses within the program in terms of those people who have deductions made from their salaries. How can the department better monitor that? I can draw that back to the training as well in terms of supervising or monitoring to ensure ongoing training. As I see it, this is a good stopgap measure to help us top up with some of that experience and expertise that we do not have. But if we are not going to be sure that we benefit from it from the country's point of view, then we are missing a great opportunity. Can you elaborate there?

CHAIR—Do you mind if I just support your question, and that is that you go further, from your submission, in relation to your views on the monitoring and compliance arrangements made by the department? I think that is certainly central to our terms of reference.

Senator PARRY—Could I also ask that Senator Polley add to it 'alleged' abuses? These are not factual at this point in time, so I think we need to be careful.

CHAIR—Unless the representatives can give us some specific cases, yes.

Ms Bissett—Certainly we would suggest that the printers in Victoria were subject to abuse. My understanding is that the Victorian Employment Advocate is currently investigating at least two cases that have been referred to his office, so the outcomes of those—

Senator PARRY—So they remain as allegations. I am not disputing what you are putting forward, but they remain as allegations at this point in time.

Ms Bissett—Yes. I am not quite sure at what point they become proven. I am not sure what process 457 visa holders go through, but yes, I take your point. There are a number of issues that go to the monitoring of 457 visa holders. First of all, you need to have the appropriate regulatory regime. Once you have established the proper rules, proper behavioural standards and so on for employers and 457 visa holders, you need the resources within the department or elsewhere to ensure compliance. Compliance obviously does not involve 100 per cent checking, and I do not think that anyone would suggest that someone from the department needs to go out to every workplace and see every 457 visa holder and every employer every six months.

CHAIR—So you are saying 100 per cent is not realistic?

Ms Bissett—No. Let us be realistic about it—I do not think it is. I am sure the department would love the resources, but I do not think they are about to be made available. But resourcing the compliance area and resourcing within the department some area that is responsible for having some ongoing relationship with sponsoring employers and with the 457 visa holders is important. The 457 visa holders need to know what resources are available to them in terms of their being able to complain or seek advice and assistance about their circumstances. One of the problems that exists is that 457 visa holders often will not raise their concerns because of the threat of loss of sponsorship. The current departmental guidelines suggest that they have 28 days after loss of sponsorship to either have found another sponsor or leave the country.

I do recognise that, where serious allegations are made against an employer, the department may extend that period, but I do not know how serious the allegations have to be and where that cut-off point may be for the department. In terms of the compliance and monitoring process, there needs to be some protection for the 457 visa holders who do have legitimate complaints and legitimate issues so that they can raise those without having the threat hanging over their head of a 28-day deportation. The international standard on loss of sponsorship and time to find new employment is three months under the UN convention. For some reason, Australia has not adopted that.

CHAIR—Are you saying we should adopt that?

Ms Bissett—Absolutely—at least three months, we believe. Three months seems to be an international standard, so it is one that we believe should be utilised. The other area where I think the monitoring and compliance issues can be better dealt with is the broader range of information being provided to 457 visa holders about community assistance that is available to them and assistance that is available to them through their unions. In that respect I should say that we are concerned about some contracts we have seen where 457 visa holders are being told that they cannot join a union, which is obviously in breach of Australian law and ILO conventions.

CHAIR—Do you have any evidence of that?

Ms Bissett—I do have a contract which I am quite happy to provide.

CHAIR—Are you able to provide that to the committee?

Ms Bissett—Yes. Obviously, the identifying information has been removed from it, but it is a legitimate—

CHAIR—We can take that as an in-camera submission and retain its confidentiality, if you would like to do that.

Ms Bissett—Yes. We can provide—

CHAIR—It would help its legitimacy.

Ms Bissett—Yes, absolutely. We will provide that. We are concerned about contracts that suggest to the 457 visa holders that they are not allowed to join a union. Unions are a source of

information for working people in Australia and can provide assistance and support to 457 visa holders who may be going through issues with employers. So there should be information for 457 visa holders about community organisations that can support them, about unions that may be relevant to their area of work. We are not saying that they have to join unions, but there should be information about access to unions would be beneficial.

But when you start to build all of those things together—so regulation, proper resourcing within the department, removing the threat of 28-day deportation, information about community organisations and unions—you start to build a range of sources of information for the 457 visa holders that may provide them with not only better protection but also enable better monitoring to occur.

Senator POLLEY—Just to follow on from what you have just elaborated on, I want to go to another area that has had varying levels of discussion, and I am sure we will hear more on it today, with respect to the requirement to have minimum English language skills. For me it would be paramount for people to understand their rights and to be able to work effectively and safely on any worksite. Do you have a view that you can share with us?

Ms Bissett—Absolutely we believe that there should be minimum English requirements for 457 visa holders. This came out when I was perusing some of the submissions made to the committee. I cannot recall who, but someone suggested—certainly in a radio interview at the time submissions came into the inquiry—that someone working in a Chinese kitchen perhaps should not need to have English language requirements, because health and safety issues, for example, could be dealt with in the person's native language.

Having English language skills serves two purposes in my view. The first is to enable them to operate effectively in the work environment. It is to enable them to receive instructions, to understand the health and safety requirements in particular and to be able to communicate with their workmates. The second is so they can operate in the community. People on 457 visas do not come here just to work; they live in the community, and English language skills enable them to better operate within the community. To suggest it is okay if a Japanese-speaking 457 visa holder, who is only working in a Japanese restaurant, cannot speak English cuts that person off from a whole range of interactions that exist outside the workplace. I think English language skills are important not only for work but also for their capacity to operate in the community.

CHAIR—If a Chinese cook, for example, came with what would be deemed insufficient English proficiency, would your organisation consider that, as long as they undertook classes and training to raise their standard while they were here, it would be acceptable?

Ms Bissett—I think the critical issue with that is who provides the English language training for them.

CHAIR—But as a condition of their employment that they have to attend classes and obtain a certain proficiency, there are certain levels in the migration scheme that certain industries have to reach. If that was bench-marked after a certain period of time, would that be deemed as acceptable? It is very hard to get a cook out of Quandong province, for example, who is proficient in English, but when they get here, like many of our forebears on the Snowy River scheme, for example, they eventually become quite proficient.

Ms Bissett—The thing to remember about 457 visa holders is that they are here for 'relatively' short periods of time. I stand to be corrected, but my understanding is that the bulk of 457 visas are issued for periods of less than two years. So even though they are available for periods of up to four years, they are actually issued for periods of less than two years. I think we need to understand that the circumstances within which the 457 visa holders come are perhaps a bit different from the permanent migration program where a different level of leeway might be allowed. I would have to think that one through.

CHAIR—We are considering asking you back at another time if you would be interested, so you might want to respond to us later on or in writing later.

Ms Bissett—Yes, I would like to have a think about that one. It really does depend, of course, on at least the minimum level of English language that you expect them to have.

Senator POLLEY—In your submission, you referred to the need to have a strict code of practice for migration agents. Can you elaborate and put your views on the record for us?

Ms Bissett—We are concerned that there is a whole range of people operating in this area of 457 visas in terms of recruitment, advertising jobs, bringing 457 visa holders to Australia, and it extends beyond migration agents, because labour hire companies are engaged in this area, and I have never quite been able to get my head around how they manage to operate in the area.

CHAIR—Do they charge a fee?

Ms Bissett—Yes, they charge a fee. The issue of being the direct employer, it really seems to me that it is playing around the edges of their being the direct employer because they on-hire the person, and while they may remain responsible for a whole range of matters associated with the employee, really the employee is working for the Williamstown dockyard or whomever it may be. There are some issues there. We are concerned that there needs to be a proper code of practice for migration agents, and that that code needs to include the sorts of representations that migration agents can make to potential 457 visa holders. That code would need to cover the types of costs that can be charged or on-charged in any circumstance to the 457 visa holder. The code would need to include quite clear guidelines on who is and is not responsible for the costs of bringing 457 visa holders to the country and so on.

One of the things that does concern us—and we saw this with the Chinese printers at A Print in Melbourne—is they are having deducted from their pay by their employer, who also seems to have been related very closely to the migration company that brought the workers to Australia, money for legal fees associated with having brought them to the country. The workers have ended up about paying I think about $10,000, deducted out of their pay at the rate of $200 a week, if my memory serves me correctly. What we would want to see is regulation and control that stops that sort of behaviour.

I explained to the senator a bit earlier that we moved office over the weekend, so the boxes are still not quite unpacked, but I understand that some regulation was put in place for international students in relation to the operation of migration agents, both in Australia and overseas, in an attempt to protect overseas students from being exploited through the migration process itself. I would like to have a look at that program and provide some advice back to the committee about

whether there is anything in that program that we think might be transportable into the 457 visa program.

Senator PARRY—Just going back to the English language issue, I notice in paragraph 36 that you have a bet each way; you wanted the migrants to be informed about union membership in both languages. It is important to have English as a base language, but I notice that you refer to both languages.

You mentioned that you are concerned about contracts that prevent union membership, and you used the term in the plural sense, yet you have one contract about which you have evidence. It is important that we keep things in context. Is there only one contract that you are aware of that has had that express provision in it, and that is the one you will provide to us in evidence in-camera?

Ms Bissett—No. I have been advised of the existence of more than one contract that includes that provision. I only actually physically have one contract that has been provided to me. If there is more evidence available with respect to that, I will provide that to the committee, absolutely. It is our view that it is more widespread than just this one contract.

Senator PARRY—Again, we deal in evidence; we deal in what is presented, and at this stage you are aware of one that you can provide to us—that is good. I refer to page 28 of the submission, and in particular paragraphs 73 through to 75. You have left it that the average weekly earnings is $1,026 taken on the March 2006 figures, and that the minimum rates of pay since July 2006 are specified for non-regional and regional. Do you know the actual average payment for workers who come in on 457 visas?

Ms Bissett—The visa subclass 457 state/territory summary report prepared by the Department of Immigration and Multicultural Affairs, which has a report ID of R0672.1.0, shows average salaries for the primary 457 visa holder across a range of industry classifications. Those average salaries range from the minimum of $42,900 through to a maximum of about $92,500 per annum. The national average on that report, at the end of 2006, was $66,200.

Senator PARRY—Which is $1,250 a week compared to—again, we are dealing with averages, so we have to compare like with like—so the average weekly rate is $1,026, and that works out to be $1,250 per week for the average visa holder. I am advised that the figure for the first half of 2006-07 is $1,365 per week. Again, it is good to have on the record, if we are going to quote averages, that the average for 457 visa holders is a lot higher than the minimum specified rate, which is in paragraph 75 of your submission.

Ms Bissett—I believe that we need to dig below the averages. We certainly need to understand the substantial differences in salaries that are paid to managers, administrators and professionals, including doctors, who may come in under the program, and the salaries that are paid to people in what might be called lower skilled classifications, such as welders, meat processors—

Senator PARRY—I agree with that, but if we are going to quote under your paragraph 75 an average figure, if you want to drill down, we need to drill down into that figure as well. I just

want to compare like with like. You have quoted a broad scope average, so it is good to get onto the record the other averages that are applicable that marry in with your average.

Ms Bissett—In terms of the average salaries specified in the report by DIMA—well, it was DIMA at the time—what is not clear in the salaries quoted is whether they includes overtime pay, all-in salary costs or whatever.

Senator PARRY—My advice is that it does not; it is salary only.

Ms Bissett—It is a bit difficult to tell, because they do not specify clearly in the report. What I tried to pull out, because it was comparable, was the average weekly ordinary time earnings, and I compared that to the minimum salary requirements that were specified. There is no intent to mislead the committee in any way on the salaries issues.

Senator PARRY—No, that is fine, it is good to have everything on the board rather than just selective figures. You mentioned some alleged abuses about the deductions coming from employees, and you quoted rent and electricity. You have also mentioned legal fees, which is concerning if that is factual and something for which you can provide evidence. I do not regard rent and electricity as abuse, because a lot of employees would have those deductions made if they were living in accommodation provided. Apart from what is in your submission—and the legal fees deduction is a new one for me—is there anything else that is unusual that would fit into that category?

Ms Bissett—I would have to go back and look through the list of deductions that were being made, particularly for the printers in Victoria who were the ones also paying legal fees. One of the concerns is that some of the alleged abuses that are coming out include deductions for rent that are well above market rates. There are 457 visa holders working in suburban Melbourne who are being put into employer-provided accommodation. There is nothing wrong with the employer offering accommodation and assisting 457 visa holders in sourcing accommodation. However, the abuses that have come to light indicate that the employer owns the accommodation, so it is not accommodation that is being sourced for the 457 visa holder—the employer actually has a financial interest in it—and the rental rates that are being charged are way above what would normally be expected.

My colleague has just reminded me that one of the issues about the deductions is the transparency of the process, and a real choice being given to the 457 visa holders about whether they take the accommodation that is offered, and whether what they are being charged for electricity is a reasonable charge for electricity. I will clarify the particular employer, but some workers were being charged entertainment expenses. That involved a television set, certainly not electricity or a normal charge that a person renting accommodation would expect to pay.

Senator PARRY—Moving on to your Ballarat example, you used the term ‘half-trained’ welders in Ballarat. What does ‘half-trained’ mean? Does it mean they have no skills at all and they have had backyard experience, or does it mean they have gone halfway through a course and stopped?

Ms Bissett—In that particular case, which involved MaxiTrans, the local workers were employed by the company as casuals, so they had some training and some skills because they were actually on the job—

Senator PARRY—Again, so 'half-trained' means no formal qualifications, just work experience through time at a worksite?

Ms Bissett—At MaxiTrans, at the company itself that brought in the welders from China, but they were denied access to formal training and skilling—

Senator PARRY—The 457 workers were qualified welders, is that correct, when they came here?

Ms Bissett—They were welders from China; I do not know whether they had Australian equivalent qualifications.

Senator PARRY—But they passed the test to arrive and to practise as welders in Australia?

Ms Bissett—Well, there is minimum testing required.

Senator PARRY—You indicated that they were given preference over, and you used the word 'half-trained' welders in Ballarat. I just want to get a concept of what you meant by 'half-trained'.

You then went on to say that they were paid less than the local rate. I have used the term 'elevated rate'. So there was a local market or elevated rate. But they were paid in accordance with the provisions of the 457 visa but not paid at the rate that the local welders were getting. I do not know about your experience, but my experience in Australia at the moment is that there is a severe shortage of metal fabrication workers, and that includes welders. Welders are just wanted everywhere. My view is that the local welders could not have been welders per se. But you might have a different experience with MaxiTrans. What you are alluding to is that MaxiTrans were avoiding local workers to bring in 457 visa workers to pay a lower rate, which was still above what was required legally. I want to go back to your 'half-trained' concept. How have you have determined their level of competence?

Ms Bissett—The issue for MaxiTrans in Ballarat was that they had casual workers who wanted and were willing to become—

Senator PARRY—But that is what we have to determine.

Ms Bissett—I will just finish my sentence. They wanted and were willing to become permanent employees of the company. They were willing to undertake the training that was required to bring them up to the appropriate standard. They were denied that opportunity. So, in the context of the comments that I made about the 457 visa program needing to sit in conjunction with commitments to training and commitments to the Australian workers, it is an example of an area where the 457 visa program fixed the employer's problem but did not fix the Australian problem, which is a shortage of welders, even though there was a group of people there who were willing to be trained. At that time as well, I understand that the youth

unemployment rate in Ballarat was sitting at 18 per cent. So there is a whole range of issues that are floating around and sitting around this particular circumstance in Ballarat that raised alarm bells or that set some bells ringing in terms of a lack of a coordinated approach and an apparent lack of commitment by the employer to training local workers.

Senator PARRY—We are using a case example, so we have to make sure we are factual. Did the employer have an urgent need for welders on day 1 and could not wait for a 12-month timeframe? The purpose of the 457 visa is to get welders on day 1 rather than wait for 12 months or 18 months or however long it would have taken to bring the locals up to speed with their welding skills. That is the problem when we start quoting exact cases. We need to get detail.

Ms Bissett—It is a bit difficult to think that the employer was moving along with the casual workers that the company had, and then woke up one Monday morning and said, 'We need welders; let's get them from China.' I would find it very strange that an employer would make that decision when they woke up on Monday morning. Their need for skilled welders would be known by them and they could have put in place training programs. What I have said earlier is that, if there is a need and the skilled labour is not available, maybe a program like the 457 program has a role to play. But it has to be done in conjunction with the training effort.

Senator PARRY—Do we know whether they landed a big contract or there was a sudden need? Do we know that sort of detail?

Ms Bissett—I could not tell you off the top of my head.

CHAIR—We are just about out of time, but it is pretty obvious that we are going to have to get the details of your specific case. If it is only part-heard, we really need to get the final outcome so that we are not second-guessing in some respects. The only observation I would make in relation to that is that, if any employer is desperate enough to go and pay for transport and accommodation and bringing someone from overseas, it must mean that they have an immediate and severe problem at that point in time which maybe this visa is satisfying. Senator Parry's point about the lead time for bringing somebody up to that skill set is exactly what we are inquiring into. I am not going to try to second-guess. I think we should get the report and examine it when it is completed.

Senator POLLEY—In terms of finishing that case, it would be most useful to know what those casual employees were doing up until the time that the decision was made to import the skills.

CHAIR—If you can get us further details on that, the secretariat will certainly look for that completed case so that we can look at some of the comments made. There is so much more that we could ask you. It is a very comprehensive area. We appreciate the time you have given us. Thank you for attending the hearing today. The secretariat will send you a copy of the transcript for any corrections that need to be made. I would be grateful if you would also send the secretariat any additional material that you have undertaken to provide as soon as possible. We are grateful for your attendance here today.

Ms Bissett—Thank you very much.

[10.34 am]

McMULLEN, Mr Antony, Social Justice Officer, Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia

ZIRNSAK, Dr Mark, Director, Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia

CHAIR—I welcome to this public hearing representatives of the Uniting Church in Australia. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The committee has received your submission and it has been authorised for publication. I invite you to make a brief opening statement if you wish before we proceed to questions.

Dr Zirnsak—We would like to thank the committee for the opportunity to appear here. I will start by acknowledging that we are not experts across this area. The matter came to our attention because of a case involving a minister of one of our congregations and their experience with a member who is attending that congregation who is on a 457 visa while in this situation. That case is outlined fairly comprehensively within the submission. It outlines the difficulties that the congregation has gone through to try to assist this person. We are certainly not opposed to the 457 visa scheme, so we should be very upfront about that.

Obviously our desire here is to seek justice. We acknowledge that that involves a balance between the need to protect those on 457 visas from exploitation by unethical employers and the need to ensure that those brought here on a 457 visa are not able to make vexatious or malicious claims against an employer where there may be circumstances where that person is not performing as required or engages in some other unacceptable behaviour. So we recognise a need for a balance in the protections.

At the time of writing the submission, we certainly felt that the balance was very heavily weighted towards those who are the sponsors on the 457 visa scheme, but we acknowledge that that balance has swung back somewhat in the other direction. Subsequent to writing the submission, the minister did make announcements about tougher penalties for employers with regard to those who violate the sponsoring arrangement and exploit those brought out on the arrangements. As we indicated, in this particular case, the person in question does not wish to be identified because they hold a grave fear that, if they are identified or if their employer is identified in any way, they will be subject to retributive action that would involve their dismissal. They hold a grave fear that they would then be deported without the ability to find an alternative sponsor, particularly, in this case, given their lack of English skills.

We have made recommendations in the submission about the need to ensure that there is appropriate investigation to try to identify where this kind of exploitation may take place. We recognise that efforts are already being made in that area. Further, those on 457 visas should be made aware of their rights, they should be freely able to complain without fear of reprisal, they

should be able to have such cases heard in a timely procedurally fair manner in accordance with natural justice principles, they should be able to continue in their employment or, failing that, receive income support and not be deported before their case is heard where such a complaint is made. Should such a case be upheld, they should be allowed six months to find an alternative employment sponsor in Australia. At this point we are happy to take questions from the committee.

CHAIR—Will you confirm that you are not in principle opposed to the 457 visa program?

Dr Zirnsak—Correct.

CHAIR—Am I correct in saying that you have concerns about compliance in terms of the department's monitoring and surveillance?

Dr Zirnsak—That would be correct. This particular situation is a little unusual in that our understanding is that the employer is allegedly requiring employees to mislead the department about the conditions in place.

CHAIR—Will you be more specific?

Dr Zirnsak—In this case, our understanding is that inspections have taken place and the employer has required the employees to not be truthful with regard to the inspections in order to mislead the department about compliance.

CHAIR—Have you passed this on to the department?

Dr Zirnsak—No. The unit itself is not aware of the name of the person. We are working with our congregation and, as indicated, the employee is concerned that any reporting or action at this point would open him up to retributive action where he would be dismissed and deported, and that is an outcome he wishes to avoid.

CHAIR—Do you have any suggestions on how we might get around this concern by 457 visa holders of retributive action so they can be more free and open in exposing any concerns?

Dr Zirnsak—That is our suggestion, that there be some sort of regulatory or—

CHAIR—But how can you do it if you cannot get their names?

Dr Zirnsak—The point is that if he had certainty that he would have adequate time to seek an alternative sponsor rather than the fear of being deported, there is a much greater likelihood that he would be willing to come forward and publicly expose what is going on and have it properly heard and the allegations properly investigated.

CHAIR—Okay, that theme about more time seems to be running through a number of submissions. However, in that potential six months—and we have actually heard that it could be longer if other requests were granted—how would people sustain themselves?

Dr Zirnsak—As we have indicated, where a person has been found to be exploited, our view is that they should be provided with income support during that period. Having been brought here on that arrangement in good faith, it is not their fault if they have been subjected to illegal exploitation and mistreatment.

CHAIR—Are you suggesting that the person who brought them here pay for them, or would the Australian taxpayers be responsible?

Dr Zirnsak—That would be a matter for consideration. However, it would seem unreasonable that a person comes here in good faith and, through no fault of their own, is subjected to illegal exploitation, if that case is upheld, and as a result they are deported. Having been exploited, they are dependent on whether they are compensated for the illegal exploitation and the employer can afford to pay the compensation. They may have been exploited, be sent back and have suffered through this process. It strikes us as unreasonable that given the Australian Government is facilitating this scheme they not supported.

CHAIR—So they should be responsible because we are facilitating their sponsorship?

Dr Zirnsak—We are suggesting that there is some level of responsibility. Obviously the government is taking its responsibility seriously in the sense that it does undertake inspections and seeks to ensure that employers comply with the sponsorship arrangements. It has now put in place tougher penalties on those employers that violate the sponsorship arrangements. The government has accepted that it has responsibilities, and we are suggesting that they may extend somewhat further in cases of exploitation. Yes, it would probably be better if the employer were ultimately forced to pay compensation for any illegal exploitation that has taken place.

Senator POLLEY—Thank you for your evidence. Obviously it is a difficult case. Would you be suggesting that the lack of English language skills is contributing to the alleged abuse of this individual?

Dr Zirnsak—In this case, yes, but having heard the evidence from the previous witnesses we would take a different view and not see minimum English requirements as an automatic barrier to people being brought in on a 457 visa. Clearly, if there is a lack of English skills, there may need to be appropriate protections and safeguards added to the sponsoring arrangement for those who likely to be more vulnerable. You can also imagine the situation of someone who is very highly skilled coming out here to work for an employer who is very desirous of their skills and who would treat them very kindly. In that case a lack of language skill would not be a barrier to the employer. I can certainly think of people who have done the reverse, going from Australia to other countries where they have not had local language skills, yet their skills were highly sought after and they have secured highly paid employment with good conditions and have been looked after very well.

Senator POLLEY—Can you identify the industry that the anecdotal evidence relates to?

Dr Zirnsak—It is the hospitality industry in this case.

Senator POLLEY—Okay. Are they from Tasmania?

Dr Zirnsak—No.

Senator POLLEY—I just wanted to place that on the record.

Senator PARRY—They were my two questions.

Senator POLLEY—Obviously this is a very serious matter. If there is not a basic understanding of English, that would have to contribute to the abuse. Is there any other evidence from your organisation? The story that you come to us with obviously reflects better on the 457 visa holder than some of the other submissions that we are receiving.

Dr Zirnsak—At this stage, only this case has come to our attention, through one of our congregations. Therefore, we were bringing it to the notice of the committee for that reason. Obviously we are aware of the other cases that have appeared in the press and in our congregation and ourselves pursuing assistance for this person, trying to find whether there are additional avenues they could pursue to have their circumstances addressed. There has been an indication from others that this is not an isolated case, but it has been vague in terms of verbal information.

Senator POLLEY—You obviously sat in on the first witnesses that appeared before us this morning, who are looking to have more stringent measures to monitor all the requirements under this program. Do you have any suggestions on the ways that we can avoid the sort of incidents that you are raising today?

Dr Zirnsak—Other than what is in our submission, it would be building additional safeguards into the sponsoring arrangements based on who is coming out. You must recognise that there will be a balance between the resources that government can commit to this scheme to ensure appropriate protections versus the cost. That will always be a matter to be balanced. We would take the view that no monitoring scheme will ever be perfect and that we will never have a scheme where no abuse ever occurred. At the same time, I am sure there will always be circumstances in which some employees will come out here on 457 who will not perform as expected. We acknowledge that there will always be a range of behaviour. Obviously, we hope government will try to provide a balance between the protections versus ensuring an employer receives the skills they are seeking through the scheme by bringing people out.

CHAIR—Somebody could come here on a 457 visa and allege certain abuses because they can get a better deal if they transfer their sponsorship to someone else. That is the other side of the coin that needs to be taken on board.

Dr Zirnsak—We acknowledge that in our submission. We have suggested the support and the ability to seek another sponsor is dependent on a finding that the alleged abuse has actually occurred. We are not suggesting that, where someone makes a vexatious or malicious claim and seeks another sponsor, they should somehow be provided with a whole lot of support by the Australian community for doing that. That is not what we are putting forward.

Senator PARRY—Continuing with the case example, if what you have presented in writing is factual, the employer needs to be dealt with severely—there is no doubt about that. We are in a very perplexing situation here, because we want to get evidence if there is exploitation

happening of the nature that you have outlined. We want to find out so that things can be dealt with. I want to check a couple of things, because it is now on the public record. You have indicated that, upon complaint—I presume from the minister to the Australian Fair Pay and Conditions Standard—there was an investigation and then false statements were made basically by employees to substantiate that there is no impropriety on behalf of the employer. That is the allegation here. I just find that difficult. Surely anyone who is investigating, unless we have really incompetent investigators—and if that is the case, that needs addressing—would look at things like statements of earnings and tax records. They would be able to verify what was being paid to employees. So, if nothing untoward was found by the investigating officials, it does not give strength to the allegation. Has this been challenged with the department at all? Has it been tested as to what the department did, and did it investigate? Without our knowing what the circumstances are, we cannot go back and ask that question. I would love to be able to do that.

Dr Zirnsak—As we have raised with the committee's secretariat, we do have the minister here who is involved in the case, and she is happy to appear in camera if the committee wants to drill down into what level of detail we have on the case.

Senator PARRY—I am prepared to hold until an in-camera session, chair. That would be very good.

CHAIR—Is it the wish of the committee that we take the evidence in camera?

Senator POLLEY—Yes.

Senator PARRY—Yes.

CHAIR—That is moved and seconded. There being no objection, the committee will now take evidence from the Uniting Church representative in camera.

Evidence was then taken in camera but later resumed in public—

[11.14 am]

MILLS, Ms Julie, Chief Executive Officer, Recruitment and Consulting Services Association

TURNER, Ms Gemma, Legal Adviser, Recruitment and Consulting Services Australia

CHAIR—I welcome representatives from the Recruitment and Consulting Services Association to this public hearing. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The committee has received your submission and it has been authorised for publication. I invite you to make a brief opening statement if you wish before we proceed to questions.

Ms Mills—I thank the committee for giving us the time today to go through some of the items that we have raised in the submission and also to respond to any questions you may have. As part of my opening statement, I have tabled a document which is, if you like, a definitions document that refers to the definitions of the different sectors of the recruitment industry. The biggest issue in any of these matters is whether or not the actual definitions of the various sectors are understood correctly, so this is a standard document that we table at any one of these types of hearings. The term 'recruitment' refers, obviously, to the permanent placement of workers, but within the recruitment industry there are, as you can see from the diagram, five distinct sectors where this industry is very active at the moment. It is important that, through the discussion, those definitions are understood.

The key area in relation to this particular inquiry is obviously in the on-hire labour hire sector and the issues surrounding some of that that have been raised throughout the course of discussion in relation to restrictions and the opportunities for that industry to participate. That is the key area that we have addressed in most of our submission. I am really just interested in any questions that have come out of the submission, and in particular looking at the understanding of those areas where we think we have some opportunity to assist in monitoring and ensuring that the 457 processes are well managed.

CHAIR—Ms Turner, do you have anything to add?

Ms Turner—No.

CHAIR—This might seem unusual, but before we proceed, SBS television would like to do a bit of footage for this inquiry. We will need a motion that the committee authorises still and video recordings of today's proceedings by members of the press.

Senator POLLEY—I so move.

Senator PARRY—That is seconded.

CHAIR—Thank you. We will now proceed with our questions. I will be brief, because I am sure that Senator Parry and Senator Polley have some questions as well. First of all, are you a supporter of the 457 temporary work visa program?

Ms Mills—We certainly are.

CHAIR—You are obviously a large participant in this field?

Ms Mills—Sectors of our industry are participants.

CHAIR—How many 457 workers do members of your association recruit each year, and in what industry sectors primarily?

Ms Mills—In terms of numbers of 457 visas that our industry would recruit, that can vary. One of our largest members, for instance, at any one time would have 90 to 100, and our smallest members could have just three, four or five. In most cases it is related to their needs. If they cannot find what they need in the Australian workplace, it is overseas. It is a moving number but, on average, it is probably between 1,500 and 2,000 across the industry in a large number of sectors. I will separate the IT contracting sector because ITCRA will be appearing before you this afternoon. I will keep those figures out of it. We have joint membership, which is the reason I am clarifying that point here.

The largest area of recruitment in this area is nursing. Nurses and overseas trained doctors have been a large area. Overseas trained doctors are not normally 457, but they are included in our numbers in terms of recruiting from overseas. The other area that is in the high skilled area is engineering and in some of those areas where there is shortage, particularly in the resources area at the moment. That is where our numbers have grown quite substantially. Also, in the middle range, there are areas where there are needs—for example, science, with scientific recruitment, and health professionals. Also, individual members would have a specific need to fulfil a contract where they have 99 per cent of the placements here in Australia and they may need to recruit a particular style of building skill or a particular contracting skill at the high end.

CHAIR—Are you aware of the department's immigration outreach officers who support this program?

Ms Mills—Yes. We have applied for those on two occasions.

CHAIR—How effectively do you think they operate?

Ms Mills—I have reported to them at a couple of meetings. I think their activity has been effective in the associations where they are working. Some of their difficulties for our sector have been in understanding how our sector actually works with their industry where they are placed. That is one of the roles I have played—actually informing them better about how our particular sector operates underneath a VECCI or other industry association model.

CHAIR—In your submission you explain the difference between recruitment and on-hire firms.

Ms Mills—Yes.

CHAIR—What different issues are faced by these two types of firms in utilising the 457 visa program, for example, in terms of the different employment relationships with the 457 visa holders?

Ms Turner—The permanent placement recruiters are not an employer and therefore they cannot apply for the 457 visa. It will actually be their client who will apply for them. In the on-hire relationship, they are the employer, so they are bound by the obligations under the sponsorship requirements and also, obviously, by the Industrial Relations Act or the Workplace Relations Act which applies.

CHAIR—What sort of difficulties does it cause, for example, for the on-hire firms, et cetera, in not being the direct recruiter?

Ms Turner—They are not the direct employer, so they will source the person from overseas and then be the employer. But that employee will work for a third party. They have to manage that relationship as they would with any Australian on-hire employee.

CHAIR—But are there problems with that transferred relationship?

Ms Turner—The monitoring of it?

CHAIR—Yes.

Ms Turner—I suppose they have to implement the monitoring requirements and must also keep in contact with their client constantly to ensure that the obligations are being met.

Ms Mills—From the 457 perspective, the issues are not there with the 457; the issues are there with anything to do with on-hire where there is the third party relationship. So, it is about that extra level of compliance.

CHAIR—That is my point. Does that extra level of removal cause any difficulties that you are aware of in terms of compliance?

Ms Mills—No, it does not for those who are good operators. Where the difficulties occur are for operators that are outside constraints such as an industry association and who do not have codes of professional practice. That would occur in any environment, whether it is 457s, OHS or whatever. It is about understanding their obligations and trying to avoid some compliance issues. That occurs outside of compliant members, if you like.

CHAIR—Are you aware of examples of abuse within the system that you are involved in?

Ms Mills—I have been aware of a number of media examples. We have no examples of abuse within our membership. Outside of our membership, there are examples of companies that have used overseas recruitment companies to bring in 457 visa holders. We have been made very aware of where the industry's reputation has been damaged because there are companies that have, as a client, within their business created a labour hire firm or an on-hire firm. They have

created it within the business in order to engage workers on these third-party relationships. So the third party actually sits within the same company. This has then created situations where it is deemed that on-hire is abusing the system. But we need to go back to the definition of a true on-hire firm, which is an external firm to the actual company that is there.

Senator POLLEY—You have already stated that you are in support of the program. Do you see any need to reassess the monitoring of the program?

Ms Mills—Through the examples that have been brought to me where there have been abuses or breaches of the program, the need that I see to reassess the program is in looking at how companies get approved to bring in 457 visas.

We have made a couple of suggestions in our submission, one of which relates to a collective labour agreement for the industry. The other is at least to establish that the companies that are allowed to employ people and bring people in under 457 visas actually have gone through some accreditation check. As an association CEO, obviously I see our industry association as being one such body, but there would be a number of models around to which that would apply. In my view, that is where I see the need for increased monitoring of who actually can sign up and bring in 457 visa holders.

Senator POLLEY—So that would be the migration agents, and you would like to see some changes there?

Ms Mills—There has been some discussion in this industry about the role that migration agents play. A number of our members partner with migration agents to assist them in the process, and that partnering is fine. It is when the industry becomes one in the same—when the migration agent and the recruitment agent decide that they will be the same company, albeit under two different brand names or whatever. We then have the issues of the 457 visa holder not understanding who is actually employing them as opposed to who is helping them come into the country. There has been a number of examples of that. One of the reasons that particular process has grown is because of the myriad paperwork and difficulties that some companies have found in accessing 457 visas. As a result they have sought support from migration agents and seen it as a business opportunity. It is not one that we recommend or one that we want to see grow. We actually think there should be a very distinct separation between those who are employing and those who are actually assisting people to gain employment.

Senator PARRY—At arm's length?

Ms Mills—Yes, and they should be very much at arm's length.

Senator POLLEY—I would take it from the key areas you have identified this morning that obviously English language is an essential part of nursing, for instance. Do you have a view about whether there should be a greater emphasis on the level of English required before the visa is issued?

Ms Mills—There are variations in that, and the IT submission addresses that to some extent. For some roles and positions, yes, there needs to be a level of English, and our industry has not made an assessment. We are looking at the debate as that goes forward. However, there are some

areas where occupational health and safety issues need to be addressed. Nursing and engineering are other areas. The whole premise of what people are doing is based on understanding the instructions. It is about ensuring minimum levels, but that other levels are set for those areas where a better understanding of English is required. That has to be a scale, and I have no sense, yet, of how that should look.

Senator POLLEY—We have had evidence given to us today in relation to how a particular category can be placed on the program. For instance, in Western Australia at the moment there is a shortage of people to work in the mining industry. Concern was expressed about those skills being brought into Queensland and Western Australia to the detriment of Australians. Do you have a view about that, and whether there should be more stringent monitoring?

Ms Mills—Given that RCSA also works very closely with Job Network and the Job Placement Program and a lot of the replacement programs they are trying to develop in taking skilled workers from one particular place to another—

CHAIR—I will get you to comment on that later, as to the success or otherwise.

Ms Mills—Yes. But my answer to the first part of the question is that the biggest issue in terms of the skill and the candidate shortage at the moment is more related to the fact that you might identify a skill that you need now, but we do not have the time to get the Australian workforce to that skill level to maintain the resources boom. So, the 457 and any other skilled migration program needs to be seen as a short-term solution while the long-term solution of upskilling or relocating the workforce, or all the other strategies that the government has planned are maintained. However, as a classic example, to maintain what we need to be delivering in the resources boom the workforce is needed now. I do not believe that what is happening now is actually undermining work for Australians. Our industry has tens of thousands of people on databases, but sometimes they have to go overseas to get employees simply because there is no one else to fill those roles.

Senator POLLEY—So we must bear in mind always that training has to be an essential component in the long term?

Ms Mills—Yes. One of the key policy messages we are sending to the on-hire sector, which is a sector that is considered not to deliver enough training to its on-hire workforce, is that that is an essential component. We see that as a necessary component if they are to bring in overseas workers, whether they be 457s, working holidaymakers, or whatever they are doing in that space. They need to have that matching skill component. That is growing. We have research suggesting a huge improvement in that area. The on-hire sector is not seen as a short-term fix; it is a long-term partnership with business in Australia. That is where the difference is from, say, five years ago.

Senator POLLEY—Yet the lag time in terms of skilling up, training and educating nurses and doctors is still some years away, is it not?

Ms Mills—But I think the lag time with nursing will be there forever. The shortage of nurses is worldwide; whatever we do in this country is happening in every other well developed country. Because nursing is such a mobile profession, for all of the movement into this country

by overseas nurses, we have as many nurses wanting to do three or five years in the UK. Nursing is a unique example in the sense that the worldwide shortage of medical practitioners is one that we are all swapping around to some extent. That is a bad way of putting it, but I think that is exactly what is happening.

Senator PARRY—I have two questions about your submission. Under 3.2 Enforcement, the opening paragraph indicates that you feel as though the mechanisms in the Migration Act do not provide for adequate deterrence. There are fairly heavy penalties in the Migration Act; is it detection rather than deterrence? Do you think that detection is a bigger issue than the deterrence? I am very interested in that paragraph. It does not seem congruous with some of the other statements we have read.

Ms Turner—I think some of the deterrents have just increased with the passing of the Employers Sanction Act. The breach penalties are now a large deterrent. This was done prior to the passage of that legislation.

Senator PARRY—So you do not necessarily subscribe to the depth or context of that statement?

Ms Mills—No. We actually came out in support of those additional deterrents.

Senator PARRY—Thank you. That clarifies that. Do you think there is an issue with detection? Do you think breaches are very hard to detect?

Ms Mills—Yes, because in many cases breaches can be found only when the worker complains. It is a very difficult situation in many cases if you are in the country and you have a job and you want the job. Unless the breaches are picked up through other investigations such as tax audits or occupational health and safety—

Senator PARRY—So, you will not necessarily get a complaint from the 457 visa holder?

Ms Mills—Not necessarily. Often they will go to a support group with a complaint, and often that then gets exacerbated. The complaint gets caught up in a whole lot of other processes.

Senator PARRY—Do you think there is a dominant reason as to why 457 visa holders would not complain?

Ms Mills—Basically because they want to stay here and do the work they are doing. In any workplace, it is difficult to get people to complain. I do not think it is unique to 457 visa holders; you have a job and you want to keep the job, and it is about feeling comfortable about complaining. That is a changing trend, but it is still one of those things in business that has to be developed.

Senator PARRY—Finally, under 3.1 Effectiveness of Monitoring, the opening paragraph states that you believe there is a place for improved monitoring systems with relevant state and federal departments. What state departments?

Ms Turner—Perhaps working with the relevant employment departments.

Senator PARRY—So state departments of employment?

Ms Turner—State departments like industrial—

Senator PARRY—Does the monitoring role there extend to what we were earlier talking about? Is that in a detection method and compliance audit, that sort of thing?

Ms Mills—Yes. So that there is effective reporting. Occupational health and safety is another area. If audits and reporting are being carried out, and if there are any 457 visa holders in that workplace, the outcomes of those audits and reports are forwarded. There may be issues that are not being picked up because that department is not actually looking at those particular things. There can be a lot more cross-referencing.

CHAIR—The evidence we have received so far has some criticism about the 28 or 30 days, whatever it is, to find a new sponsor. Do you think it should be extended, and if so, who picks up the tab in the intervening time, and what sorts of issues would people like yourselves and labour hire companies, et cetera, have with more mobility in that change of sponsor?

Ms Mills—Do you mind if I take that on notice, because I need to spend a little time thinking about that. There are obviously some policy issues around that, and I need to have a discussion with the membership that are in this space as to how they see that. That issue has not been raised with me, so I suggest that possibly for us it has not been seen as an issue.

CHAIR—But you do not have any mobility issues in your arrangements?

Ms Mills—No.

CHAIR—Once they get their job, they stay there and they are happy?

Ms Mills—In most cases with on-hire firms, they get their job and stay there, or for whatever reason if the job cannot continue, in an on-hire environment, they usually have half a dozen other jobs that they can do within that same environment. One of the benefits of on-hire work is the fact that an on-hire company would have a plethora, or at least a range, of jobs on their books at any one time. With respect to any worker whose job has finished or whose contract with a client has finished, there is usually another role for them to go to. That is part of the benefit of working through that on-hire arrangement, and it takes that responsibility with the on-hire company as opposed to the client.

Senator PARRY—That is very interesting. Do you think that would then enable employees, if there was a problem in the workplace, to then want to complain, if they had a legitimate complaint? In the absence of complaints in the on-hire sector, would that suggest that everything is going as well as it could possibly be in the workplace, because they have security of tenure in another position, one would assume?

Ms Mills—That is possible. It is a pretty big assumption. You raised it, not me, so I am not selling my industry. But from my perspective, one of the benefits in that area is that there is a better window. Use nursing agencies again as an example. If a 457 nurse has a particular reason for not being able to continue on their shifts in a hospital, there would be another seven hospitals

that that agency would have to put them in; that is a classic example of how that longevity problem can be solved. The other part of it is in terms of issues not working out, if that nurse is not working out in that placement, yes, it is in the best interests of the on-hire company to put them somewhere else, going back to your complaints question. That is a very general statement I am making.

Senator PARRY—The follow-up to that is, what is the level of complaint from 457 visa holders within the on-hire sector that you are aware of?

Ms Mills—I have none on record for my members. I need to clarify that.

Senator PARRY—So you have had none from your members to you, but your members could have had—

Ms Mills—Them internally, but they have not raised them with me, but the other side of it is I do know that, where I have had complaints about this industry outside of my membership, it has often been my members that have taken those nurses or in some cases those welders on board and found them positions and put them into a proper structure.

Senator PARRY—Is it possible for you to provide on notice some form of statistical analysis of the number of complaints, type of complaints?

Ms Mills—Yes.

Senator PARRY—And the incidences where your agencies have picked up employees from other—

Ms Mills—Yes, I have a particularly good—

Senator PARRY—That would be great.

Senator POLLEY—Could we just clarify what you are taking on notice for the chair, if I can just drill a little bit further, if you have a person who actually has been abused and it has been proven, it has been suggested that there is a window of opportunity for them to have six months to gain a new sponsor, who then would pick up the ongoing responsibilities for that person here? In other words, who will financially support them while they are waiting here?

Ms Mills—From my industry's perspective, six months between an abuse and a replacement would not be acceptable because it is just not within the financial capabilities of the industry. I can answer that part.

Senator POLLEY—Well, people are saying three months; some people are asking for longer than that.

CHAIR—Do you think 28 days is suitable at the moment?

Ms Mills—Yes, I do. I personally do, and I would speak on behalf of those that I know would see that 28 days would be acceptable, but I do need to get some further advice on that.

Senator POLLEY—That would be based on the industries that you predominately cover?

Ms Mills—Yes.

CHAIR—As a further tangential type question, because we are trying to gather evidence from a range of people—it is not in your submission—but are you encouraging or do you have a view on citizenship outcomes in terms of your 457 visa holders? As to these people heading in that direction, do you encourage them to head in that direction for a migration outcome that gives them citizenship?

Ms Mills—The industry as such would not, but I would suspect that those at the higher level that are coming in through 457 to my members are coming in with a longer term view to citizenship because of the nature of the roles that they are in. But it is certainly not something in my understanding that our members would be encouraging. It is not that they would be discouraging it either; it is simply that they are looking for a solution to an employment problem, a solution for their client. If the outcome of that is that they end up with someone who converts to permanency, for whatever reason, that person may end up then not being available to them anyway because they may go to permanent workforce. To the on-hire sector, it is their on-hire workforce that is their bread and butter, not the permanent employees.

CHAIR—It has been suggested in some submissions that DIAC (the department) has deliberately slowed down or may have slowed down inadvertently in terms of application approvals for visas from overseas workers. Is that your experience?

Ms Mills—No. We have one particular nursing agency who has complained just recently about some obstructions to a particular group of nurses that they want to bring in. That is the first time in a long time that I have had anyone raise concerns. I do not know whether it is deliberately slowing down or whether there is a problem in this particular instance; at this stage we have gone to DIAC and asked them to explain why this is happening, but I have not heard anything back. As to the second one, in fact we have had the reverse, saying that in many cases our members do not want too much of the system changed because the process for them is working as smoothly and as well as they have ever had it work. Depending on which particular submission you listen to, the feedback can be one way or the other.

CHAIR—Do you have view on regional exemptions for skills and wages?

Ms Mills—Yes. I think the regional exemptions that are in place need to be maintained. We need to look at what we are defining as a region, but that should not be set in stone. I think there are times when a region, for whatever reason, may need to be considered. I know what we are defining as region, but sometimes a region can be created simply by a particular project that occurs in that space at that time. We need to have a constant review of that.

CHAIR—So you think that the regional variations and geographic variations need to be monitored?

Ms Mills—They need to be monitored. Should Adelaide always be considered a region—as a question? Depending on what is happening in particular spaces at particular times, I think that regional list probably just needs to be monitored.

Senator PARRY—It is a convict-free region, they constantly tell us.

Ms Mills—But that is an example of one that, depending on where the employment opportunities are and depending on how that particular area grows, should they always be deemed to be in a certain place in the list.

CHAIR—Okay. We appreciate your submission and your appearance here today. Do you have any closing statements at all? You seem to be very much on top of your brief—a quality brief, I might say.

Ms Mills—Thank you. No, I think I would just indicate that this is an area of great interest in our industry that is almost at the forefront. If a client cannot find a candidate, then you can be assured that the recruitment industry has already been there looking for them, so they are already one jump ahead of the players who are looking for a workforce. This is seen as a viable and practical solution, as a short-term solution. This industry does not see it as a long-term solution to the shortages that we have been talking about. I think the final thing is that it is the credibility of those who are bringing 457 visas into the country is the key message. We need to make sure that those companies that are allowed to action 457 visas have some credibility around them. To some extent, that is one of the key factors.

CHAIR—That is very good. Thank you for attending today's hearing. The secretariat will send you a copy of the transcript for any corrections that need to be made. We would be grateful if you could also send the secretariat any additional material that you have undertaken to provide as soon as possible. Thank you very much.

[11.46 am]

KELSON, Mr Noel Matthew, Executive Manager, Midfield Meat International Pty Ltd

CHAIR—I welcome the representative from Midfield Meat International to this public hearing. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The committee has received your submission and it has been authorised for publication. I invite you to make a brief opening statement if you wish before we proceed to questions.

Mr Kelson—I am also the project manager for the introduction of 457 skilled labour to the operation at Warrnambool. At the outset, I take you to the second to last paragraph on the first page of the submission, where I state that the ASCO codes are at least 15 years out of date. I wish to correct that and say they were published in 1997, so it is 10 years ago.

CHAIR—Okay, thanks for correcting that.

Mr Kelson—As the submission indicates, we are a very large export meat processor at Warrnambool in Western Victoria. In 2005 we became an approved sponsor under the 457 program with the introduction of skilled labour, long stay 457 participants. In the ensuing period, we have experienced significant delays in the approval of both nominations and visas in this process. We express concern that this is a matter that is being particularly applied to the meat industry more than it is, in my understanding, of like industries that seem to have a much quicker turnaround time than we do. Within the meat industry, there has been a series of activities by the former DIMA and now DIAC in relation to the consideration of the introduction of skilled labour into this sector. Today I will provide a hand out of a statement and attachments to that statement that we believe, on any fair reading, supports strongly that the department of immigration has sought to deal very differently with the meat industry than it has with like industries. We express significant concern at this, and seek to understand why this is so. In terms of meeting the criteria of the terms of reference of this hearing, we point to element two, which requires that we seek to identify areas where procedures can be improved.

CHAIR—Thanks for providing that material. Because it is new and rather comprehensive, the committee will consider this material at its next meeting and resolve its formal status. You can talk to it, but in terms of our accepting it, we will have to do it at our next formal meeting. Do you have anything further to submit, or would you like to go to questions?

Mr Kelson—As an overview, I would outline the background. Essentially we identified 110 nominations that were approved for our business at Warrnambool as skilled slaughter persons. To this point in time we have received the entry of 10 only to that group. The plan for the introduction of these people into our workforce was to be 10 per month in terms of an ability and an understanding in that community at Warrnambool to assimilate those sorts of people both socially into the community and into the workplace. It would appear that, following the introduction of the first 10 of that group, the department of immigration has taken the view that

it would no longer approve visas or, indeed, nominations. We had a subsequent approval of 10 nominations on 29 March last year, and at this moment, the visas that went forward simultaneously with those nominations have not been advised in relation to either approval or denial. Thank you.

CHAIR—Do you have any views, once you got past the first 10, as to why you have basically been stonewalled? Secondly, how have the first 10 worked out?

Mr Kelson—Dealing with the second question first, the first 10 have worked out particularly well, nine of whom remain in the workplace. We sought to dismiss the other one on the basis that the skills that had been reported in relation to this particular fellow were not evident with him when he was in the workplace, after a 90-day period.

CHAIR—So how did he get through the original assessment from the overseas post if you got him here and you find out that he cannot do the work?

Mr Kelson—The answer to that lies in a number of issues. The export meat industry, particularly in this country, over the last 12 years, has been developed to a very high level of expertise, particularly driven by quality assurance systems that have demanded very high levels of outcome of all the individuals in the plant, and particularly at the higher skilled people. As to the assessment of those skills offshore, whilst the initial skills most probably were satisfied, in terms of actually meeting the demands of the particular workplace, this one fellow was found to be shortcoming in relation to that delivery. Having said that, the other nine are exemplary.

CHAIR—What happened to him?

Mr Kelson—In accordance with the requirements of a business sponsor, I notified the department of immigration that the person was not suitable for the task, and I understand that he has actually been placed in another abattoir in South Australia that most probably does not have the same line speeds and operational speeds that our plant has.

Senator POLLEY—Do you see any necessity to look at the assessment process?

Mr Kelson—Given a 90 per cent success rate, I think not. Invariably, and reasonably, in any skill set there is a likelihood of a small amount of failure. No, I really think that, by and large, certainly with the experience of the remaining nine and the way in which they fitted into the workplace, and the way in which they have adapted to the high speed operations that exist in our country in relation to this industry, they are indeed exemplary. They have been first class.

Senator PARRY—Was the one who was expelled or terminated also Chinese?

Mr Kelson—Yes, there were 10 Chinese. In fact, we took the first group from China and then we sought as the employer and the sponsor to source our own people in the Philippines.

So we went there and conducted interviews. There has been a significant amount of media reports in relation to this process. We were very anxious about the allegations that money was changing hands in these offshore destinations in relation to the people seeking employment. Through an association with a former colleague of mine, now residing in the Philippines, we

have been able to identify a linkage with a meat processor in that country that has a number of skilled people who would be highly suitable for the process. We have conducted training in the Philippines and we have assessed these people to the AQF standard, level three, as being suitable for work in the Australian industry.

CHAIR—You did not answer the second part of my question. Why do you think the department has essentially not work reviewed on the balance of your request, and given the fact that, when appearing before this committee you have privilege and so can say what you like—tell us the way you feel?

Mr Kelson—Well, I guess the hand out will show you a chronology of events that will outline what I believe to be the reasons behind this increased interest in the meat industry's use of 457 visa holders, and it would appear that the department has taken the view that the numbers coming forward in this industry are excessive and have sought to become alarmed by that. Certainly from March last year onwards, there has been this wall of resistance. At the very centre of this resistance, the department of immigration continues to cite a particular audit that was conducted in South Australia of a meat company that had a large number of skilled intake, and seek to allege that that company has improperly used those people in relation to their business sponsorship arrangement. As I understand it, the former minister has chosen not to table the result of that audit, but continues to cite it in relation to the progression of this issue. I now understand that the current minister has chosen not to table that document either, but nonetheless the findings of that audit have been used vigorously to deny the continual approval of both nominations and visas to the industry.

CHAIR—How do you respond to the fact that both meat workers, the unions and other organisations have alleged that there are many meat workers elsewhere in Australia that would be available for work and you are not sourcing them first?

Mr Kelson—Our company has advertised extensively through all the available media, all the electronic processes of employment seeking skilled labour with the qualification of AQF3 to come to Warrnambool to work in our plant. We have fundamentally been unable to source the labour to the extent that we would require to operate our plant to the extent that it can. Vicariously, associated with that has been the drought that has seen increased activity in the meat sector, particularly the export sector, where large numbers of livestock have come forward, for both the market and processing, that might not otherwise have been available. So, it is a bit like the previous witnesses—the industry has really had a need in the last 12 months desperately for skilled labour, and we would say and have said continually throughout our submissions to DIAC that, for each skilled person we put into our plant, we generate work for two to 2.5 unskilled and semiskilled persons to process the work generated by skilled persons. In terms of the importance to our business and, indeed, to furthering employment in the region, and giving us the ability to continue to train people so that we can become self-sufficient, understanding that this is a somewhat short-term process, we would say that this need for skilled labour now is a critical issue, not only for us but also the industry.

Senator POLLEY—These 457 visas are meant to be for a short-term gap; can you elaborate on whether or not you have any traineeships or apprenticeships?

Mr Kelson—We do. Quite proudly I say that the company has been one of the early participants in the trainee schemes that apply to the meat industry. What needs to be understood is that the meat industry is not the vocation of first choice for many people. It is I guess a little like nursing; it is probably not seen as the most glamorous industry. It is a demanding industry. As I said earlier, overseas countries have very high demands of output within our industry, so the demands and disciplines of people within our industry are extensive. We appear to have high turnover rates, and I suspect strongly that it is related to those. We do participate in Mintrac, the national training organisation that has developed a curricula for the meat industry, and we have worked strongly with that organisation. In our region South-West TAFE has pioneered substantially the training for the meat industry and has in the past provided training to our organisation at Warrnambool. Over a long period of time, we have a strong history of training. Retention is a meat industry issue, and a number of projects have been conducted through the meat and livestock organisation industry bodies about retention in the industry. It is about an understanding that our industry is certainly not the industry of first choice but a very necessary and essential one to the rural sector in this country.

Senator POLLEY—Is there a different level of salary for Australian skilled workers in the meat industry as opposed to those who come out on 457 visas?

Mr Kelson—The gazetted salary level for 457s is in excess of the Australian award provisions. This has become an issue for those in the meat industry because of the insistence by DIMA, or DIAC as it is now, that the gazetted rate should apply. Simply to access the people, we have had to acquiesce to that requirement.

CHAIR—Do you bring the Australian workers up to the 457 level?

Mr Kelson—Given the opportunities that exist within the organisation to generate income in terms of both quality and quantity performances, the average salary level is approximately $45,000, so our imported labour are receiving in excess of the gazetted rate which, at our period with the regional certifying body support, was $37,668. Indeed, our first round of people had gone in at less than that, but I am just about to complete my first 12-monthly review of the nine people that remain with us, and it will show an average wage earning of approximately $45,000.

Senator POLLEY—We have had evidence this morning that people have different views about the level of English that is required. From your experience with the Chinese workers that you brought in, what are their basic language skills?

Mr Kelson—Very limited in terms of some to not so bad for others. But to overcome that, the company very quickly commenced English language training for these people. Bearing in mind that the industry has a rich history of the uptake of people who are not English speaking, and have always been able to develop levels and methods of understanding in the organisation for those people. In terms of the concerns relating to English and workplace safety, international signage, danger signs of international signage. Throughout the plant, we are fortunate enough to have a number of English speaking Chinese who also assist with those other levels of communication that might be a little different from the normal.

Senator POLLEY—In your submission and in your evidence this morning, you have outlined your concerns with the department in terms of the process of the fact that these visas are

not being granted. With respect to the nine remaining Chinese workers that you have, can you outline to us how often the department has had contact with you, either in site visits or telephone calls, and whether or not you see that there needs to be changes as far as monitoring is concerned?

Mr Kelson—The department of immigration has sought to introduce a level of auditing in relation to new considerations of nominations and visas that exceeds the lawful requirement that is available to them under the act. In relation to the nine that remain, not once have I had a phone call from DIMA or DIAC asking me how they are going. Not once has an officer knocked on the door and said, 'Noel, I want to have a look at these people to see if they are doing the job that you say they are doing.' That is despite many offers to them to come and visit the plant, because we are absolutely frustrated beyond reproach that this wall of resistance continues. Where it appears we are being maligned as an employer, we would want them to understand holistically that we are an employer of integrity and that we seek to treat these people in the best possible way that we can.

Senator PARRY—Coming back to the local issue, you said that you advertised extensively, using most or all media. Was that just throughout your home state or Australia-wide, and was that for the 110 vacancies?

Mr Kelson—Principally for ongoing vacancies, not necessarily the 110.

Senator PARRY—But you would have had about 100 or so vacancies when you advertised?

Mr Kelson—Yes. Essentially the 110 vacancies were in relation to a plan to extend shifts, so that the plant has a capacity to double its output. As the drought set in, it was clear that there was going to be a need to do that. But we have gone the other way; indeed, our submission would suggest, and it is fact, that we have had to reduce production because of the lack of skilled persons. But in answer to your question, yes, we have. Our electronic advertising was a national contact, and it was certainly extensive, both locally and regionally, as well as interstate.

Senator PARRY—And as to the response, obviously you did not get enough skilled response. Can you give an indication of what capacity you might have received that could have filled those vacancies?

Mr Kelson—None that could have filled the vacancy at AQF level three. A number of people were interested in working in the plant in an unskilled capacity.

Senator PARRY—What about employees wishing to work there who did not have the skills? Were you inundated with applications from people who would not have met the criteria?

Mr Kelson—You may or may not understand that the Warrnambool community has supported strongly refugees into the community, particularly from the Sudan. We have had a number of those people apply for employment at our plant; they are all unskilled, but you would understand that, without the work being generated by skilled persons, the work for unskilled people remains limited. Where we have been able to take these people up, we have. We have provided them with training and sought to have them continue in the industry.

Senator PARRY—How long does it take to complete AQF3 for the meat industry? What is the title of that course?

Mr Kelson—It is the Certificate of Meat Processing, level three, slaughter-person.

Senator PARRY—How long does it take to complete that?

Mr Kelson—About 12 months to complete that—that is both on-the-job training and face-to-face curriculum training.

Senator PARRY—In your submission you indicated—and you have just alluded to it—that the operating capacity was reduced by 25 per cent?

Mr Kelson—That is correct.

Senator PARRY—You went to increase, and in turn had to decrease by 25 per cent. Has the financial viability of your company, if you feel free to comment about that on the public record, been seriously impeded by this issue?

Mr Kelson—It is a very large company, with an annual turnover in the range of $200 million, but in terms of the losses accrued as a consequence of not being able to operate to the extent that we believe we are able to, just at the existing level with single shift capacity, we would estimate that that loss is in excess of $1.5 million. Of course, there is an additional loss that I have not quantified, and that is wages to the community that would accrue as a consequence of that follow-on unskilled/semi-skilled type labour.

Senator PARRY—So going forward now with your skill shortage, and you have acknowledged that it is an Australia-wide issue, what is the prognosis for the company?

Mr Kelson—We will continue to function as best we can, as we have. We have continued to seek to source people, and we are doing that as I speak, but certainly the opportunity that is available by way of this government's policy to introduce skilled persons into the Australian workplace via this 457 process is an entitlement in terms of the law, and we believe that the obstruction placed before us by the department of immigration has been unreasonable and certainly is one that has been extraordinarily frustrating in terms of the conduct of the business.

Senator PARRY—Without having read your additional submission which the committee is yet to discuss, have you outlined approaches that you may have made to the department directly and maybe to the minister?

Mr Kelson—Regrettably, it has reached the stage where the statements before you today will form the basis of an affidavit to further the matter to a writ of mandamus in the High Court. Today, I have received the first response from DIMA in relation to nominations, where they have chosen today to refuse 10 nominations. So, a cynic might suggest that the fact I am appearing here today has inspired the department of immigration to some activity.

Senator PARRY—Is there a reason given for the non-granting of those 10 applications?

Mr Kelson—With respect, I have not had an opportunity to read the document. I suspect it is long and I need to be able to consider that.

Senator PARRY—If you feel it appropriate, would you mind copying that to us or making that as an appendix to your submission on notice?

Mr Kelson—Yes, I will.

CHAIR—I have a couple of closing questions. Your company, Midfield Meat International, is being discriminated against, as you describe it? It is not an industry-wide situation?

Mr Kelson—I believe that the industry has not been able to progress nominations and visas since March of last year. The documentation will show that in April and May of last year, there was a fundamental denial by DIMA that there was anything untoward in this issue, that everything was progressing normally. In about June last year, the department was asserting that the way forward for the meat industry was by way of a labour agreement, which is also a facility that exists within the 457 process for engaging skilled labour. The meat industry peak body, who I believe has made a submission and will speak to that, has sought to negotiate that labour agreement with the department of immigration. It would appear from my understanding that there has been an emergence of admission that there would be no further nomination of visa approvals until the labour agreement was resolved. For Victoria, it has become untenable because the key element of a labour agreement was that the Federal Government required that the states be signatories and be participants in the labour agreement. The Victorian Government, in a letter from the Office of the Premier, has categorically stated that it will not take part in a labour agreement, so that would disfranchise every Victorian employer who has sought to travel the alternative path of a labour agreement.

Senator PARRY—Was a decision given as to why the Victorian Government refused?

Mr Kelson—There was, and it is within the attachments to today's hand out. You will read that. Essentially, it says that it is not their role.

CHAIR—While we are on that, it is timely that I ask in relation to the labour agreement that has just been signed with the Queensland Government, and in conjunction with Minister Kevin Andrews, as a temporary solution as long as there were training elements to it. That is what it says, essentially, in this document here. Are you aware of the Queensland agreement?

Mr Kelson—I am.

CHAIR—Is that something that you would be happy to see attached to the Victorian situation?

Mr Kelson—There are a number of issues with the labour agreement. The department of immigration, in negotiating the labour agreement, has essentially determined a number of ambit claims. The consequence is that there is now a denial of the regional certifying status for Queensland, so essentially there is no relief for regional employers in relation to the gazetted salary. There are incumbencies upon the employer in relation to the secondary visa holders that are not incumbent upon an employer in relation to 457s. There are a number of issues within the

labour agreement that are ambit; they are mischievous in terms of driving the cost of the process to a point where it is essentially unviable and for a great many, I believe—and I think the Western Australian experiences have shown that, despite there being a labour agreement over there, there have been no uptakes. There are a number of issues with labour agreements. If the approach to the labour agreement had been a genuine one that sought to deal with the major issue for the meat industry, which was this anomaly that existed in terms of the ASCO code and its definition of slaughter persons and the equity skills process in a meat plant of boner and slicer, then the need for a labour agreement would not exist. If the boner and slicer category had been gazetted within the four group, then the meat industry would be able to use people in that element of what is essentially a vertically integrated process in the modern meat industry, where the slaughtering and particularly those plants that deploy the hot boning process, where the slaughtered carcass proceeds to a boning room and it is essentially vertically integrated, for a variety of reasons—not the least of which is occupational health and safety—seek to multi-skill our people. That enables them to work through a range of tasks which is good sense and good practice in relation to the operation of our business.

CHAIR—I understand quite clearly what you have just said, but at the end of the day, one of your sticking points is about the regional element of a certified agreement as it affects wages. We are talking about the $41,850 for the general category, if that is the right term, yet you are saying on average you are paying yours $45,000, so that really should not worry you, should it?

Mr Kelson—Well, the issue becomes a matter of base wage rates and its impact upon any flow-on effect that might occur in what is now an orderly system of wage fixation in the meat industry. I would suggest that it would certainly seek to place that orderly wage fixation in great difficulty as one group is paid an hourly rate in excess of another, and that would be a difficult process to manage in the same working environment.

Senator POLLEY—We have heard from the company's point of view all of your concerns with the department. Do you have any concerns with the monitoring and the terms and conditions under which workers work under the 457 visas? Is there enough protection there for workers?

Mr Kelson—I believe so, and certainly since the very recent amendments to the legislation which make the sanctions fairly significant, I think the sanctions in place are adequate. They are of little consequence to us because we would employ our 457s no differently from our own people, and that is properly and with integrity and in a process that enables them to enjoy employment with the full protection of the Workplace Relations Act.

CHAIR—Thank you very much, Mr Kelson. The issues you have raised are unique to your industry, and there are some very serious concerns that I hope not only can you help resolve through your mechanisms but also this committee can help address through these hearings, sooner rather than later. As you say, appearing before a committee sometimes jogs the department's collective memory. I am sure that your evidence will not go unmissed today. For that reason, thank you for attending today's hearing. The secretariat will send you a copy of the transcript for any corrections that need to be made. I would be grateful if you could also send the secretariat any additional material you have undertaken to provide as soon as possible. Thank you.

Proceedings suspended from 12.19 pm to 1.31 pm

KEARNEY, Ms Gerardine Mary, Assistant Federal Secretary, Australian Nursing Federation

CHAIR—I would like to welcome the representative from the Australian Nursing Federation to this public hearing.

Ms Kearney—Gerardine Kearney, but I am very commonly known as Ged, so please call me Ged.

CHAIR—Thank you. We will call you Ged then. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings in the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The committee has received your submission and it has been authorised for publication with the deletion of the name of a particular company you have mentioned. The committee would ask that you refrain from naming that company in your evidence although you can refer to it, of course. The committee will be discussing the submission further and may agree to its full publication at a later date. I would invite you to make a brief opening statement if you wish before we proceed to questions.

Ms Kearney—I will make a very brief one. I thought it might be useful to give you a bit of background into nursing. Nurses are a registered profession and enrolled. There are certain standards in Australia that need to be met to qualify as a registered nurse. I refer in the submission to PCAs or patient care attendants. They are what we call an unlicensed level of worker who work in the nursing family. There are no qualification requirements to be a PCA. It is what we call a third level nurse: there is a registered nurse, an enrolled nurse and our third level nurse who are also members of the federation and whom we represent. I thought I had better explain that to you, as I do refer to it in the submission and I may not have explained it carefully.

We would like to acknowledge that we support the ACTU's submission. We have not gone into any great depth like the ACTU have, but we have kept our concerns mainly in relation to nurses and the nursing profession. We have had an alarming increase in people coming to us asking for help and support for nurses who have brought here on various employment models including the visas. I mentioned the 442 visas in the submission, even though it was not in the terms of reference. The situation of nurses coming here on the 442 visas is a growing concern to us and we have been asked to represent them on many occasions recently. Our involvement also fits with the increasing number of visas that have been granted. They are not our members, but they have been brought to us by virtue of our members who work with and alongside them and who are quite concerned.

Most of our concerns are at the recruiting end. We are finding that the recruiting companies are making promises to the nurses; they are employing them under conditions that they do not fulfil when they arrive, telling them that they will come as nurses and there will be opportunities for them to register as nurses when they arrive, but this is not the case. We really are very concerned for the nurses once they arrive here that they have these great expectations of

employment that simply are not fulfilled and they are exploited in positions as unlicensed workers at the third nursing level where they do not need qualifications. Something that has come to light in some of the examples, which is curious to us, is they are put on clinical placement where they are actually asked to go into the workplace to get clinical training and then are not paid for that period. It is a called a clinical placement training period. We do not know how they get away with it and it is of great concern to us. Some of them have been employed at a training wage which is about 70 per cent of an award wage. We do not know where that arbitrary figure came from. They are often charged for the training when they arrive which is also a concern to us.

At the employment level we find that they are often working overtime and weekends without knowing they are due penalty rates and overtime pay; unfortunately they do not receive these payments. This has been brought to our attention by their co-workers who have found out how much they are being paid. They are offered what we would call a bit 'dodgy' training that has often occurred in homes of the directors of nursing as I mentioned in my submission. It is not subject to any standards. It is also a concern to us that the nurses are frightened to complain and when they do come to us they ask that they stay anonymous, which of course is extremely difficult. These nurses are fully qualified and highly skilled in their country, particularly in the case study that I mention, and the only thing that holds them back from registration here is their English language. They are utilising their skills, very similar to a registered nurse in Australia, but they are being employed and paid at a much lower level. We are concerned it is about wage restraint and also exploitation of their skills. We are also concerned that nurses in the health industry generally are the largest employer or utiliser of 457 visas, yet there seems to be a big gap about where they are being employed in the health sector. We vaguely know there are doctors and that some are being employed as nurses, but we are not sure what they are employed as or where they are employed. That is a quick overview of our concerns. Our recommendations are in the submission and I am happy to answer any questions.

CHAIR—Thank you. I appreciate that, Ged. In terms of employment and some of the issues you raise regarding 457s, it appears to me quite incongruous that, if somebody is employed in another country and there is the verification and compliance checking, and many of them have the equivalent status of a registered nurse—would that be correct?

Ms Kearney—A lot of them probably would, bar for the language barriers. To be deemed equivalent in Australia, they need to do what we call a pre-registration course. Depending on which jurisdiction, it is a five to seven-week course in Australia that would assess their competencies against Australian standards.

CHAIR—Let me go to where I really want to go. You alluded to it and I understand that one of the largest employers of medical professionals, particularly nurses, are the state government health departments. I would be most surprised if they sponsored people on these 457 visa programs not knowing that their qualifications were not recognised and accepted in Australia and then used them in another field. You are not suggesting that the state governments are doing that, are you?

Ms Kearney—No, I am not. In fact, the majority of nurses who come here under 457 are employed in the public system under award wages, are well treated and have no problems. We are concerned about this increasing minority that are coming here under very strange

circumstances. To our knowledge, these people are predominantly being employed in the private aged care sector.

CHAIR—So it is a minority?

Ms Kearney—Yes, I would say that it is a smaller part of it, but it is growing increasingly and we are becoming alarmed at the number of instances where we are being called upon.

CHAIR—Sorry to be pedantic, but to tease this out, with respect to the sponsorship by the state government health departments, et cetera, those 457 visa holders are finding their right place in the workforce and are being paid their right minimum salaries, over and above their award conditions, et cetera. However, it is the ones through some of the private hire companies that you more concerned about who do not end up in the correct employment scenario that they believed they would be?

Ms Kearney—That is basically correct, but we have had an increasing number of recruitment companies contacting public hospitals directly. We have had directors of nursing reporting to us. Recruiting companies, for example, will ring and say, 'I can bring you 30 nurses from India and you can be the employer.' When we have looked into it, there have been some fairly spurious arrangements. We would not be surprised if there have been some not so secure employment arrangements occurring in the public sector that we do not know about and that have not been brought to mind. Most of these have been turned down. They have contacted us and we have said, 'We would prefer if you looked more closely into the employment contract and what they are being told at the recruitment end and what they are being charged, et cetera.' I find that many of the public hospitals that are employing directly actually employ their own recruitment people to do it for them so that they know it is all above board. It is becoming an increasing problem and not all of them contact us, so we would not know if there were any creeping into the public sector.

CHAIR—If I can continue down this line, because I think it is important from an immigration department point of view that this be clarified. The overseas posts are generally at a level where it is government to government, like state government sponsorships. I would hate to think that the overseas posts, either through lack of resourcing or by not doing their job, are first, not making sure that these people are qualified as they say they are, but secondly, understand the employment situation to which they are going and the terms and conditions. That concerns me if there is a problem in terms of the Commonwealth Government's administration of its overseas posts. Do you have any comment or evidence on that?

Ms Kearney—We probably only have anecdotal evidence, but it would be very difficult to know from the reports and the data that we are given. It is very difficult to find who exactly does employ them and under what conditions and terms they are employed. With respect to registration, if they came as a registered nurse, they would have to meet the registering authority's criteria to actually be registered as a nurse. From that level, one would hope that that would all be done properly because they would have to register with the board if they were being employed as RNs or ENs. Anything below that, however, there is no registering authority, so you would not really know under what terms and conditions they have come from. However, the licensing might above board but I do not believe that the data in the reports that we get from DIMIA tell us terms and conditions or exactly all the employers. For example, I would not know

how many nurses were employed at each particular hospital in each jurisdiction. It would be very difficult for me to comment on that.

CHAIR—The basis of a 457 visa is that you have a recognised, transportable skill. What is the third category that you mentioned?

Ms Kearney—Unlicensed workers.

CHAIR—Unlicensed workers—I would be surprised if they could get a visa.

Ms Kearney—As we indicated in the example that we gave of the company whose name I am not supposed to mention, they do find a classification that is acceptable. That classification is not used at the recruitment end. They are told at the other end that they are coming in as nurses or nursing assistants. However, we know from this example that, in order to get the visa, they used a classification that was acceptable. Once they get here they are employed in nursing homes as nursing assistants.

CHAIR—Have you more specific detail other than the name of the company that you can provide now or in the future about the arrangement that that company is using?

Ms Kearney—I believe I could. Kate might know if the New South Wales Nurses Association is presenting evidence to the committee. I thought I saw that on the site. This is a specific case to New South Wales and I can ask the New South Wales nurses to forward the information. Unfortunately they could not come today.

CHAIR—We are going to Sydney. If you do not mind, we will have the secretariat contact you and liaise with you to get that specific arrangement that could be transgressing.

Ms Kearney—I am sure that will be fine because it was quite a public affair. The media releases were on the website and I am sure they would have specifics for you. They were Fijian nurses in that specific instance.

CHAIR—We are in the wrong place, are we not?

Ms Kearney—At their end I believe they thought they were coming as nurses with the opportunity to do some training to register here and work as nurses, but they were actually employed as assistants in nursing as this third level nurse.

CHAIR—I would be interested to get further detail on that.

Ms Kearney—Certainly.

CHAIR—Finally, I refer to the ability to go to regional areas and have regional variations in terms of pay and qualifications. How do you respond to that?

Ms Kearney—From our perspective we are always calling for extra pay and extra conditions and things for people who have to go to regional areas, and it seems to me an interesting anomaly that we are prepared to pay people less to go there. We certainly do not support the

differentiation. We hope that they would be paid the same as their co-workers and alongside the same people with whom they work. Nursing is listed as a particular area with a shortage and yet we know that every given year between 2,000 and 4,000 people are knocked back from universities because there are not enough nursing places. It seems to me a crazy situation all around. We would not support differentiating wages in the regional areas; if anything, they should be given a bit more.

CHAIR—Something I would like to establish about the training of nurses because I know in my region in Western Australia, we have some nurses programs running and they are having difficulties filling the spots.

Ms Kearney—Is that right? That is interesting because in the last Deans of Nursing Report for last year, I believe that about 2,300 applicants were knocked back from nursing.

CHAIR—In Western Australia—

Ms Kearney—Maybe they need to pay them a bit more to go to WA.

CHAIR—If you come to WA you get a lot more money than you get anywhere else in this country. It is God's own country at the moment. I feel sorry for anyone living anywhere else, except Tasmania, of course. Now we will stop being flippant and move onto Senator Polley.

Senator POLLEY—Thank you very much for your submission. Could you paint a picture for me of the countries that are represented by those coming in on 457 visas within the nursing fraternity?

Ms Kearney—There are a lot from the Pacific, the Philippines more and more, and some from China. The majority would come from English speaking countries where we have reciprocal registration arrangements, for example Irish and English nurses. New Zealand can come anyway because we have the agreement.

Senator POLLEY—As far as you are concerned are the minimum levels of English acceptable within the industry?

Ms Kearney—Yes, I do. We have had some isolated cases where we have had some difficulty with nurses from South Africa who it was assumed would have English, and reciprocal rights were granted without testing. When they came here they were Afrikaans speaking and not English. We have had the occasional problem here and there, but mostly so far it has been okay.

Senator POLLEY—In terms of the department's ability to monitor and assess the mechanics and workings of the program, do you have a view on whether or not they should be tightened or do you see them as being adequate?

Ms Kearney—No, we definitely think they should be tightened. We think there needs to be much more vetting of the information that is given at the recruiting end. There is a lot of misinformation given and people are often brought here under false pretences. They are offered things, but they do not know costs that they are going to be subjected to. We have heard of nurses that are charged double what an Australian person would pay for training or education

when they arrive here. Recruitment costs, rental, all sorts of extra costs are taken out of their pay. That side of it needs to be tightened up enormously. Certainly when they arrive here they need to be given a lot more information about their rights as workers. They are very nervous to complain; they do not know who to go to for assistance or help. Mostly they turn to their fellow co-workers and they are lucky if they get someone who does actually know and can help them and generally brings them to us. With self-reporting, there seems to me to be a complete lack of control from the beginning of recruitment to the employment end.

Senator POLLEY—We have already had evidence this morning in relation to the lack of protection for people making complaints. Do you have a view on that that you would like to put on record?

Ms Kearney—Certainly. I think there needs to be protection for workers as we indicated in our submission. They need to know their rights in relation to complaints that they can make; there needs to be information in their language about where they go and to whom they can complain, and their protection so that once they complain they know they cannot necessarily be sacked or sent back home because they have complained. This is what they are telling us they are frightened about, that they are told they will be sacked or sent back. A lot of people come here with high expectations and their families have saved up thousands of dollars to send them here and there is a lot of pressure on them, morally from home, to stay and work. They put up with these dreadful conditions while they are here, not wanting to return and disappoint people at home.

Senator POLLEY—Can you enlighten us as to your experience with the department in terms of assessing and monitoring those who are out here on visas and whether there is enough contact with the individuals here?

Ms Kearney—From what we are told, some of them know. The most recent case, with the Fijian nurses, they did not feel they had much contact at all with the department. They did not really know that there was anyone they could go to and speak with, although the New South Wales nurses would be able to give you a lot more specific information around that. We would like to see a lot more contact and a lot more information for the people who do come. We are genuinely concerned about a lot of the people who come out regarding their knowledge of their rights and really exploitation of their terms and conditions of employment when they get here.

Senator POLLEY—We had evidence this morning from the ACTU, and we all accept that this is a stopgap measure for our skills shortages. I concur with the evidence that you need to also have proper training. As you have alluded to in your evidence, and I know from my home state of Tasmania that many people were turned away from university and being able to get into a nursing course. Do you think enough is being done in relation to the training and developing the long-term skills that we need, rather than relying on these visas?

Ms Kearney—We have been calling long and hard for more nursing undergraduate places. The first nursing report now is about eight years old and we have known for that long about projecting nursing shortages. We know that the average age of nurses is between 45 and 47 years. At least half the nurses are going to retire, including me, in the next 10 years.

Senator POLLEY—You are still young, though.

Ms Kearney—That is right, still young at heart. Half the workforce is going to retire and it is not hard to work out the projected costs. The recent report has been done showing that some inroads have been made through extra undergraduate places and we certainly think that is the way to go with training. Overseas nurses with 457 visas have a place in the very short term with gap filling. Australia is really lucky as we have a net migration of nurses who go overseas. Nursing is a very portable qualification and we are lucky in that up to date we have this net migration where nurses travel overseas and others come here. It is very short-sighted and very short term and we will need to be training more. We agree that we need about 1,000 extra undergraduate nursing places per year across the country to meet the shortfall.

Senator PARRY—That leads into what I was going to ask you. You said we have a net migration. Which way is it, are we losing or gaining?

Ms Kearney—I meant even, neither.

Senator PARRY—So there is not net loss or gain?

Ms Kearney—Yes, generally speaking at the registered nurse level.

Senator PARRY—This is one of the arguments put forward over the years that we can train as many nurses as we like, but they end up going overseas for a year or two.

Ms Kearney—The evidence does not show that. The evidence shows that by net it is even, the same number come and go.

Senator PARRY—You mentioned in the submission that 2,550 457 visas were granted for the 2006 year, which represents about six per cent of the entire number. Can you give me a breakdown—if you cannot I am happy to take it on notice—of those 2,550 how many ended up being registered nurses, how many enrolled nurse positions and how many in the personal care assistant positions? Do you know roughly now or is it possible to obtain that data?

Ms Kearney—I really could not tell you.

Senator PARRY—Can you take a stab in the dark and we will treat it as a stab in the dark? For example, would less than 50 per cent end up in registered nurse positions?

Ms Kearney—I would not think so. It is very hard to say, but if they are in the report as nurses, then I would say that the majority of them would be registered nurses.

Senator PARRY—Would there be less than 10 per cent that end up as personal care assistants? Would you be prepared to make an estimate?

Ms Kearney—Of that lot I would say, but we do not know about this mysterious group that is listed as 'other'. We do not know where they are or where they have gone to and they are the ones that we are concerned about.

Senator PARRY—That then leads into another question. You mention in paragraph 3.1 on page eight of your report that the nurses arrive under a non-nursing skilled migration category. What is the non-nursing skilled category they arrive under?

Ms Kearney—It is an Australian Standard Classification of Occupations, ASCO, defined occupation. It is Residential Care Officer, which is a very specific classification that refers to people who work with autistic children.

Senator PARRY—That is it?

Ms Kearney—That is it. I have listed ASCO's occupation and duties there and to be perfectly honest, I have never met an RCO.

Senator PARRY—So that is the only other non-nursing category that nurses come in under?

Ms Kearney—I cannot say it is the only one, but it is the one that I have been alerted to by the New South Wales nurses. That was the specific example that we had.

Senator PARRY—You mentioned also about the exploitation of skills at 6.6 of the report. You talked about nurses being eligible for registration as a nurse, et cetera, and they do not meet the English language requirement. Are you confident that, on a competency base, they would marry in skill for skill as a registered nurse?

Ms Kearney—I think certainly with our pre-registration course that is a standard requirement that many of these nurses would. Not all of them would, but certainly Pacific nation nurses have done very well with the pre-registered course.

Senator PARRY—Is that the only way of determining the skill sets, the competency of the nurses, through the pre-registration course?

Ms Kearney—At the moment it is a legal requirement, yes.

Senator PARRY—Is that the only way of assessing? Is that the only formal assessment process that nurses are placed through?

Ms Kearney—Yes, at the moment, to my understanding, it is.

Senator PARRY—Do you think that is satisfactory?

Ms Kearney—Yes, I do. I think they are very stringent courses.

Senator PARRY—If you can guess again, what percentage of nurses would fail that pre-registration of between five and seven-weeks' duration depending on the state or territory—would it be less than five per cent?

Ms Kearney—I really could not say, I would have to check with the registering authorities. I could take that on notice for you.

Senator PARRY—The other thing that I have noticed in your submission, in the conclusion, 7.2 Office of Chief Nurse.

Ms Kearney—Yes.

Senator PARRY—I have to declare an interest: my wife is a nurse, I am not looking for a job for her—

CHAIR—So you like nurses?

Senator PARRY—I do like nurses, yes.

Ms Kearney—Everybody knows a nurse; there are 250,000 of us in the country.

Senator PARRY—The Office of Chief Nurse, do you think that that would be like an oversight type audit role?

Ms Kearney—We are desperate for some really good workforce planning. That is one major role that I think an office of a chief nurse could undertake. It is so difficult to get accurate data about nurses leaving, coming and going, retention and recruitment.

Senator PARRY—In the migration context, would you see this as someone who would probably look after the pre-registration standards, and you are looking at a standard that would be adopted throughout the country, rather than having very different states?

Ms Kearney—Absolutely. You probably do know that we are moving to national registration and national accreditation, so we think even more now an office of a chief nurse would be able to implement national standards across the country for such things as pre-registration.

CHAIR—Just finally, I appreciate your submission, but are you opposed to 457 visas per se?

Ms Kearney—No.

CHAIR—Do you believe that they play a role in workforce shortages as a temporary measure?

Ms Kearney—We do believe that. Many nurses do come here and work and it also facilitates learning and education and skill transition across countries. You pick up skills that you might not be able to get elsewhere. At the same time we do not think it is a good workforce gap measure. There is certainly a place for it in the workforce, but we are very concerned that for some reason over the last couple of years the exploitation of nurses on these visas has grown exponentially. We are being alerted to it more and more. I do believe there is a place for it.

CHAIR—Are you happy with the fact that they have a citizenship outcome potential at the end of these programs?

Ms Kearney—We certainly would love to see a citizenship outcome. We would love to encourage permanent visas as opposed to these visas, and we think that would be a very good outcome.

Senator PARRY—Do you see any pockets in Australia, either by state or any other geographic area, where there is a stronger prevalence for exploitation, if I use your term?

Ms Kearney—State-by-state?

Senator PARRY—State-by-state, or is it uniform across the country?

Ms Kearney—To date most of our experience has come from, dare I say it, New South Wales and Victoria. I do not know if that is because that is where the majority of our membership is and so our members are more prepared to alert their colleagues to our existence and what we can do for them. That is another thing; they do not even know that there is a nurses union that they can go to if they would like help. I might be skewing your data by saying that, but most of our experience is New South Wales and Victoria to date.

Senator PARRY—We will take the data with that qualification.

CHAIR—A probing question: you are affiliated with the ACTU?

Ms Kearney—We are.

CHAIR—The Australian Nurses Federation (WA Branch) is not?

Ms Kearney—That is not quite true. They disaffiliated I believe from Unions WA, but by virtue of the fact that they are a member of the federation, they are still affiliated with the ACTU.

CHAIR—I am saying that because I believe we are taking evidence from the Australian Nurses Federation. It would be interesting to get a submission from them to see if they have any definite view—

Ms Kearney—It would be.

CHAIR—Given their slightly different connection.

Ms Kearney—They are still part of our federation, so they are still part of the ANF. They just disaffiliated from Unions WA for reasons of their own.

Senator POLLEY—In relation to those that come out of the 457 visas and go into the aged care industry, are they being manipulated into that industry because there is a shortage worldwide of those willing to work in aged care or is it just to take advantage and it is a matter of salaries and money?

Ms Kearney—I certainly think it is to take advantage. It is a non-skilled position. There is quite a lot of federal money to assist training and employment of people into these positions. We firmly believe it is a manipulation of wages and conditions that they employ them into these

jobs. There are plenty of people who are willing to work in this area. The ANF is a registered training authority (RTO) and we skill people, mainly because we would like people working in aged care to have skills. We train them at a Certificate III level and we never have any problems filling our classes. We have an oversupply of people wanting to work in the industry in those positions. Our shortage in aged care is with registered nurses, not the non-skilled workers.

Senator POLLEY—Thank you very much.

CHAIR—Thanks, Ged, for attending this hearing today. The secretariat will send you a copy of the transcript for any corrections that need to be made.

Ms Kearney—Will you remind me of the questions that were on notice?

CHAIR—We will send you the transcript and the questions will be in there. I would be grateful if you could also send the secretariat any additional material which you have alluded to and that you have undertaken to provide as soon as possible. Thank you.

Ms Kearney—No worries.

[2.05 pm]

FRANCESCHINI, Mr Matthew Robert, Chief Executive Officer, Entity Solutions Pty Ltd

NORTHOVER, Miss Lindy Maree, General Manager, Entity Solutions Pty Ltd

CHAIR—I would like to say good afternoon and welcome representatives from Entity Solutions to this public hearing. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The committee has received your submission and it has been authorised for publication. I now invite you to make a brief opening statement if you wish before we proceed to questions.

Mr Franceschini—Thank you. We will give a brief opening statement. I will briefly explain Entity Solutions and what we do, and Lindy will talk more specifically about the 457 migration issue. Entity Solutions was incorporated in February 2000. It is a wholly Australian owned and operated business. It is an award winning business. It is Australia's largest engagement consulting and services firm. We are neither a recruitment agency, a labour hire organisation, nor a contractor management services organisation. Rather, we are a consulting and back office services company that manages the engagement between independent professionals who are loosely defined as professional white collar workers and the businesses that require their services. This means that we enable independent professionals to provide their highly skilled services whilst we ensure statutory and professional compliance for them and the businesses that require their services. We ensure that all parties, being the independent professionals themselves, companies, government agencies, recruitment agencies and anyone else who is involved in the process of engaging these people are fully compliant and risk free. This covers areas such as GST, income tax, salary packaging, superannuation, workers compensation, payroll tax, visa conditions and professional insurances. As an organisation we bring many independent professionals back into the PAYG system and effectively become a collection agency for the government, in particular the Australian Taxation Office. We prevent tax avoidance strategies such as income splitting and non-payment of state-based statutories such as payroll tax and workers compensation, which is prevalent where independent professionals are engaged through their own structures.

We represent over 2,000 independent professionals of which approximately 200 are working in Australia through our company under a 457 visa, as well as the numerous commercial and government organisations that engage them. We essentially operate in the IT&T, engineering and accounting sectors and we provide independent professionals, IPROs, to organisations, large corporates such as AXA, Sensis, BHP, Telstra and many government departments, both state and federal. The average income of the people that we engage is approximately $100,000 per annum. As a final comment I will say that we strongly disagree with the assertion that overseas professionals are taking jobs away from Australians. Contrary to popular belief, it is far more costly and takes a longer time to sponsor an overseas professional than it takes to employ an Australian resident.

Miss Northover—As Matthew mentioned, we are both a sponsor company and a migrant agent for the migration division of Entity. We also represent other Australian sponsor companies. We are very regular users of the 457 visa program. The main points we want to make are that we believe the current eligibility requirements for the 457 visa are adequate. Some of the requirements might benefit in some ways from a more flexible approach by the Department of Immigration and Citizenship during processing and at monitoring stage. For instance, in the area of salary packaging, which is a main benefit for some of the overseas professionals that we engage, the cash component or taxable salary component of their entire package only makes up a certain part of that. The issue we have found is that when all of the tax free allowances allowed under the ATO regulations are applied to those people, such as the living away from home allowance, even on $100,000 plus salaries, sometimes that can inadvertently drop them below the minimum taxable salary levels that are set by DIAC, particularly for IT professionals who are one of our main users of the 457 system.

We do not say that these people need to have any more allowances or benefits salary wise, but it is something that sponsor companies have to be very careful about when they are payrolling these particular people through the system. Any adjustments to the salary levels as set should be recognised as whole salary packages, rather than just the taxable salary component, which is traditionally what the department of immigration monitors. Normally they ask for the PAYG summary; however, they have recently increased it to adding a couple of recent payslips as well. Some of those things are noted on there. I believe that is due to comparing salaries to hours of work, rather than any recognition of the salary packaging of these people. The second point relating to the eligibility requirements is the level of training that has to be evidenced by the sponsor companies when they are applying for sponsorship. We believe that is important from a sponsor company perspective, but we would like more recognised the on-the-job training component that these people bring in. For instance, we deal with a lot of IT specialists such as SAP consultants who are usually put out on projects where there are 10 to 20 other Australian people working with them.

It is very difficult to estimate the amount of on-the-job training that is occurring. We would suggest that trying to make a sponsor company train their current Australian employees to that level of an SAP consultant, for instance, is not a quick fix or something that can happen overnight. The people we bring in are traditionally Bachelor degree if not Masters degree educated with many years of work experience as well. They are usually on projects with some Australian university graduates in the IT field, and they are upskilled on the job during these projects which could be from six to 12 months in length. The areas we would like to mention briefly where we think changes do need to be made are in the monitoring of sponsor companies to ensure that everybody is meeting their obligations, and also perhaps some dialogue with the 457 visa holders themselves so that that can be confirmed. To our knowledge, that does not presently occur. The sponsor companies usually respond to the monitoring request, as we do, and the visa candidates are not usually involved in that process.

We support the introduction of tougher sanctions for the companies that are found to have exploited the system or misused it any way. As reported in the media, if the majority of abuses or exploitation of the system is in certain occupations, which we would call ASCO group four as migration agents, or the trades, then perhaps there could be more effort in monitoring those particular areas rather than making changes to the entire 457 visa program. This can adversely affect other sectors including the professional sector that we deal in. We only deal in ASCO

group one to three occupations and primarily groups one and two, which are degree qualified or management level. We feel that a lot of the changes that are being suggested as a result of things being reported in the media simply do not apply to the people that we are dealing with. To prevent those people coming in would actually disadvantage the Australian employees that they are on sites with and upskilling that way. We are happy to answer any questions that you have.

CHAIR—Thank you. You have an interesting arrangement. By way of background, how many people does Entity Solutions employ directly?

Mr Franceschini—We have approximately 67 internal staff now in Melbourne, Sydney and Brisbane. We employ close to 2,000 people as contractors—we refer to them as independent professionals—who are on our payroll. We act as their employer and provide all of the required payments that are required by law. There are close to 70 internal staff.

CHAIR—I know why you would not have a Tasmanian office, but why do you not have a Perth office?

Mr Franceschini—We are heading there actually, Mr Randall. We have plans to be in a couple of other states over the next 12 to 18 months.

CHAIR—That is good. Are you aware of the immigration outreach office agreement?

Miss Northover—No.

CHAIR—In terms of the exclusion of overseas labour hire firms, you are suggesting that they should be excluded, based on what?

Miss Northover—That is based on what we are reading in the media. Also as a migration agent I am a member of the Migration Institute of Australia who you would be speaking to.

CHAIR—Do you have any personal experiences where you believe that they have transgressed?

Miss Northover—No, we do not, it is simply on what has been reported in the media.

Mr Franceschini—I have personally been contacted by a couple of overseas recruitment firms who have tried, for want of a better term, to sell overseas candidates into the Australian market. We will not deal with them because there appear to be a number of ethical issues with the way they conduct themselves.

CHAIR—You mentioned the monitoring and compliance by the department and say that it could be enhanced—am I reading you correctly?

Mr Franceschini—Yes.

CHAIR—Is the turnaround time for visas timely? It is meant to be within a month.

Miss Northover—It is a major issue. I did cover that in the submission, but I have not brought it up today because I thought several other parties would speak to you about it.

CHAIR—Is it a recent phenomenon?

Miss Northover—Over the last six months it has been more of an issue than it has ever been in the past. As a sponsor company we normally put all of our applications through Sydney and Parramatta because that is where our migration agency used to work from. As a migration agent for other sponsor companies we use other offices as well including Melbourne, Canberra and Perth. The visa processing time does vary in all of those different posts and in the business sector we have found them to be unacceptable in the large majority of cases. It is sometimes the lack of information that is provided. A lot of times the department will say that the delay is waiting on an overseas check or an internal check of some description, but they will not actually reveal what that is. As migration agents we can presume it may be in relation to work references or another check that is being done, but they do not provide details of that. When you are reporting to a sponsor company or to a client that needs that resource, it is very difficult to explain why it takes a couple of months in a lot of cases for that resource to be allowed in. In our sector they are extremely highly skilled people and extremely well paid people and they are usually needed on projects as a matter of urgency to implement something like IT and engineering projects.

CHAIR—You mention short-term three-month visas there. Do you believe that the recent delays in granting visas is a workforce issue with the department or a cultural issue, or is it to do with overseas posts being under-resourced or a lack of will?

Miss Northover—I do not think it is lack of will. I would say there are two issues. One is under-resourcing in the department. I am aware that the case officers are processing as many visas as they can and a lot of them are working on Saturdays. I often get emailed on a Saturday with a reply or a request. I have been told at a Migration Institute meeting by a member of the business centre here in Melbourne that, with all of the additional checking that is done, particularly on the ASCO group four occupation in the trades to ensure that they do have the necessary qualifications, those reference checks via the overseas posts are taking a significant period of time—three months if not longer.

CHAIR—Is this recent?

Miss Northover—Yes, recently. That was just before Christmas. It slows down all of the other applications that are in line to be processed. I was also told at that meeting that they do not have any way of differentiating on the electronic system what sort of occupation is coming through. The manager has offered that if you alert them to the fact that it is a general manager on $200,000 per annum that is needed for an intra-company transfer, for instance, that you may be able to get priority processing by making a case that way. In general terms you cannot ask for priority on every case that you lodge or they will be bored with your asking and start ignoring you. I think either a shorter term visa option or separating it out so that the occupations in ASCO groups one to three are actually processed and monitored separately to the other groups. It may mean that those people who are needed in the professional sector can be facilitated a lot more quickly.

CHAIR—You alluded in your evidence and in statements that to facilitate your bringing these people along with their visas, it would be easier if you had a name or a contact of the case officer so that you could talk directly to them, is that correct?

Miss Northover—Well, as a migration agent we actually do often have contact details for the managers of the departments or business centres so that we can speak to them.

CHAIR—They do not give out information, from what I can understand.

Miss Northover—Usually you can get the information from a manager, but you will not often get the information from a case officer. From my experience, they are either overworked or some of them are under-trained to be frank in what they are actually doing. They sometimes misread regulations or do not take into account all of the aspects of a particular case, and that can cause delays as well.

Senator POLLEY—I have lots of questions. Thank you very much for your evidence. Going on from your assessment that there are delays and that there should be some priorities for some professional areas, if that were the case that in turn would create a further lag time for people in other classifications. How would you address that other than resources?

Miss Northover—I would not suggest that the other areas are disadvantaged by allocating resources more to the professional sector, for instance, but that they are processed separately and maybe some additional resources also in the trade sector or the ASCO group four sector. I am suggesting the two areas within ASCO one to three and ASCO four be processed separately. Case officers could be specialised in the checks that need to be done for those specific occupations rather than expecting them to assess a general manager with 20 years' experience on one hand and a plumber with a whole different set of qualifications on the next. That may speed up the process from all perspectives.

Senator POLLEY—In terms of monitoring from the department's point of view, you have alluded to the fact that you believe that it should be more hands on in terms of consultation with those people who are out here working on the visas. Can you elaborate or add anything to your earlier comments?

Miss Northover—I have seen a suggestion that perhaps visa candidates could be asked to sign-off on the report that is provided back to the department in relation to the monitoring. I would certainly support that idea. A company like ours actually facilitates quicker monitoring of various workplaces that are using 457 visa holders. As our people are out on client sites, rather than each one of those clients obtaining their own business sponsorship for one resource and then all having to be monitored, that Entity is only monitored once to cover that person's employment during that 12-month period. We are basically the sponsor company for all of those resources and different projects. That would cut down on the amount of monitoring that needs to be done. We are monitored every 12 months on average as a larger user of the 457 visa program. It does seem that the monitoring levels have decreased due to the growth of the 457 visa program.

Mr Franceschini—Because Lindy does our own business monitoring, as well as for a number of other businesses, we have seen a high incidence of small businesses who gain their

sponsorship not really understanding the monitoring rules and regulations. They can inadvertently be in breach of a lot of those rules and regulations and quite often when they come to us they need assistance. Where an organisation like ours is fully abreast of all the monitoring conditions it would create efficiencies for the department insofar as only having to go to one organisation. They are welcome to come and look at our systems because it is our systems that enable us to do that. A lot of organisations do not have the right systems in place. But it is a bit like our structure as a whole, we enforce compliance with everyone who uses our structure. One suggestion could be to put in place a particular status of organisation where the department could be assured that there is a much higher degree of monitoring and compliance across all of the required areas. I believe that is the case in another visa class with the 459 visa.

Senator POLLEY—In talking about your systems, you touched on an area in terms of those workers on a 457 visa who have issues or concerns on site from where they are employed. You obviously have a mechanism in place that allows them to raise their concerns without any fear or favour. Can you enlighten us as to what that system is? Perhaps it is something that the department could benefit from as well.

Miss Northover—That system ties in with a system that we use across the board as a company for all of our independent professionals, whether they be Australian or on visas. We have a separate Client Services section that keeps in constant contact by telephone or email with all of those professionals wherever they may be placed on client sites. All of those employees can contact Entity Solutions at any time with any queries. For the visa holder people it is taken to an additional degree in that we contact them constantly regarding the projects that they are on and when those projects may finish so that they can start a new project straightaway and comply with all their visa conditions. Through that system they are able to contact us at any time with any other concerns they may have in relation to OH&S or anything else on their worksite. We also release condition 8107, with is the conditions that 457 visas have, individually at the time of the visa approval. They receive a copy of their visa approval notification and also an additional copy of that condition and how it applies to them. As a migration agent I provide the same type of information to sponsor companies. Rather than briefly reading the information that is contained on the application form for sponsor companies with respect to their application, it is actually explained to them point by point as to what those obligations are and how they should manage them.

Senator PARRY—We are very short of time. I like the way you have actually given us some suggestions in most of these. In clause 4.9 on page seven, you have indicated that you would like to see the renewal of the 457 to be shortened, and you have stepped out some logical reasons for that. Do you know what the percentage of renewals is in your industry? For example, there are 200 or so 457 visa holders currently within your domain?

Miss Northover—It actually depends on the amount of time those people have been here. Because the maximum term of these visas is four years it can depend on what term of visa they apply for initially.

Senator PARRY—Can you give me a rough estimate?

Miss Northover—With our particular company I would say we are up to almost 50 per cent of our 200 that are renewing at the moment. We have been sponsoring a lot of them for the past four years.

Senator PARRY—We may have to research more widely, but would you have any idea within the entire 457 area as to the percentage of renewals?

Mr Franceschini—We can only comment on the ASCO one to three area because we do not have anything to do with four and above.

Senator PARRY—Can you give ASCO one to three?

Mr Franceschini—On ASCO one to three, predominantly the people who come out are very highly skilled. They are not graduate IT people; they are 10 to 20 years experienced IT people. Their initial visa might only be for a year or two, and in those cases you would probably have well over a 50 per cent renewal rate. Where they are initially four-year visas, and we have seen a high incidence of when they get to towards the end of their four years, they apply for permanent residency.

Senator PARRY—We asked this question of nursing, but is there a net loss or gain? Are we getting more people coming into our country rather than losing any at this end?

Mr Franceschini—No, it is going the other way. I think there is a major brain drain, to coin the phrase, in particular in the IT&T field and engineering fields. As Lindy alluded to earlier, part of the reason for that is that it is a global market now. A lot of countries competing for these highly skilled resources are offering very low tax rates and very easy migration situations.

Senator PARRY—Is it dollar driven?

Mr Franceschini—Absolutely. A lot of these independent professionals are driven by the dollar, by the travel and the opportunities.

Senator PARRY—Is there evidence where they go away for a couple of years to experience a different culture in the workplace and then come back?

Mr Franceschini—There is a lot of that. I think most born and bred Australians at this level will go away for a period of time, but they will generally come back. Of the ones who do not, the highest incidence we have seen are of people who have been in the UK for five to 10 years. If they are going off to places like Dubai, where a lot of engineering work is required, they usually go for two or three years and come back.

Senator PARRY—Rupert Murdoch has not come back yet.

Mr Franceschini—I do not think he would need a visa, would he?

Senator PARRY—No, I do not think he would.

CHAIR—It is a fascinating submission about which we can talk a lot more. We appreciate your professional approach. Others may know this, but for my own enlightenment, can you give me a little thumbnail sketch of what it would cost to bring say a Swiss engineer to Australia—to him, his company and the sponsor, et cetera.

Miss Northover—It does depend on how they go about that. If it was simply a matter of bringing him in and the company applying for their own sponsorship, they would only pay a total of $510 for the department of immigration application fees. There may be an additional cost to pay him through their payroll system as it would have to allow for expenses such as the living away from home allowances. A lot of smaller companies cannot facilitate that so they outsource that payroll. The independent professionals will not come over if those payments are not part of the deal because of the cash.

Mr Franceschini—I would think if you are going to use a migration agent, which most do because it can be a minefield and you are going to have to recruit from overseas, as a thumbnail it would probably be up to $10,000 on top of what it would cost to find the person in Collins Street. This would include using the agent, flying them over and accommodating them for the first six or eight weeks until they find permanent accommodation,.

CHAIR—I asked that because that was one of your original statements; that you are better off training or upskilling an Australian if you can.

Mr Franceschini—The financial side is one side, but there is no doubt that the time limit is a major issue; that is the second factor. In the professional sector if you can find a local person you can have them working within a week or two. Even if the visas were being processed in four weeks, it is probably an eight week gap before you can have someone landed and working. The third factor is the cultural factor; not all overseas people will naturally fit directly into an Australian workforce. I have not seen an incident in 12 years in this industry where a company has said no, we are not hiring that local guy, we are going overseas for someone. If they can find them and they can hire them, they will. It is a necessity, not for the reasons of cost-saving or any other reason that may be suggested in the media.

CHAIR—I would like to thank you for attending today's hearing. The secretariat will send you a copy of the transcript for any corrections that need to be made. I would be grateful if you could also send the secretariat any additional material that you have undertaken to provide as soon as possible.

[2.24 pm]

CHANESMAN, Mr Alan Lipman, Adviser to Information Technology Contract and Recruitment Association

LACY, The Hon. Norman Henry, Executive Director, Information Technology Contract and Recruitment Association

CHAIR—I would like to welcome the representatives from the Information Technology Contract and Recruitment Association to this public hearing. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The committee has received your submission and it has been authorised for publication. I invite you to make a brief opening statement if you wish before we proceed to questions.

Mr Lacy—Thank you very much and thank you for time of the committee to elaborate on our submission. The association represents approximately 154 member companies; I say approximately because we are constantly dealing with applications and currently have six before us. Those companies specialise in the recruitment and management of ICT professionals, whether permanent employees or contractors. Half the candidates placed in the public and private sector are actually contractors. My members represent about 90 per cent of the ICT recruitment industry. I have included a pack here of background information about the association and other items to which I am about to refer as well as a summary for the committee.

CHAIR—I will give it to the secretariat, thanks.

Mr Lacy—My association is committed to the preservation for its members of the strategic opportunity it has in the current arrangements for migration in this country, to recruit both from the Australian workforce and from the international workforce to satisfy the employment demand being generated by government and the private sector in Australia.

The second main point I want to make is that ICT applicants for 457 visas meet the DIAC eligibility criteria at a higher level than any other industry sector in respect of migration salary level (which are set at 11 per cent higher than non ICT sectors), skills, training, English language and the Migrations Occupations in Demand List (MODL). We believe that the current eligibility requirements are more than adequate as they are.

The fourth point I would like to make is that the shortage of skilled professionals in ICT, as demonstrated by DEWR's Skilled Vacancies Index, continues into 2007. The index has increased by 200 per cent in the three years since February 2004. There is no evidence from my members or from the association that suggests that there is going to be any diminution in the trend of that index.

Finally, my members have a very strong interest in the existing regime and a very strong interest therefore in ensuring that all those who would make use of the existing regime are compliant with the regulations, laws and policies of the department. On many occasions we have sought from the department an indication of any member of the association who is not compliant, particularly when these things have become a matter of public debate and discussion. Our own code of conduct for this industry is such that we would not countenance the membership of an organisation who was in breach or behaving in a way that put them in breach of the laws of the land. We believe it is important that compliance is looked it and that non-compliance is identified and punished. From the indication we have had from the department on numerous occasions, we believe that our members are fully compliant. I have personally asked the senior levels of the department for that information on least three or four occasions and they have been unable to indicate to us any member who has been non-compliant with the current regime. I therefore make those comments about my association's members with confidence.

Mr Lacy—Those are my introductory comments. We welcome the opportunity to expand on or make further comments about our submission to the department. Mr Chanesman, who is an advisor to the association on immigration law matters and much more in touch with the details of how the current regime operates in our industry, is available to help me when I find myself out of my depth.

CHAIR—Thank you very much. Can I say at the outset that it is obvious that you have made this submission because you are supporters of the current arrangement. You have made some suggestions about compliance and reporting, et cetera, but largely you feel that in your particular area of ICT, this visa category does what it is intended to do rather well.

Mr Lacy—Yes we do.

Mr Chanesman—Of relevance to the ICT industry and our association are the DIAC figures which attest to ICT professions being two of the top three in the industry. It is very relevant to this inquiry.

CHAIR—We took evidence some time ago on another inquiry called *Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing*. An industry body before us then believed that bringing lesser qualified operators to Australia was actually doing young Australians out of a job. They suggested targeting highly qualified engineers in that field rather than operators. It is a bit of a tangential question, but would you agree with that or do you see a need for the whole range?

Mr Lacy—I share the view of the previous person sitting in this chair who made the point very well that it is at significant cost that our members have to find someone overseas. It is much more in their interests to find an Australian for a position in many respects, including the recruitment process itself; it is easier to place someone who you can interview face to face. In addition, they do not always fit into the culture as was mentioned before and the general experience is that they are not as easy to manage. On our own association job board, IT2, where they advertise free, our members currently have 11,500 jobs. All our members put all of their jobs in IT2. We promote that job board in the IT sections of magazines, the *Sydney Morning Herald*, the *Age*, the *Financial Review* and other places. It is known to the industry that it exists

and it is known that there are 11,000 jobs there. There is no doubt that Australians get the first go at these jobs. It is only if they cannot find someone with the required skills that they will go to the trouble, the expense and the extra effort to try find someone overseas.

CHAIR—Senator Polley?

Senator POLLEY—Can you explain why there is such an acute shortage in your industry?

Mr Lacy—There is a very high demand, not least from the government sector where a lot of the demand is being created. There are three government departments currently undergoing major projects including DIAC, ATO and Centrelink. Currently and for the last two or three years, government have significantly ratcheted up demand for ICT with major systems projects.

The economy is the other general factor. As we all know, it is a very strong economy and that is generating increasing infrastructure projects that are generating this demand. There does not seem to be anything on the horizon that suggests that that is going to change. It could well change, but nothing that we can see at the moment.

Senator POLLEY—In general you are very happy with the 457 visas. Do you have any comments on the structure of the salaries?

Mr Lacy—The salaries paid to our members?

Senator POLLEY—Through the program; the minimum salaries in those areas.

Mr Chanesman—As far as that is concerned the ICT industry has a hurdle which is 11 per cent higher than the minimum salary level (MSL). That level has been determined by DIAC for any number of reasons. Whilst we live with that as an industry, one of our recommendations that you will find in the submission is that it remains untouched. We are prepared to live with the disparity at this particular point in time. In the vast majority of cases, as the Australian Bureau of Statistics and DIAC figures will attest, the salaries and remuneration levels paid to ICT people in the industry are considerably higher than the mean average. As far as MSL is concerned across the board, moving away from being ICT generic, I do not think any further adjustment needs to be made as I think it is equitable and fair. One of industry's biggest concerns is that when the MSL gets ratcheted up by DIAC, that effectively forces industry to increase their salary levels; that is a major concern in the marketplace.

Senator PARRY—Your recommendations are quite clear. Why did you not recommend to reduce back to just having one MSL and not have the distinction for IT?

Mr Lacy—We did talk about that and our general view is that it would desirable. We fail to see why ICT has this distinction against it. However, as a tactic rather than a strategy, we decided to live with what we have and try to ensure that it does not go up.

Mr Chanesman—If this disparity between the two levels increased significantly, we would then take a position on that because anything over and above where it is at the moment is grossly unfair.

Senator PARRY—I was amazed that you did not recommend the equality across—

Mr Chanesman—We also take a fairly holistic view in that ICT industry folk are very highly skilled people. They are skilled and trained at a higher level, they have a higher experience level and as a result they are remunerated commensurate with their experience and skills. At this particular point in time it is not an issue. I can put on notice however that if the increase becomes any more and/or the disparity between the two levels become wider then it does become an issue.

Senator PARRY—My further understanding is that the department negotiates, discusses or has some formal dialogue with industry about setting the minimum salary level; is that correct?

Mr Lacy—That is correct.

Senator PARRY—How come it keeps going up or how come there is a differential?

Mr Chanesman—It is an arbitrary decision made by DIAC.

Senator PARRY—What other industry groups would be consulted apart from your industry?

Mr Lacy—I do not know. I guess the others are.

Senator PARRY—Would there be others?

Mr Chanesman—In terms of the IT industry?

Senator PARRY—Yes.

Mr Chanesman—Not a lot of others besides ourselves.

Senator PARRY—Can I go back a step—do you represent the largest number of members within Australia?

Mr Lacy—Ninety per cent of the ICT recruitment industry are members of the association.

Senator PARRY—I would have thought your view would have been fairly important for the department?

Mr Lacy—Yes, correct.

Senator PARRY—Has your view been consistent that you do not see a need for the differential and you do not see a need for an increase?

Mr Lacy—Yes it has.

Senator PARRY—That is all I have, thank you Chair.

CHAIR—That is an interesting form of negotiation then. In relation to English proficiency, you do not see that that needs to be further elevated?

Mr Chanesman— The current eligibility requirements are met very well by ICT people. The overwhelming majority of ICT professionals who come to Australia on the 457 visa program are from source countries where either English is the first language or English is the language of business. The English language component is not a matter of concern for people in our industry.

Our interests with this inquiry reside predominantly with the ICT sector. Taking us out of that somewhat and putting the other hat on which looks at the holistic view of the industry, there is certainly a case for increased and a more vigilant monitoring of the English language component at anything below ASCO one to three.

CHAIR—Changing tack a little, a question you may have heard us ask others before regards the timeliness of visas being granted. How do you respond to that? Is it blowing out, is it becoming more difficult, more bureaucratic or are you finding it okay?

Mr Chanesman—At the moment there is an interesting scenario in the marketplace with DIAC and their response to industry. Unfortunately DIAC have been caught by the nature of the beast that they administer. The objectives of the 457 visa program when it was first introduced were speed and efficiency in providing a decision in relation to having people come to Australia for temporary work to fill a skills shortage. We are well aware of the massive jump in the 457 visa program uptake; there is a 44 per cent increase over the last year. As a result, DIAC have well publicised information, and will tell you themselves, that they have a human capital and a funding resource deficiency. They simply cannot attend to the uptake of the program in a proficient manner. We therefore have the situation where the decision making from the time of lodgement has definitely blown out. The DIAC figures which are published regularly quote decision rates for non-critical and critical type visas; the current state of affairs is well beyond that. Our recommendation as an association is for the government to increase the human capital component and to increase the funding so more people attend to the program and the regime.

CHAIR—Do you think rather than government funding that it should be made more user pays?

Mr Chanesman—The industry should not bear the brunt of administering a government program.

CHAIR—A good point, but the individual applicant might want to pay more significant—

Mr Chanesman—The individual applicant?

CHAIR—Yes.

Mr Chanesman—Our position is very strong that the individual applicant is not a factor here. Sponsoring business is the entity that should be paying for the service as the migration instruments currently dictate. We oppose any environment where the visa holder is forced to pay for the service, that would be appalling.

CHAIR—A good point, well made and clear. In your experience have you found that the lag time is increasing in overseas posts from where you source the individuals?

Mr Chanesman—The lag time is across the board. I could not point to any issue where it was country specific, especially by any overseas post or DFAT controlled environment. I would answer that question as no, not at this particular point in time. From our experience the lag time is most definitely Australia-based through the various centres within Australia.

Senator POLLEY—Any suggestions on how that can be improved?

Mr Chanesman—The effectiveness of the program in terms of decision making?

Senator POLLEY—Yes and the lag time. Is it a matter of resourcing?

Mr Chanesman— One of the key recommendations of the Palmer report, which was released in 2005 and which was on the completely different subject of detention, was that the department of immigration need to be consistent in their decision making. If you look at the Australian migration program right across the board, whether it is 457 visas or spouse programs, DIAC are not consistent. Two years after the Palmer report and that recommendation, I do not believe that the department has risen to the occasion. Why have they not done it? They probably have not had the capacity to do that because of the very well publicised lack of human capital and lack of funding. What are my personal recommendations to address that factor? It is an easy fix to say, hire more people and give us more money, but the effectiveness of the Australian migration program relies on being adaptable and suiting the environment in which we are working . The environment says that we have a massive skills shortage when we are talking about 457s, and we need to address it. We need everybody in the marketplace to understand that the 457 program is a supplementary measure to going to the Australian marketplace first. If you cannot find skilled people and you do not have the capacity to train them through training measures, then you turn to the 457 visa program.

CHAIR—Mr Metcalfe might find your comments very interesting. I am sure he will, given the commitment to a new culture. Thank you very much. I will conclude by saying thank you for attending the hearing today. The secretariat will send you a copy of the transcript for any corrections that need to be made. We would be grateful if you could also send the secretariat any additional material that you have undertaken to provide as soon as possible.

[2.59 pm]

PALMER, Ms Alice, Solicitor, Administrative Law and Human Rights Section, Law Institute of Victoria

STRATTON, Mr David, Migration Law Committee of the Administrative Law and Human Rights Section, Law Institute of Victoria

CHAIR—I would like to welcome representatives from the Law Institute of Victoria to this public hearing. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The committee has received your submission and it has been authorised for publication. I invite you to make a brief opening statement if you wish before we proceed to questions.

Ms Palmer—Thank you. On behalf of the Law Institute of Victoria I would like to thank you for giving us this opportunity to appear here today. I was planning on introducing the submission, highlighting some of the points that we have made in it. I will make some clarifications and also a few additional comments before we open for questions, with your permission.

By way of an overview, I wanted to start by putting our submission in the broad context. As Victorians who have recently enacted the Charter of Human Rights and Responsibilities Act (Victoria) we are very conscious of looking at legislation and government decision making through a human rights lens. To that end, we support changes to the 457 visa requirements and their procedures to take account of the needs of workers, business and the wider community, bearing in mind that foreign workers are particularly vulnerable to unfair treatment.

We have some concerns about the requirements that I will go through briefly. The emphasis of our concerns is around the apparent lack of resources to ensure efficient processing, proper monitoring and enforcement.

Our submission looks at a number of substantive matters, we then consider the issue of monitoring and reporting enforcement before closing with some other recommendations concerning the electronic lodgements of applications.

The first substantive matter we address is the English language requirement for which we recommend no change. We think that employers should be free to judge English proficiency in light of the requirements of a particular job or position. Having said that, we are aware of some of the problems that arise with people who do not speak English such as them being unaware of their rights or responsibilities in the workplace, or with respect to their visa. To that end, we would recommend that they be informed in their native language or communicated in a way that they do understand what are those rights and responsibilities; that should not be addressed through an English proficiency requirement.

On the issue of sponsor or employer eligibility, we discuss the training requirements for business sponsors and we consider these too onerous for small businesses. We recommend that they be relaxed or that appropriate resources be made available to those small businesses so that they are able to fulfil those training requirements.

We consider that the minimum salary requirements should be linked to award rates and that they should be modified in accordance with geographical region. By away of an additional comment, we would obviously stress that any inappropriate salary deductions by employers should be strictly monitored and penalised.

An additional comment to our submission with respect to nominations for certain positions is that we consider the Australian Standard Classification of Occupations to be an inadequate gauge for monitoring and assessing particular positions. We think there should be more flexibility built into the system so that industries and occupations not covered by ASCO can be considered for nomination.

Moving to monitoring and reporting, we commend the department's efforts to ensure that there is across the board reporting and audits. We do however note through our members that there is disproportionate attention to some countries or industries of concern in comparison with others. We would advocate a monitoring system that is carried out on a non-discriminatory basis. By way of clarification to 4.3 of our submission, we acknowledge that there are reporting requirements in place by virtue of the monitoring forms that are sent out to sponsors, but we note that this is only happening across the board within the first year and thereafter it happens on a discretionary basis. It is there that we have concerns about particular industries being targeted on a discriminatory basis.

We have raised concerns in our submission about the department's practice of overseas reference checks. We find these wholly inappropriate and unreliable and we recommend that they not be undertaken in the current manner.

On the issue of enforcement, we have concerns about the fact that the first sponsor of an applicant remains liable for some of the costs associated with that applicant. They already make an initial investment in bringing the person to Australia and they then remain responsible for those costs even if that person leaves their employ up to a certain timeframe. We have expressed our concern about that; we think that it is important to create some sort of system whereby the first sponsor can recover from the second sponsor some of the costs that they incur where a person leaves their employ and takes up employment with another sponsor.

By way of clarification to our submission on 4.2, we would not like to see any unreasonable requirements placed on employees that would discourage them from seeking improved work entitlements with other employers.

We want to stress what we have said already around the English proficiency requirement, that employees must be informed of their rights and their responsibilities in respect of the visa and they should have communication channels available for them to the department.

Overall, we have identified some of the deficiencies in monitoring and enforcement, but we feel that this is ultimately exacerbated by a lack of resources which means that monitoring is not carried out appropriately.

Another item we identified was regarding electronic submissions; the e-visa system is dysfunctional, it often crashes, there are difficulties experienced with submitting additional documentation and it is hard to track what is going on with a particular application. By way of clarification to our submission 5.2, we accept that the receipt of documents is acknowledged by the department through the assignment of a TRN, but we are concerned about the lack of tracking on the status of that application subsequent to its submission.

Thank you. I am happy to respond to any questions. I will defer to my colleague David Stratton for any questions you may have regarding a practitioner's perspective on these issues.

CHAIR—Thank you. I note from your submission your interest in this area. Many people in the legal arena involve themselves in migration, not only law, but also in these associated issues such as 457 visas. I note that largely you are saying that the system is a good system and it fills a current need; am I correct in saying all this?

Ms Palmer—Yes, that is correct.

CHAIR—Other than refinements, you would like to see it continue as long as it does not place a greater burden on small business and has more stringent monitoring and reporting, et cetera?

Ms Palmer—And particular attention to employees and those that are vulnerable to certain abuses.

CHAIR—While we are on that point, we have received evidence on a couple of occasions today about 457 visa holders who have had difficulties with employers and who are too scared to blow the whistle. Do you have any suggestions in terms of mechanisms of reporting for those who do not wish to be identified for fear of losing their position, such as whistle blower-type legislation?

Mr Stratton—That is always a difficult question. Clearly we know where they are coming from; it is something that needs to be addressed and something needs to be done about it. Whilst we say that largely the system works well, there will always be abuse within it and it is important that those abuses be dealt with. Off the top of my head, there must be some sort of procedure worked out whereby they might be able to go onto a form of bridging visa to give them a holding position until such time as they can feel free to move onto other employment or seek other opportunities. Often what prevents people from making that move is a fear of the financial ramifications that will flow. If they are able to move across into some sort of a bridging position where they are given a window of opportunity to look for other options, that would largely address that problem.

CHAIR—The concern there obviously is if that became widespread practice, it would be a mechanism to put your visa on hold for perhaps an indefinite period to stay here, and that could be abused. Who picks up the tab while they are sitting in limbo in between finding another spot?

I am not saying this in any obtuse way; we have had evidence of trying to find a way where those suffering negativity in terms of treatment can go without fear or favour and yet maintain the integrity of the system.

Mr Stratton—As we know, workers have a period of 28 days in which to take action and it may not be unreasonable to extend that for a further 28 days, having some finite period on it. Another thing which has been at the back of my mind for some time on this issue is to have some type of system whereby a bond is in place where, at the end of that 56-day period, they may have another offer of employment or they return.

CHAIR—Like a guarantee maybe?

Mr Stratton—Something like that.

CHAIR—That is good, I appreciate you talking about that.

Ms Palmer—One of the issues that we need to consider is the manner in which they communicate their concern to the department; you pointed out the concerns around confidentiality. I am not sure how the department is currently placed to keep those kinds of complaints and concerns confidential.

CHAIR—I do not think they can at this stage and that is the concern of the people who have given evidence today.

On a similar matter, you have talked about those who transfer from one sponsor to another and the potential of transferring the costs from an original sponsor to another. What if the original sponsor was a rather undesirable person? It helps them to get out gaol free in some respects if they can transfer their responsibility to someone else after treating a holder poorly. Would it not be better that they receive some form of sanction by paying the lot, given the fact that they were not a very good sponsor in the first place?

Ms Palmer— One way of dealing with that may be that you could qualify the ability to recover costs on the basis that they have to have complied with the visa requirements.

Mr Stratton—You may well be able to link it in with the Migration Review Tribunal in a creative way. There may even be recommendations from the department as to whether a transfer is worthy and whether the employer should pay. If the employer disputed that, it may be then that it links back into the sanctions on the sponsorships. The department might say, 'Well look, if you haven't followed that order, then we won't allow you to have further sponsorships.' We take your point that we can never get the perfect solution, but there are ways of working things into our existing mechanisms. If there was a dispute, you could enhance the powers of the MRT to look after that and build that back into sponsorships.

CHAIR—I have another question, but I would like to ask Senator Polley if she has a question there.

Senator POLLEY—I was interested in your comments in relation to the adequacy of the provisions for English language. I have heard evidence of a concern in relation to ensuring that

workers coming out on 457 visas have adequate English as to be protected on a worksite from a health and safety point of view. Have you a view in that area?

Ms Palmer—I think that people can be protected from an occupational health and safety perspective. If their English is really zero, those issues can be communicated to them either in their native language or with the assistance of diagrams and appropriate instructions in a manner that they will understand.

Senator POLLEY—What about the effect in terms of the general workplace in ensuring that those people who are here on temporary visas are able to fit into the work environment, and, to a greater extent, into the community in which they are going to live for up to four years?

Ms Palmer—There are obviously people in Australia, Australian citizens and permanent residents, who do not necessarily have a very high standard of English, if any English at all—

Senator POLLEY—The government has now changed.

Ms Palmer—who are in the workplace as Australians, living here on a permanent basis. It seems inappropriate to target foreign workers for an English proficiency requirement when we do not hold our own citizens to those kinds of standards. I think the workplace is capable of coming up with ways of communicating information to them. In terms of them integrating into the community in general, there are a number of community groups who can help in that process. In terms integrating into the workplace, it depends on the size of that workplace; there might be other people who speak their language who can help them integrate, but I am not sure that an English proficiency requirement is what is needed to ensure that happens.

Senator POLLEY—I wanted to query the comments you made earlier in relation to the lack of a need for reference checks. Was I mishearing or do you have concerns about the length of time and the processes that are currently in place by the department to check on references?

Ms Palmer—It is the process about which we are concerned.

Mr Stratton—Yes, it is the process, not the lack of need. We concede that the program has to be seen to be taking all of the proper steps. The difficulty we have at the moment is that, as I understand it, the department will do reference checks on anyone from a non-ETA country as a matter of course. Suddenly every single applicant is being checked and that means that there is a bottleneck that is quite considerable because of this checking process. The volume has increased because it used to be discretionary—'I will check this candidate or not; I think this is okay, it looks okay, if he is a mechanic his work background has been with Honda or whatever'—but now because it is across the board we have a backlog. That is the first issue.

The second issue is that, in our view, the people who are doing these checks are not properly trained or qualified to do them. They have been overwhelmed by the volume, the quality of the checking is very, very poor and should be an embarrassment to the department. We mentioned in the report some of the anecdotal cases such as security guards being called.

CHAIR—Security guards who do not know them.

Mr Stratton—No. Those sorts of things are not one-offs; that is happening. We say reference checking is good, the system should have checks and balances in it, but it needs to be resourced. The figures are now up to around 100,000 457s a year. I am not sure how that breaks down to ETA and non-ETA countries, but that is a lot of checking that is required.

Senator POLLEY—Do you have any solutions or a streamlining of the process? Have you put your position to the department?

Mr Stratton—The LIV Migration Committee has liaison meetings with the department and it has been raised at those meetings and other conferences. We understand the department's position. There is a lot of interest now in 457s so they are seeing the need to check them and be diligent. We would say that they are going a bit over the top. Certainly our concerns are known to them.

I heard the last speaker saying it is a matter of resources. It is our view that this system is good. The 457s have evolved from the 412s, they have been around for quite a while, it has worked quite well, but it is under pressure now. The biggest pressure is in relation to resourcing and trying to meet these demands. For example, what is worrying about the reference checks is the information about it. It is like that old story where if you tell someone in the queue something, then the message is convoluted at the end of the queue. It often comes back that the application is rejected because the references are non-genuine. The concern is for the visa applicant who in good faith has been nominated by an employer, put in a visa application and then has to go through what we would describe as a shoddy process. For the applicant to then be branded as having lodged non-genuine references will have a real impact on any subsequent visa application. We have real concerns about how much corner cutting is going into this process. At the same we recognise that there needs to be some sort of a system.

Senator POLLEY—I have a lot more questions, but I am aware of the time restraints.

Senator PARRY—Thank you. Senator Polley has asked one of mine, so that is good. When you mentioned, Ms Palmer, about poaching and the cost transfer, there is also in the final paragraph under 4.2 in the submission, having some form of restriction on the visa holder to stay with that employer for a period of time. Do you want to expand on that? You have at least one or two years. In your opening statement you indicated that you did not want to tie the employee down if the employee had a genuine need. Can you clarify that for my mind?

Ms Palmer—Our preference would be to find a way in which the costs could be recovered from the subsequent sponsor. In terms of that discussion in the submission, the weight of our recommendation is on the second part of that statement. To the extent that we have talked about possible conditions that might be applied to a person's visa, we would want that balanced against ensuring that workers are free to seek better work entitlements. We appreciate that you should not and cannot restrict someone from access to better work opportunities.

Senator PARRY—I will give weight to the second part of the paragraph when that clears up in my mind. Regarding paragraph 3.3 on salaries, you spoke about geographic regions and that you would like to see a more realistic market level salary applied. When you mention geographic regions are you talking about seasonal issues in geographic regions, where there might be, for example, a mining boom on the west coast of Tasmania or Western Australia? Would you see

that as being a salary level that would be put in at a market rate higher than mining in other areas? How did you envisage that to work?

Ms Palmer—Our primary concern was the distinction between metropolitan areas and regional country areas.

Senator PARRY—Which is what now exists with the distinction between the minimum salary levels.

Ms Palmer—Except that it is set at an arbitrary rate, rather than tied to award rates.

Senator PARRY—An industry rate.

Ms Palmer—We would like to look at award rates and then take account of whether that is a hairdresser in the city of a hairdresser in Shepparton; there will obviously be salary differentials there. David, you might want to add to that.

Mr Stratton—I will give some background there. As I understand it, and I stand to be corrected, the minimum salary of $418.50 is a figure given to the department by the Bureau of Statistics; it is the average Australian salary. Of course that includes salaries paid to the head of the Aussie Home Loans and the head of Macquarie Bank. In one sense that is not realistic as a starting point; it is not really an average salary. The regional salary is then deemed to be 10 per cent less than that, to give the figure of $365.50, or whatever it is. The reality is that in regional areas most people like mechanics, spray painters and welders, other than in mining regions, only get paid the award which is about $32,000 and some hundreds. As a result of the amendments that came in last year with this broad brush approach, it has precluded a lot of regional employers from improving their position vis-à-vis the labour force, because they are no longer able to hire skilled workers. There is a concern about a wage push going the other way. The government says, 'Well we don't want you employers to abuse workers by underpaying them', but in fact in the regional areas in particular, they are going to be overpaid vis-à-vis their follow workers. It will lead to an inflationary trend. There is some evidence that employers are very reluctantly being forced to move to this higher salary because they have no option. It is of concern to us that the regions have been largely forgotten and they have very real needs.

This also comes back to the training issue. Take for example a mechanic in Wycheproof or somewhere who runs his own business and cannot attract a mechanic at all. He wants to pay award wages, but he is also asked to provide a training program which is one of the points we raised in our submission. We say that that is unrealistic for small businesses. It is very difficult for small regional businesses who have no opportunity to do either.

CHAIR—Thank you for that.

Senator PARRY—Would you see as an alternate the minimum award wage, wherever, and where the award wage was not there, the minimum wage under the current federal system?

Mr Stratton—Yes. Clearly we acknowledge that workers should not get less. It would either be the minimum or what the rest of the workforce is getting.

Senator PARRY—You have already introduced the concept of an under-resourced, over-stretched department. It would be a mind-boggling exercise to then add a whole section just for working out the wage in each particular area. It would be nice to fit into an existing structure. The minimum level—apart from the fact that it may have come from the Bureau of Statistics, of which I would not be sure—is designed to prevent exploitation at that level; that is its simple purpose. I do not think it has ever been set to reflect anything other than an exploitation issue. They are interesting comments. Thank you for that.

Ms Palmer—To clarify on that point, someone could be paid a minimum wage but it could still be an exploitative wage if other people in the workplace are being paid at a higher rate. We would obviously want to guard against that. Essentially what we are talking about is being driven by the market. To the extent that the market is gauged by award rates, that is what we have pegged it to. We appreciate the difficulties in trying to ascertain what that is.

Senator PARRY—I am having difficulty with that concept. Thank you.

CHAIR—Before I conclude there is one thing I wanted to add. You alluded to greater flexibility from DIAC with I think Senator Polley. Do you want to add anything to that?

Mr Stratton—In relation to the occupations?

CHAIR—In relation to their whole handling of the visa issue.

Mr Stratton—In general terms, one of the difficulties with the whole migration program, not just the 457s, is this quest for public accountability. There is more and more of a movement towards prescription; everything in the act and regulations is totally prescribed and you miss out on the opportunity to be flexible. The 457s are driven by the ASCO. There are occupations now in existence that were not in existence when ASCO was published. As a country we can decide to be a follower and wait for successive issues of ASCO to be published, which is few and far between, or we can see that we need to be a leader in the global community. A lot of our business is global; a lot of clients that our members act for are global clients trying to get people in. We have discovered that some occupations are not in ASCO and this creates difficulties in terms of trying to bring people in. It is at the nub of the whole problem.

Senator PARRY—That is when 'the computer says no'.

Mr Stratton—Yes. We have to then try and be very creative to find elements of the job that can arguably fit within an ASCO description and then try and get people under that heading. It creates all sorts of frustrations for employers and employees.

CHAIR—Would you consider that this program drives down Australian workers' wages and conditions?

Mr Stratton—Not at all. Not at all.

CHAIR—Thank you very much for your submission today. It helps us respond appropriately to our terms of reference of which you are well aware. There is great interest in the 457 temporary skilled visa program and other temporary visa programs. Given your expertise and

interest in this it has been very helpful today. Thanks for attending. The secretariat will send you a copy of the transcript for any corrections that need to be made and I would be grateful if you could also send the secretariat any additional material that you may have undertaken to provide as soon as possible. Thank you.

Motion (by **Senator Polley**) agreed to:

That the committee authorise publication of the transcript of the evidence taken at this public hearing today.

CHAIR—I declare this public hearing closed.

Committee adjourned at 3.31 pm