COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON MIGRATION

Reference: Temporary business visas

WEDNESDAY, 16 MAY 2007

SYDNEY

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JOINT STANDING COMMITTEE ON

MIGRATION

Wednesday, 16 May 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, Mr Laurie Ferguson and Mr Randall

Terms of reference for the inquiry:

To inquire into and report on:

1. 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 9.58 am

CHAIR (Mr Randall)—Good morning. I declare open this public hearing of the Joint Standing Committee on Migration inquiry into temporary business visas and welcome you all here today. The committee is 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 am required to make a few comments about the protection of witnesses. By way of background, anyone giving evidence at a public hearing is protected by parliamentary privilege. Essentially, this means that no legal action can be taken against a person because of what they are saying during a hearing. The protection does not apply if, after the hearing, a witness repeats the statements made in evidence. I suggest they say something like, 'I stand by my comments made in the committee.' Parliamentary privilege also means that it is an offence to take action against a person or threaten them because of evidence they may have given before a committee. It is also an offence to influence another person about the evidence they may give or to try to prevent a person from giving evidence. If a witness to the inquiry feels that they have been intimidated, threatened or suffered adverse consequences as a direct result of having given evidence to the committee they should contact the committee secretariat immediately.

Witnesses may request to give evidence in private—that is, in camera—if they have concerns about the evidence they propose to give. While the committee prefers as much evidence as possible to be on the public record, we would consider such a request carefully. If witnesses have any concerns about giving evidence to the inquiry they should contact the committee secretariat at the earliest possible opportunity to discuss this matter.

Today we have had some requests from the media about the recording of proceedings. The committee also notes that members of the press may wish to take photos or film sections of today's proceedings. Is it the wish of the committee that members of the press be authorised to make still and video recordings of today's proceedings?

Senator PARRY—I move that.

CHAIR—That is so moved.

[10.01 am]

O'BREE, Mr Bernard Patrick, Proprietor and Director, Cytech Intersearch Pty Ltd

SEERS, Miss Belinda Ann, Operations Manager, Cytech Intersearch Pty Ltd

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that these hearings are legal proceeding of the parliament and warrant the same respect as 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 before we proceed to questions.

Mr O'Bree—Thank you for the opportunity to speak today. Cytech Intersearch is an Australian immigration relocation and recruitment company. I would like to start this morning with a statement. I feel it is necessary to have Cytech's position placed on the record and to repudiate accusations that have been directly or indirectly levelled at my company and our industry. Cytech Intersearch does not, has never and will not employ people under 442 visas. Cytech employs registered and non-registered nurses. Cytech does not charge 457 visa holders for any of our services.

We first approached the Department of Immigration and Citizenship with a proposal to hire non-registered nurses from overseas—nurses who, without Cytech, would not be able to gain entry into Australia and ultimately registration. The initial job description that was submitted to DIAC was for care services employees, and this is something that was given to us by our client. It was decided that the nomination 'residential care officers', RCOs, was the position that aligned as closely as possible to the ASCO code. We were advised by DIAC, through Sellanes Clark, our registered migration agents, that the most appropriate visa for non-skilled nurses would be RCOs. This is based on the skills of the nurses, by virtue of the fact they have had training overseas. It is a DIAC requirement also that we include a copy of their nursing diploma with the visa application. This is to ensure that our RCOs have the background to be able to undertake, originally cost free, the training to become a registered nurse in Australia.

Under this program, which has been running for a little over two years, Cytech has relocated only 24 RCOs into Australia, 10 who currently have nursing registration, three who are awaiting results, four who are enrolled to do the nursing registration towards the end of the year, five who are yet to arrange for their pre-registration courses and two whom we believe have failed the course. Of the 24 Fijian nurses employed by Cytech, those who will obtain registration have expressed the desire to gain permanent residency in Australia. Cytech does not charge any nurse any cost for training and we encourage our nurses to do their registration training, which once completed successfully enables greater work choices.

In the past seven years Cytech has hired and relocated over 150 staff on the subclass 457 visa program. If we include families the number would be over 400 people. Certain parties would have the committee believe that RCO recruitment is designed to enslave nurses and hire them under less than award conditions. This is categorically wrong and very misleading. This process

was put together in consultation with DIAC and is specifically designed to fill shortages and give nurses the opportunity to come to Australia and ultimately obtain permanent residency.

I draw the committee's attention to ASCO RCO classifications. ASCO does not refer to the role of a RCO as one who works with autistic children; however, DIAC classifies an RCO via the ASCO code 3421-15, and I quote:

Provides care and supervision for children or disabled persons in group housing or government institutions.

It is under this classification that we have been granted the RCO visas for people working in group housing such as aged-care facilities. If the classification is not acceptable or if we have done something wrong as an organisation then I will stand corrected, but at no time has Cytech sought to deceive DIAC, our nurses or our clients. We have had DIAC monitoring come through our organisation as recently as March this year, and I quote: 'I am satisfied that Cytech Intersearch Pty Ltd is meeting sponsorship obligations.' If there are adequate nurses waiting to take on these roles then why is Cytech approached by our clients to support their areas of need? The ANF maintains that they have an abundance of skills in the area; then why are my clients screaming for nurses?

The committee has been told that these and other nurses are not in tune with their rights. We ensure our nurses know their rights. As part of the relocation information package given to our employees upon arrival, Cytech includes an application form to join the New South Wales Nurses Association, their union. Cytech has always solicited the approval of DIAC. If DIAC had an issue with the process Cytech undertakes then we would not have gone ahead with this or any other recruitment that could risk our PQBS. I believe that the vast majority of companies are complying or trying to comply with DIAC requirements. I fail to see why those companies who are doing the right thing should be punished. I would view it as a very heavy-handed approach to what is not a large-scale problem. I believe in greater scrutiny of those who are sponsoring people on 457 visas and I would welcome DIAC to go through my organisation and our processes at any time—day or night. As an organisation we have nothing to hide. The 457 visa helps alleviate the skills shortages the global employment market has created. It is an excellent way to ensure that the industry is able to expand and thrive whilst offering opportunities for people to migrate to Australia and have the advantages we often take for granted. Thank you.

CHAIR—Thank you. Would you like to make a statement, Miss Seers?

Miss Seers—No, not at this time.

CHAIR—I appreciate your coming to give evidence today, particularly as we received representation from the Australian Nurses Federation, as you are aware, in relation to your company and you have addressed those allegations quite strongly. Why do you think the ANF has been so forthright in their criticism of your company?

Mr O'Bree—We have had nurses complain to the New South Wales Nurses Association. Not once has the association or the ANF approached Cytech to ask what we are doing or how we are doing it—not once in the last two or three years. I believe that what they have done is that they have taken this as a way to broadside the 457 visa program. They did not come to us and ask us why we were doing things the way we were doing them or suggest other ways. DIAC did not

want to change the process we were undertaking. They do not have a leg to stand on. They cannot castigate us, which they have done through the media, their own magazine and the committee in various ways. We are not a large organisation. We turn over less than $4 million a year and I employ less than 40 nurses a year. I think the ANF and the Nurses Association think we are an easy target. I really do not know, but at the end of the day DIAC has approved everything we have done and we have not done anything wrong. I have said to the committee, through my submission and this morning, that if we are doing something wrong tell us and we will change it.

CHAIR—What percentage of your work would the RCOs represent?

Mr O'Bree—It would only be probably about 30 per cent of our work. The vast majority of our nurses are registered nurses, and the idea of the RCO program is to bring nurses into the country who can gain registration because they have registration overseas. If they did not have registration overseas the Department of Immigration and Citizenship would not allow us to bring them in. The whole process is designed to bring nurses in, to have them work as RCOs and, during that period, gain registration and ultimately become a registered nurse. Once they gain registration as a nurse in Australia they can apply for permanent residency. Under the RCO guise they cannot.

CHAIR—What proportion, roughly, would come from Fiji?

Mr O'Bree—Of the nurses we have brought in, all of them have come from Fiji—24 of them.

CHAIR—I said Fiji but, having some small knowledge of the region, I think that Fiji seems to be a major hub for other South Pacific nations and not all might be Fijian nationals. Would that be correct?

Mr O'Bree—If memory serves me correctly, I think one of them is originally from the Philippines. I am pretty sure that particular lady has a Fijian passport.

Miss Seers—That is right.

CHAIR—Let us go back to the nub of the problem. You believe that the service you provide fills an inadequacy in the supply of nurses—registered and RCOs—for the New South Wales health system and that there are not sufficient Australians who could take those positions at this stage?

Mr O'Bree—That is correct. We service predominantly remote areas—and that could be remote suburban or rural areas. In the case of the RCOs, they have been going to one particular client. It is in an area that has a high socio demographic so they find it difficult to find nurses or a lot of staff. They are quite remote as well.

CHAIR—Well, interestingly, ABC regional radio want to talk to me tomorrow morning about how this affects their listening audience. What would you say the challenges are in the outer metropolitan areas of New South Wales in terms of finding health professionals, particularly nurses?

Mr O'Bree—There are a great deal of challenges. At the end of the day the hard part is to attract to the regional areas. As an organisation we pride ourselves on being able to travel throughout the country. I am currently doing work up in the far north of Australia. We find it easier to bring people in from overseas who are willing to work in the remote areas. As an example, the desire of the Fijians we bring in is not necessarily to work for Cytech as RCOs; their desire is to get permanent residency and ultimately settle in Australia. So the attraction, initially, is the fact that they are in Australia. I think that a lot of the time the regional areas could quite easily attract nurses from overseas if they had the right sorts of tools to be able to do so.

CHAIR—Do you have any exposure to the regional certifying bodies?

Mr O'Bree—No, we do not. Do you mean at the state level?

CHAIR—Yes.

Mr O'Bree—One of our greatest competitors is New South Wales State Health. We do not deal with the New South Wales State Health department at all because the New South Wales department want to carry their own 457s.

CHAIR—They do. From the evidence provided to this committee I understand that New South Wales health department last year—let me find the figure—employed something like 480 nurses on 457 visas. Is that what you are talking about?

Mr O'Bree—I would hazard a guess that it is a great deal more than that, but that would be right.

CHAIR—The comment has been made that the New South Wales health department is the largest user—for want of a better word—of the 457 visa program to assist in its shortages in the area of health professionals.

Mr O'Bree—I have no doubt that they are the facts. The New South Wales Department of Health is the greatest user of 457 visas.

CHAIR—Yes. The figure here is about 470 primary grants. So that is interesting. I have other questions, but I will go to Senator Polley first.

Senator POLLEY—I wondered if you had any suggestions about any mechanisms that can be improved in terms of the complaints that workers that come out on 457 visas have.

Mr O'Bree—I do. We treat our nurses as employees, and one of the things that I believe could be better for these nurses upon arrival is greater training, greater access to training. Because we are a small business—and any organisation would be in the same circumstances—we have to cover our costs. We have to maintain the nurses; we have to get them training. If there were greater flexibility in the 457 visa program whereby we were able to offer them a training wage or offer them training through Cytech so they could gain preregistration and they could take time off—because at the moment I cannot have any of my nurses taking time off under the 457 program; it is not permitted by DIAC—that would be a great way to assist the nurses. Doing that would also allow us to enable these nurses to become RNs as quickly as possible.

Senator POLLEY—But, from the perspective of the workers who are out here on the 457 visas, there are obviously concerns and complaints being made by organisations about the way that they are treated, and we have had evidence of this from not only this part of the industry but also other industries where workers have been taken advantage of. In terms of a complaints mechanism for these workers, can you suggest any ways that that can be improved? What processes do you have in place?

Mr O'Bree—I would be very happy if DIAC were to implement a compulsory information session whereby these nurses, upon arrival, were given information about the 457 visa, told their rights under that visa and allowed to have a complaints mechanism that does not involve the employer. If our nurses have complaints, in the past they have approached the department of immigration, as they have approached the Nursing Federation. So I would have no problems with that at all. The thing about this is that often we are perceived to be some sort of clandestine group that just pulls the levers on these nurses. That is not the case. We are very transparent with our clients, with DIAC and also with our nurses. If that transparency has to go a little bit further to ensure that the nurses know their rights, then I am happy to do that.

Senator POLLEY—In terms of the requirements for these nurses coming out, do you have any difficulties with the standard of English that is required? Is that something that is detrimental to them passing and becoming registered nurses?

Mr O'Bree—No. We find that the nurses we are bringing in from overseas are word perfect apart from their accents. Of the 24 nurses so far, we have had only two fail the course. Now, I do not know why they failed, and I do believe that one or two of these nurses have actually resat the course and failed it a number of times. We do not seem to have problems with that. I have actually made a recommendation that I would welcome IELTS being introduced into the program; the only concern I would have is that for nurses, say, coming out of Fiji it can add something like 12 weeks to the process. I would argue that, if we were to introduce IELTs, it should be along the lines of a MODL type list where it is introduced only for countries that do not have English as a main or primary language—China, Korea and those sorts of countries.

Senator POLLEY—I have a question about your experience with the department's monitoring. You said that you had a visit back in March; do you have regular contact with the department? Do they speak to those who are out here on 457 visas? Do they have site visits? Do they make phone calls? What is your experience with the department; and do you see room for improvement in terms of their monitoring?

Mr O'Bree—We are monitored on a regular basis—every six to 12 months. That monitoring is always very transparent. As I said in my statement, I would welcome them any day or night, because my business relies on the PQBS. My business is built around the 457 visa, if you like.

CHAIR—When you say 'monitoring', are 100 per cent of your visa holders monitored?

Mr O'Bree—What tends to happen is that they come in and go through our documentation, our payroll and those sorts of things—

CHAIR—Do they talk to the workers?

Mr O'Bree—Not as far as I know. If they do, they do it without us knowing. To answer your question: I would welcome them meeting with our employees or with those who are on 457s, simply because it comes down to transparency. If we are doing something wrong we need to know about it rather than having to use the media or this sort of forum to be knocking each other on the head.

Senator POLLEY—Do you have any views on the minimum salary levels as gazetted? Do you have any concerns in relation to the salary scales?

Mr O'Bree—The salary level has gone up incrementally every year for the last few years. It is always a hard one, because at one level you want to be able to ensure that the employees are getting exactly what they are entitled to. At another level, you do not really want to be pricing them out of the market, so to speak. I think that the salary level is fair where it is now. I will give you an example. When we advertised in Fiji, I would estimate that we had about 200 responses for about 10 positions. This is going back about two or three years. The salary level was around $13,000 to $15,000 Fijian. If you were to compare salaries to what they were earning, and our cost of living is four times higher, often their motivation is not money. That does not mean that they should not be earning a very good salary. Their motivation is to get to Australia. Their motivation is a better lifestyle for themselves, their families and their children. A lot of our Fijian nurses arrive without their husbands and children; they might stay for six months and save up enough to bring their families out.

If there could be an additional training component to the salary—where organisations would pay a certain percentage of their salary into training—I would welcome that. It also depends on the industry. When we started out it was all IT, and salary was never an issue. IT contractors were earning far in excess of what nurses do. It is really only the salaries of the RCOs that we have to worry about. With the downturn of the market, nursing was an area we got into. If the committee feels that the salary should be increased, I would welcome that. I cannot stress strongly enough that transparency is what we look for, as well as being able to work with the system the best we possibly can.

Senator PARRY—Mr O'Bree, in response to a question from the chair this morning, you started off by saying, 'We have had nurses complain.' What were the complaints?

Mr O'Bree—Without naming names, we had a nurse who complained to the New South Wales Nurses Association that we were not treating her fairly. This particular nurse had been working with us for around 16 or 17 months. We told her what her options were at the end of the 18-month contract. We said that she could stay with Cytech if we had a position for her—and this is an RCO, I might add—she could find another sponsor to take her over, or she could be repatriated back to Fiji. This particular nurse then went to the union and started complaining that we were treating her poorly. We liaised with the union and the union organised for her to go through the pre-registration training. We gave her leave, and I think she did the pre-registration training during her leave period, which is about seven weeks. At the end of that period, she failed the course. As far as I have heard—and this is hearsay—she has failed the course three or four times since.

We were being castigated by the union for not treating her fairly. I think this is why we are appearing today and why we have been mentioned through the ANF—because of this one

incident. Not once since then did the union try to approach us to assist this nurse. This nurse also claimed unfair dismissal and has taken my client and me through the IRC. We were dismissed from the claim because we have under 100 employees. We are still waiting for a result from the IRC, because what she ultimately did was take my client to the IRC, because they have over 100 employees, trying to claim that they are the employer.

Senator PARRY—You were technically the employer?

Mr O'Bree—We were, exactly, and that is what we said to the IRC. We feel confident that that will be the ruling. At the end of the day we have tried to do the right thing. We are hamstrung to a certain degree with the 457 because we can terminate and we have to give notice for termination.

Senator PARRY—Have you terminated any?

Mr O'Bree—We have since, yes. This stuff is from September last year.

Senator PARRY—Has that resulted in being sent home?

Mr O'Bree—No, this particular nurse, as far as I know, is still in Australia.

Senator PARRY—Have you been involved in any where they have been returned home to Fiji?

Mr O'Bree—No, we have never had a nurse go back to Fiji.

Senator PARRY—Do you give time, without pay or with pay, for your staff to undertake training if they wish to?

Mr O'Bree—Yes, we do. It is up to them. Because these nurses are working as RCOs, if we were to pay them as per the award—and as far as we know there is no RCO award—it would mean they would be paid as a CSE or an AIN.

Senator PARRY—A CSE is what?

Mr O'Bree—A care services employee. So it is less than the current $41,850 that is being paid. We pay them the minimum that DIAC requires. We say to them that if they want to do the training they should let us know when they want to do it. We assist them to try and get onto the training course. It used to be free; now the Nursing Council are charging something like $7,000 to do the course.

Senator PARRY—Who pays that? Do you pay that?

Mr O'Bree—No, we do not. We could not afford to, Senator.

Senator PARRY—One of the major or significant allegations is that you are underpaying and that there are unfair conditions, which you have just alluded to. I have some questions about that.

Do you take any money from any salary packages for any items, such as accommodation, power costs, anything of that nature?

Mr O'Bree—Not at all. What we do, in terms of any money we take from the nurses, is we get them to sign an expense form. We set up absolutely everything for them. We fly them into the country. My colleague Belinda looks after their full relocation. We lease them a property. We furnished the property. We buy them basic commodities to start with. We also purchase linen, crockery, cutlery and those sorts of things. The only thing that we would get them to pay us back for is the costs that we spent that they would normally spend. That would mean the items they keep, such as the bond for the rent. We pay initially two weeks rent, but what often happens is we pay the four weeks rent and they pay us back for the first two weeks. So at no time are we charging them for any of our service; we simply charge them for what we have purchased. And they can opt out of that.

Senator PARRY—So you are charging disbursements—basically: what they incur, you are simply deducting that from their salary.

Mr O'Bree—With their permission, yes.

Senator PARRY—So they can opt out?

Mr O'Bree—Yes, definitely.

Senator PARRY—They can arrange their own accommodation.

Mr O'Bree—Yes.

Senator PARRY—Are there any terms or conditions attached to that? For example, do they have to give you six months notice or five days notice? Are there any terms and conditions?

Mr O'Bree—The very first thing we do when we hire a nurse is we send them what is known as a commitment letter. That explains absolutely everything that we can think of—from arriving in Australia to what we do for them. Then we send them an expense policy and we ask nurses if they are single to bring $1,500 or if they are married to bring $3,000 with them. That is to cover their expenses, such as bond, rent and those sorts of things. The reason we do that is that we have had nurses in the past that have arrived from overseas with $50 in their pocket.

Senator PARRY—Can you provide to the committee at a later stage a copy of your initial letter, the conditions letter, and also of the expense policy letter—is that possible?

Mr O'Bree—We can, yes. It would have been in our original submission.

Senator PARRY—Is the expense letter there?

CHAIR—We will check the original material and liaise with you.

Mr LAURIE FERGUSON—You stated that the intake is overwhelmingly or totally Fijian. Is there any historical reason for that, or is it through your own connections or through some

degree of recognition of Fiji because of the Commonwealth, as we do in TAFE? What is the main reason?

Mr O'Bree—There are probably a number of reasons. As with any recruitment program, it is about trying to find the skills in the first place. We identified Fiji because they are English speaking and also because many Fijian nurses in the past trained through Queensland university, so their skills are very much in parallel with the Australian standards. This was a new venture for us. We assumed at the time that their skills would be able to be readily transferred to registration. Also, we ran a very small advertisement in the *Fiji Times* and received an overwhelming response.

Mr LAURIE FERGUSON—You spoke of being monitored every six months but, when I look at the summary you have provided of your monitoring, in reality we are mostly talking about filling out some forms, aren't we? There have been a few visits, but some of these visits do not seem to be monitoring related.

Mr O'Bree—A lot of visits are. If we have a query and we are concerned that we are not doing something right, we will contact monitoring ourselves. Monitoring do come in and they gain access to the books, if you like.

Mr LAURIE FERGUSON—I am not looking at it from your point of view; I am looking at it from the point of view of departmental oversight. It would seem from your summary of 2001-07—and you have abided by their requirement; I am not saying you have not—that, predominantly, it is about filling out the forms, isn't it?

Mr O'Bree—Yes.

Mr LAURIE FERGUSON—You might not be au fait with this—and I am certainly less clear about it—but could we look at how you would sponsor a person here, and their road to permanent residence, as opposed to that person seeking entry as a permanent resident from Fiji. Could you give me the advantages for that person in coming through you and becoming a permanent resident, as opposed to whether they would get in in the first place as a permanent or—

Mr O'Bree—In talking specifically about Fijian nurses, because they are coming in working as RCOs or CSEs, I know of very few organisations which would actually do what we do. The reason we do it is that we had a client who actually said, 'We need these sorts of skills. These skills are not available locally.' So we thought, 'Why don't we look at Fiji?' with the view that, at the end of the term, they could become RNs. Quite simply, without our organisation, the 24 Fijians would not be in Australia. The ones who are gaining RN status—

Mr LAURIE FERGUSON—Those 24, per se, would not gain entry as permanent residents?

Mr O'Bree—As far as I know, yes. They would not gain registration and, ultimately, permanent residency. With registered nurses, it is a different story. Obviously, there are many companies such as ours—and even state governments—out there trying to attract registered nurses who have reciprocity with registration councils of Australia. Once a registered nurse gets here, it is almost guaranteed they will get permanent residency. Recently, we had a nurse

working for us who was well into her sixties and who gained permanent residency, which would be surprising for most other industries. So registered nurses do not need Cytech. Other companies can do it. However, the Fijian RCOs definitely need an organisation like ours.

Mr LAURIE FERGUSON—You have said you are not aware of anyone who has been involved with you being deported. Are you aware of any who have overstayed or not gone back when they should have?

Mr O'Bree—The 457 is an area of contention with DIAC. We go through the process. If someone resigns from Cytech and joins a hospital down the road, we have to notify the department of immigration and, 28 days later, our obligations as a sponsor cease, as you are probably aware. We follow up three months after the fact to see whether they have a sponsor, to see whether they have permanent residency and to see exactly what is happening. Often we cannot get that information from the department of immigration because it is considered privileged. As far as I know, we have never had anyone who has been deported.

Mr LAURIE FERGUSON—I am not worried about the deportation; I am worried about those who have overstayed and are still here.

Mr O'Bree—Or who have overstayed. We just do not know.

CHAIR—I would like to pursue the matter of the nurse who laid the complaint, which you were talking about originally. You say she is still in the country. Do you know if she is working?

Mr O'Bree—To the best of my knowledge, she is. I do not know who—

CHAIR—But she transferred her sponsorship to someone else?

Mr O'Bree—Yes, I believe so.

CHAIR—I have a couple of quick tidying up questions. How are you finding the processing times from DIAC?

Mr O'Bree—They vary greatly. We can have a visa processed in six weeks or we can have a visa processed in six months. Recently we had a nurse who had been with us for a number of years, working in Victoria, whose visa renewal—and this was a renewal of a 457—took from September last year till March this year. So the processing time is one thing that is very frustrating.

CHAIR—Is it becoming worse?

Mr O'Bree—Yes, I believe so. I think it is.

CHAIR—Do you think that is because of the sheer volume of 457 visas or because of a bit of paralysis in the department?

Mr O'Bree—I think it is sheer volume, which creates the paralysis. There are a lot of very good organisations out there using the system. We have been doing this for seven years. It is

longer actually; I have been involved with the 457 program for eight or nine years now. At no time has it been as slow as it is at the moment. We get letters from our clients stating that it is urgent to have these nurses arrive and we submit those with the visa application, and that tends to put you on top of the pile. That is a very genuine request.

CHAIR—Do you think the minister's recent statement about helping to fast-track good sponsors or employers is one thing that will help?

Mr O'Bree—I welcome that. I welcome anything that assists employers in obtaining 457s and anything that punishes or fines those that are not abiding by the rules.

CHAIR—Even fines?

Mr O'Bree—Whatever it takes. With the requirements through Immigration and the requirements through the awards, it is not an easy industry to go into and it is not an easy industry to abide by. We all make mistakes. We have admitted that; we have made mistakes in the past. But if that means greater education and correcting those mistakes then we are willing to do that. At the end of the day, I do not want to risk my PQBS.

CHAIR—Is your business in particular growing and flourishing?

Mr O'Bree—Yes, it is—slowly. As I said, it is not an easy industry but, yes, we are growing. I have recently taken over from my business partner. I bought her out around six weeks ago. So we are going through a bit of change at the moment.

CHAIR—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 send the secretariat any additional material you have undertaken to provide as soon as possible.

Proceedings suspended from 10.38 am to 10.48 am

HART, Mr John, Chief Executive Officer, Restaurant and Catering Industry Association of Australia

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the parliament itself. The giving of false or misleading evidence is a serious matter and may be regarded as 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 before we proceed to questions.

Mr Hart—The Restaurant and Catering Industry Association of Australia is an industry organisation that is a federation of state associations. We have around 7,200 members across the country that are essentially small restaurants and catering businesses. Across the industry more broadly, there were 37,700 restaurant businesses at the last ABS count. Since our submission, just to note the industry's progress since that time, over the last three months, according to ABS retail trade data, we have had month-on-month growth over last year of 13.9 per cent, 14 per cent and 12.8 per cent, which is a pretty high level of growth in turnover. The number of businesses is estimated by ABS to have increased by about 1,000, and jobs growth, which has been fairly well reported in our industry of late, across the whole industry, including the hotel and club sectors, sits at about 8,000 a month. According to a survey we undertook at the beginning of this year, the industry is now about seven per cent underemployed and every restaurant business could, on average, employ another person if the right person fronted up to their door and asked for a job. So the industry skills and labour shortage is pretty acute and the industry is in dire need of more employees.

Our submission outlines our position in relation to a number of matters on the skilled migration front and, in fact, it closes on a call for the area of unskilled migration to be addressed. We have undertaken a number of activities in order to take full advantage of migration arrangements, including the striking of a labour agreement for the importation of cooks and chefs. We are a participant in the immigration outreach officers program currently being undertaken by DIAC.

CHAIR—Thank you very much. Can I say at the outset that it has been relayed to me recently that Australian chefs are leaving Australia because they do not believe they are being paid as well as they could be paid overseas. How do you respond to that?

Mr Hart—The last number of net figures that I looked at showed that we are netting about 200 a year. But we have a movement of a bit over 2,000 a year, so we are certainly losing cooks and chefs at the rate that we are gaining them. Whether that is salary driven, I am not sure. In a report that was undertaken for the National Industry Skills Initiative back in about 2002, the motivation for movement offshore was more to gain experience and to understand the world of cuisine rather than simply to have an Australian perspective. So generally I think we lose cooks and chefs offshore for that reason rather than for salary reasons.

CHAIR—Do you have any views on why we have such a shortage of cooks and chefs?

Mr Hart—Again, that same report, which is called *A recipe for change*, cited working hours and the fact that it is hard work as the two most prevalent reasons for leaving that occupation. We have had a skills shortage of cooks and chefs since 1956, so it is not a new phenomenon. But the bottom line is that it is damned hard work and you have to work unusual hours. That is the nature of the job.

CHAIR—You have mentioned the industry outreach officers and you said you have a good working relationship with the outreach officers program. There has been some criticism, amongst a lot of the evidence we have received, about turnaround times and the ability to source people and to get them to Australia in a timely way. Do you have any response to that?

Mr Hart—Absolutely. At our board meeting last Tuesday this matter was raised around the board table. Comments were made in the context of a number of members of our board who had applied to bring people in on 457 arrangements—they had applied to be accepted as a sponsor—that the turnaround process had basically resulted in the people who were interested in coming to Australia, whom they were looking to engage, being employed elsewhere. So certainly the turnaround times are an issue but, more importantly, the effect of those turnaround times is that offshore workers who are looking to come to Australia opt for some arrangement other than that for which they have expressed an interest. So the outcomes are pretty dire, as well as the turnaround times themselves.

CHAIR—Do you think there is a bureaucratic malaise in the department, or are they simply underresourced?

Mr Hart—Yes, it is difficult to express an opinion on this. We understand that processing is creating the delay. Whether that processing is based on adequate resources or not, I do not know that I am qualified to comment. I stress that it needs to be addressed because the outcome is basically that we are not able to get the people whom we want to get to work in Australia.

CHAIR—Are the delays in DIAC in Australia or are they in the accreditation and the approval process overseas?

Mr Hart—I believe the delays are in Australia. We have the processes in place to alleviate some of those delays, through the more efficient processing of applications under the likes of a labour agreement, which we are not taking advantage of. There are solutions there.

CHAIR—I will leave that for the other committee members. The labour agreement is something you have been slightly critical of. We may discuss that at the end.

Senator POLLEY—It is a hard industry to work in and people leave because the hours are certainly not family-friendly. In the long-term, is the 457 visa doing anything to address the skills shortages across your industry?

Mr Hart—So much is being done to address the skills shortage, the time allocated in this inquiry would not allow me to go into all the initiatives. We are undertaking activities through the National Skills Shortage Strategy, through Careers Advice Australia and through the Institute of Trade Skills Excellence. We have started initiatives this year to try and address the skills shortage. We need a short-term arrangement to satisfy the need for labour whilst some of those

other initiatives provide a longer term solution. The 457 program allows us to do that. Even given that number of activities, it is going to take a lot of effort to make any headway on a skills and labour shortage in an environment that just continues to get worse because the industry continues to grow at such a rapid rate. It does not matter how much water we throw on the fire, we cannot seem to extinguish the flame because of the fuel that is being added by the booming economy.

Senator POLLEY—We have heard evidence in this inquiry relating to 457 visa holders who have been abused since coming into the country. We have seen media reports from the ACT and we have had evidence. Have you any evidence that you want to submit to the committee relating to your knowledge of cases you have experienced?

Mr Hart—I do not have any details at hand of specific cases.

CHAIR—There are celebrated cases in Canberra, if you recall.

Mr Hart—There are certainly those and the details of those cases have obviously been reported in a number of ways. There is no doubt that the lack of information on the employer's obligations under the 457 program—and other immigration programs—has caused problems in the past and I believe that was the root of what happened in the ACT. There was a lack of understanding of the interface between obligations in relation to those 457 visa holders and workplace relations arrangements. We have resolved that through educating employers in the ACT as to what their obligations are. I believe the situation will not recur. It was in a particular set of circumstances at a time when our organisation was not providing any information on immigration obligations because we were of the understanding at that point that we were not able to provide that information, as is detailed in our submission.

Senator POLLEY—Evidence has been given to us on the lack of knowledge of those people coming out on the visas regarding their rights and the hours they are expected to work and also their lack of English language skills, and this has all contributed to individuals being abused in the workplace. Do you have a response to that?

Mr Hart—You may be aware that we have undertaken an exercise in the ACT specifically. That has been designed to provide information to employees in our industry in the ACT on their rights and obligations.

Senator POLLEY—Can you submit to us any material that you have been provided with? That would be useful.

Mr Hart—Yes.

Senator POLLEY—Do you have any comment in relation to the monitoring, or the lack thereof, by the department and worksite visits, particularly in your industry where there have been known, and publicly acknowledged, abuses of workers?

Mr Hart—In terms of workplace monitoring, the way we have sought to address the instances where employers have not met their obligations has been to inform those employers and provide a reference point for them to go to so that there is a point at which they can receive

information on their obligations. That is so we have a source of data linked to the workplace relations advice that our associations are providing and have a one-stop shop where the employer can go to one location to learn of their obligations in a workplace relations sense and in an immigration sense. I think that is the solution to employers understanding their obligations in our industry, rather than a solution that involves a third party visiting the workplace. We have processes in place through the association to be able to provide that advice on a whole range of fronts. When you look at the Sensis data on where small businesses go for advice on such matters, you see that they go to their industry associations. I believe that is the repository of the information that the employers need to comply with their obligations.

Senator POLLEY—Do you have any comment on whether or not there ought to be new mechanisms put in place for complaints by 457 visa holders in relation to their work environment?

Mr Hart—The material that we have developed, which I will supply a copy of, suggests that the first port of call for an employee that has some grievance in the workplace is the workplace. We would suggest that the first port of call to resolve an issue is the workplace and that an employee should go to their direct supervisor and then to the manager of that business to resolve the grievance. That would be the first port of call from my perspective. Should there need to be another place where employees can go to air those grievances, a third party would be well-placed to do that, provided they then use the channels available to them—that is, they contact the employer directly to try to have the grievance resolved.

Senator POLLEY—We had an instance when we met in Melbourne whereby it was very difficult for one individual. Obviously he would not come before the committee. They were concerned that they would lose their sponsor and, therefore, would have to be returned—so there were concerns there. Would you concede that perhaps the department has a responsibility to ensure that better mechanisms are put in place for those with concerns to raise those concerns directly with the department?

Mr Hart—I concede that there is a role for the department to do that, provided the department then handles that grievance in the correct manner—that is, raises it with the employer concerned.

Senator POLLEY—In relation to the English language skills required, I note from your submission that you obviously have some concerns with the level of English that may now be required because of people coming from countries such as Japan, who are coming out and doing their traditional cooking. Do you concede that people coming out on those visas need to have adequate English to be able to understand their rights and conditions of employment and also to work in a safe environment?

Mr Hart—I certainly would suggest that that is the case, but I do not think that the two are connected insofar as I believe that, firstly, there should be a distinction drawn between the level of English language skill required for those under the 457-type arrangement, who are already employed by virtue of the fact that they are on the employer nomination scheme, and the level of English language skill required under the general skilled migration scheme, under which individuals go out and get a job themselves and are required to function in the community at that level rather than functioning only within the bounds of the employment arrangements they currently have.

In terms of the level of English language skill required for people such as cooks who are working in a kitchen and who may be supervised and managed by someone who has their own native tongue as their first language, I cannot see why that employment arrangement cannot function effectively with the level of foreign language skill rather than the level of English language skill that might be required of general skill migrants.

CHAIR—I suspect it might be advantageous for a French cook, for example, to have a heavy French accent almost as part of the deal.

Mr Hart—Absolutely.

Senator POLLEY—But it certainly could pose a problem if the person who is supervising the kitchen is their employer and is also ripping them off in their salary and charging them exorbitant rates for accommodation. Surely, then, if they had English language skills they would perhaps be better informed and protected.

Senator PARRY—Mr Hart, your organisation has a membership of 37,700 restaurateurs and caterers. Do you represent 100 per cent of the industry?

Mr Hart—The 37,700 is 100 per cent of the industry, and we have a direct membership of about 7,200 at this point.

Senator PARRY—Are you the peak body? There is no other body that is larger than yours?

Mr Hart—There is no other body in the space at all. Of those 37,700, approximately half are non-employing businesses. The ABS reports that there are some 18,000-odd employing businesses in the sector. Our 7,000-odd consists of individual businesses not individual outlets, so we are about 72 per cent of the businesses in turnover terms. The number is skewed by the number of non-employing, very small businesses.

Senator PARRY—Therefore, you are predominantly the employer rather than the employee.

Mr Hart—Correct.

Senator PARRY—If an employee had a complaint about one of your member firms, are they free to complain to you directly?

Mr Hart—No. We do not deal with those inquiries.

Senator PARRY—Do members approach you concerning unsavoury practices or bad practices by fellow members? Do you have a member-to-member complaint mechanism?

Mr Hart—We do, and we field some of those.

Senator PARRY—You started off earlier by saying that you were not aware of complaints within the industry by members, and then we started moving into the fact that you were aware of some issues. Have you had any complaints registered with you concerning 457 visa holders and the exploitation of employees?

Mr Hart—We have had no formal complaint lodged.

Senator PARRY—So any evidence that you can present is just anecdotal; it is what you have heard?

Mr Hart—That is right.

Mr LAURIE FERGUSON—Bob Birrell, who is fairly respected in this field—immigration intakes, skills, et cetera—recently chose to deplore an intake in this area which was essentially hairdressers and chefs. My personal experience in the Western Suburbs is that if there is one industry that tends to have an issue with overstayers, basic collapse of relationships, employers being scrubbed out by the department because their taxation records do not correlate with what they are supposedly paying and that type of thing it is this industry. You are advocating a higher non-skilled intake. What is your experience of the overstay rate in this industry at the moment—people who come here on these visas and disappear? A concern expressed by Bob Birrell is: 'Is this what we should be doing about skills in this country—bringing in chefs?' Could you marry this with your advocacy of an even less stringent intake going down the skills level?

Mr Hart—I restate that the skills and labour shortage is so acute that we are now finding in a number of circumstances that businesses are shutting down parts of their business because they simply cannot staff that business. At seven per cent underemployed and with a system that is producing far fewer people than we need to service the industry growth, we have to do something. I understand that there are concerns around employers meeting their obligations, but the view that we advance in the submission is that compliance activity should address where those concerns are. We should put in place systems that ensure employers who are not meeting their obligations are not able to be part of the program. We should not be putting in place artificial barriers to stop certain employers that are determined in some subjective fashion being able to be part of the program. As we say in the submission, the workplace relations record of an individual employer should be the criteria for determining whether they are able to bring in a worker from overseas. They should not be able to bring in a worker if they have a breach of their workplace relations record. That needs to be the cornerstone of whether an employer can be a sponsored employer.

CHAIR—So you support stronger sanctions, penalties, et cetera for those with a bad record?

Mr Hart—No; we support an absolute prohibition on employers who have breached their workplace relations record from being able to engage overseas workers. Applying the law in that way will enable employers who have an unblemished record to satisfy their skills and labour shortage and get on with business.

Senator PARRY—Are you advocating a life ban—not just a short-term, temporary ineligibility?

Mr Hart—For whatever period the breach is current, they should not be able to bring in overseas workers. As we have documented in the submission, it appears that, through the negotiation of the labour agreement, the focus has been on other aspects and other criteria, such as the commitment to training and education, rather than on the workplace relations record. All

the examples that we raised—and the majority of the comments made this morning—were around workplace relations practices.

Mr LAURIE FERGUSON—I am more concerned about going further downstream in skills, as you are advocating, in an area where I think there are already issues with regard to adherence to immigration rules. I have concerns about the policing of this once people arrive, if you are advocating a major increase in the number of unskilled coming in here.

Mr Hart—Again, I think the answer is to tighten up the current compliance regime and to make sure that those compliance breaches do not occur, rather than trying to compensate for that by not allowing the workers to come into this country.

CHAIR—Are you advocating a new subclass of visa for semiskilled workers? Would that be a mechanism?

Mr Hart—The mechanism that is applied is not something that we have addressed. What we have said in the submission though is that we have a large level of demand for unskilled workers and we see the migration program as being a way to solve that shortage in the short term.

CHAIR—It is all right saying that about the migration program, but we are looking for suggestions. Some evidence that we have taken previously has suggested a new visa subclass to cater in a short-term way for semiskilled workers, and I am wondering if you suggest that as well.

Mr Hart—I am just not sure whether it needs to be another visa subclass.

CHAIR—But otherwise you will not get them.

Mr Hart—I guess all we have suggested is that that demand exists and that the way the system addresses it should be through the employer nominations scheme, and if that means that there needs to be a new visa subclass then there needs to be a new visa subclass. The point that we make is that satisfying that demand through the general skilled migration stream is clearly not working. For instance, as we know with cooks and chefs, we have a number of individuals coming into this country studying as cooks and chefs and working as taxi drivers.

CHAIR—That is another issue. I am sorry; I have stolen your thunder, Laurie, but I will come back to you. But on this issue, we have had evidence—for example, from the meatworkers—that Australian businesses are not advertising sufficiently and not voraciously seeking possible pools of Australian low-skilled workers to fill these positions. Instead they are looking overseas for semiskilled workers particularly when we continue to run Work for the Dole programs, which is jumping the gun somewhat. You might want to respond to that.

Mr LAURIE FERGUSON—With the meatworkers, our allegation is that once they are here they do higher skilled jobs.

CHAIR—That is right.

Mr Hart—Firstly, in terms of not advertising for local workers and not undertaking Work for the Dole style programs, the advertising practices of employers have changed significantly. I am concerned that we measure, as we do through the MODL, the skill shortage in occupations or the level of effort of employers to fill vacancies by advertising. No longer do we place advertisements in daily newspapers as a matter of practice to recruit particularly for occupations that have severe skill shortages. So I would question that as a measure.

CHAIR—How do you advertise?

Mr Hart—The predominant method of recruitment is by word of mouth and referral in our industry, and that is borne out by a survey that we did at the beginning of this year. Internet advertising for staff is absolutely commonplace these days. Processes such as the MODL process do not take into account, as I understand it, advertising for staff in that way. There are various measures that are used to determine vacancy rates based on print advertising, and I would suggest that perhaps those are flawed measures.

In terms of our employers' commitment to continually placing ads in those sorts of publications for occupations to which they receive no interest and no telephone calls in response to their advertisements, that is a pretty expensive practice when you consider what an ad in the *Sydney Morning Herald* costs these days. So I guess I would question that whole advertising thing.

On programs, and I would look more particularly at some of the Welfare to Work type programs rather than Work for the Dole type programs, in our industry we have undertaken a huge number of these programs around the country. We have a very significant suite of programs that look at facilitating the transition from welfare to work. Industry-wide we would have placed a very large number of people from the welfare system into working arrangements to try to satisfy the skill shortages.

CHAIR—Can you provide the secretariat with some examples of those?

Mr Hart—Absolutely.

CHAIR—Thank you, Mr Hart.

Mr Hart—One of the points that we make in the submission is that it is that industry-wide type activity that should be considered when determining whether an industry is able to support overseas workers. One of the points we make is that the smaller employer is unlikely to be able to demonstrate an adequate level of commitment to training and education, simply because of their size, whereas the industry-wide activity could be quite comprehensive—as it is and as I have provided examples of.

Mr LAURIE FERGUSON—You earlier put a view that people in general and perhaps the department focus too much on training as opposed to the workplace criteria, but you rattled off a number of areas of training that the industry is involved in. I noticed that in the submission by the Liquor, Hospitality and Miscellaneous Union they make the point—and they are not talking about your industry, by the way—that training nationally in Australia declined from 148.6 million hours in 1997 to 139 million hours in 2005. You have told us that you are a burgeoning

industry—that you are expanding—so the overall training in the country has gone down. Internationally we are not exactly a pacemaker in training; in OECD figures we are towards the bottom. Are there any quantum figures on training? You are advocating now that we go even further towards being unskilled. Yours is an industry that is demanding a fair percentage of the intake in business entry visas. Are there any figures in regard to training in the industry?

Mr Hart—There absolutely are. Most of those figures are supplied by the National Centre for Vocational Education Research—NCVER. They show that the numbers of food trades apprentices are increasing and that in fact the commitment in our industry, proportional to the number of employees—that is, the numbers of trainees and apprentices compared to the number employed—is higher than in any other. So there is certainly a very significant increase in the training provision in our industry, which is trying to keep pace with the need for skills.

CHAIR—There has been some criticism of the program because people who are brought out on one particular visa can end up doing another job, and, as we know, that is largely illegal. So, for example, if you bring out a cook they may end up waiting. You would have a position on that, wouldn't you?

Mr Hart—We certainly do. When you say 'bring out', my understanding is that the majority of those cases are in the Employer Nomination Scheme, which is part of the skilled migration program, where an individual demonstrates that they have the skills in a particular area but are not subject to a nomination like they are through the Employer Nomination Scheme, and that is where we understand the majority of those are who say they are cooks and chefs but are not working in those occupations. In our industry the bottom line is: if somebody is a cook or a chef and they want to work as a cook or a chef, they are not going to have much trouble finding a job. They will be snapped up very quickly, and it would only be those who are not looking for a position in those occupations who would be working as anything else.

CHAIR—I do not want to put words into your mouth, but would it be right to say, in concluding, that you are generally happy with the way this visa system is running, that it is a growth sector and that you would like to see it continued, with some minor refinements?

Mr Hart—That would be right, with the exception of the labour agreement arrangements. We believe labour agreements need to provide some advantage to those organisations and employers that are parties to a labour agreement and provide some flexibility not provided under the traditional 457 process. At the moment, labour agreements generally provide additional requirements rather than additional flexibility.

CHAIR—We did not get to labour agreements, but you have taken some time in your submission to talk about that so I am sure that anybody who wants to follow up with further questioning can do so. But we have run out of time.

Mr LAURIE FERGUSON—Have you had any complaints from industry members on, or do you have any knowledge of problems with, recognition of overseas training—that is, problems with people claiming that a particular school in India or wherever has given them certain skills? Have you come across any problems in that area?

Mr Hart—Yes, we definitely have. And we very firmly believe that that skills recognition process, and the recognition of qualifications by comparing them with our levels of qualification, is an absolutely vital part of the system and needs to be improved. I made a submission to an earlier inquiry on that basis, making some suggestions in relation to the utilisation of Australian institutions overseas for that purpose.

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

Mr Hart—Thank you.

[11.25 am]

HITCHCOCK, Mr Neil, Member, Migration Institute of Australia

WATERS, Mr Bernard, Chief Executive Officer, Migration Institute of Australia

CHAIR—I welcome representatives from the Migration Institute of Australia 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 Waters—Thank you. The Migration Institute of Australia is the premier professional body representing migration agents in Australia. Our 1,600-plus members represent a great many employer clients for whom the sub-class 457 visa is an important means of securing the overseas skills and talents they need. The 457 program not only is essential to Australian business, but is of great benefit to Australia.

Many employers must have access to workers from overseas in an efficient and speedy fashion to remain competitive and to further grow Australia's economy. This is especially important now. Unemployment levels are low and the Australian economy is strong. The need for skills is a priority for virtually every successful Australian business. Unless the need for skills is addressed, and addressed urgently, many of those Australian businesses will not be successful businesses in Australia for long.

Training programs for Australians, especially our youth, must remain a priority. Migration is also very important, and we acknowledge that the coming year's migration program will be the largest for many years. The skilled migration program will be the highest ever. This will be a considerable challenge for the Department of Immigration and Citizenship to achieve.

This alone, however, will not be enough to satisfy the economy's need for skills. The 457 visa must remain a means for Australian employers to bring workers to Australia when the need is so urgent. Speed is essential. The 457 policy settings must be flexible and they must not put employers through unnecessarily bureaucratic hurdles. Everyone knows that accountants, engineers, geologists, nurses and the like are in short supply. Why ask employers to advertise extensively or have the Department of Employment and Workplace Relations do a lengthy survey? Simply check the bona fides of the employers and look at the qualifications and background of the workers. The quicker the visa is issued the quicker the worker is productive in Australia. The positive spin-off for our economy is obvious.

By all means, follow up with monitoring after arrival. At least the Australian employer is getting the benefit of the skills quickly. Stalling the visa issue process defeats a vital purpose of the 457 visa. Discussions with our members and with staff in Immigration suggest that there are a large number of cases caught up in processing delays despite being very low risk. The broad

application of checking procedures seems unnecessarily to slow the processing of these cases and divert attention from the higher risk cases. We know that Minister Andrews does not wish to disadvantage Australian employers who are doing the right thing so we have put forward a proposal to speed up the processing of the 457 visas. Registered migration agents could identify those cases at lowest risk from the outset so that they could be streamed for virtually automatic approval. This would free up more Immigration staff to process the remaining caseload, and both Australian business and the Australian economy would benefit.

In essence, we believe a registered migration agent could certify that a subclass 457 application was low risk, with features such as the employer being known to the Department of Immigration and Citizenship, with a previous positive sponsorship record; the industry sector not being known to be of concern to the Department of Employment and Workplace Relations or the department of immigration; the occupation in the ASCO groups 1 to 3; the applicant from a low-risk country; and a salary level above the minimum gazetted salary level and consistent with Australian norms. On receipt of one of these certified applications, the immigration department could, subject to public interest checks, issue a visa without further processing. Clearly, the detail of how this process would work would need to be defined and appropriate safeguards to prevent or deter abuse put in place. But the MIA believes that it will work and be to the advantage of sponsoring Australian employers.

Changes to the 457 visa need to be carefully thought through. Ill-conceived changes could damage employers and exacerbate the major skills shortages Australian employers are already facing. Any new requirements must be practical and must not unnecessarily slow down processes. English-language requirements, for example, need to recognise the difference between a hospital recruiting a medical specialist and a Chinese restaurant recruiting a chef. It would also be self-defeating to rely on existing English-testing arrangements used when a person seeks a permanent visa to Australia, as tests already often need to be booked months in advance.

Labour agreements are another area that needs careful consideration. If used, they need a serious injection of speed. Employers seldom find the negotiation process fast enough, and in the last 12 months our members have had an inordinate problem in finalising new agreements.

Policy settings need to recognise that overseas recruitment is a last resort for most Australian employers. Recruiting an overseas person is usually much more costly than recruiting locally. Most have tried to find someone here or are forced into wider recruitment efforts because of persistent, widespread shortages. Often, by the time the Australian employer has reached the point of overseas recruitment, their skill needs are immediate and critical to their business. Any changes must keep the benefits of the visa in mind and be practical. A program that makes it impractical for Australian companies to meet their skill needs could force them to relocate functions and therefore employment opportunities offshore. This could potentially put Australians out of work.

The MIA highly values the importance of the integrity of the program and deplores any exploitation of workers. We support introducing harsher penalties for those who deserve it. The penalty should fit the crime. This is a direct way of handling the problem and will act to deter those who might otherwise seek to exploit overseas workers. In introducing tougher penalties, we would suggest that the government also introduce education programs so that all employers can be absolutely certain as to where they stand. This should counter perceptions from some

overseas recruitment agents that employers can bring in cheap foreign labour when they go overseas to recruit. Contrary to some media reports, we have seen no evidence of registered migration agents being involved in any exploitation or encouraging employers to do the wrong thing. Registered migration agents are well aware of the Migration Agents Code of Conduct. They know that breaches of this code will result in a sanction. Involvement in exploitation would deserve the heaviest of sanctions. The real problem is the overseas agents and self-serving middlemen. The MIA urges the government to fast-track planned legislative changes to regulate the activities of overseas agents.

The MIA has introduced a pro bono service for at-risk visa holders in the 457 area. We have done this in close consultation with the ACTU and the immigration department to ensure that those exploited visa holders have independent, effective and appropriate assistance available to them at no cost. In the six months that the MIA has been running this service we have found only one confirmed case of exploitation. An IT professional was sponsored to work in Australia, his employer refused to help him bring out his pregnant wife and young child and he used visitor visas to bring them here. His sponsor stopped his pay and he did not know how he was going to find another sponsor, or if he and his family could stay in Australia. One of our team worked with the Department Of Immigration and Citizenship and the Australian Council of Trade Unions to help him get the pay that he was owed, to find a new sponsor and to arrange new visas for him and his family.

This was one case too many, but we believe that perspective needs to be maintained. The number of cases of exploitation is very small. Program changes should not disadvantage the overwhelming majority of Australian employers who do the right thing. In short, with a strong economy and low unemployment, Australia needs skilled workers desperately. The MIA urges the government to maintain a 457 visa program that delivers what Australian employers so desperately need: an ability to quickly obtain workers with needed skills.

CHAIR—That was a comprehensive and excellent submission. Thank you for going to so much effort. I appreciate that you have not only identified a problem but also given us some solutions. You have suggested that registered migration agents be certified, for want of a better word, to fast-track uncontentious, less problematic visas. In effect, what you have suggested is that DIAC subcontract out to certain agents this role so that it can be fast-tracked. Obviously in that implication you have suggested that the process has become bogged down and is taking far too long. However my concern with that is that I have had occasion to name a few migration agents in the parliament—who MARA had not picked up—as being less than satisfactory. One of them, thank goodness, is no longer a migration agent, but the other one still is. I would be concerned about sub-contracting out this approvals process to some agents who I might not necessarily think are up to scratch. How would you respond to that?

Mr Waters—The way that I would see it operating would be with a contractual type arrangement with the immigration department. It would not involve payment by the government or the immigration department to the agents, but simply giving the registered migration agents the tick, so to speak, to provide this service to their clients and, dare I say it, for the immigration department to sieve out the easy and good cases so that the immigration department would not have to do that work. Quite clearly the immigration department would have the power to decide who it would give the tick to. If someone was not up to scratch there is no one better than the immigration department—given the number of visas that they are processing from registered

migration agents—to know who is good and who is not and to be able to make that discrimination.

Mr LAURIE FERGUSON—In regard to totally fraudulent players, and I do not think that there are that many of them in the industry, do you see a major conflict of interest and difficulties with transparency and perception in that people with a commercial interest in facilitating entry are going to basically be part of who gets in?

Mr Waters—The arrangement would be very transparent. The criteria would be objective and clear, and clearly published. It would not be a matter of a case that was not clearly in the approval stream being moved into the approval stream by a migration agent. Such cases at the margin would continue to be processed entirely by the department. Let us be honest, the department's processing is not nearly as stringent with an application from a highly respected employer for a professional on a large salary as it is with an application from an unknown sponsor for a lower skilled and lower paid occupation.

Mr LAURIE FERGUSON—I think there is a difference between what the department might do and what people with a commercial interest in facilitating the expansion of this program might do. More and more employers would have a say in the process. I think there is a big difference there. You used the expression 'stalling' and sounded a bit severe about the department. You would be aware of recent changes by the minister which, if anything, indicate that there have been concerns in this field. Do you want to elaborate on why you perceive it as stalling?

Mr Waters—It is stalling in the sense that a motor car might stall rather than in the sense that the department is deliberately stalling the process. Essentially, our concern is that the processing times for 457 visas have increased quite markedly over the past 12 months whereby employers are finding it more and more difficult getting skilled staff to Australia quickly.

Mr LAURIE FERGUSON—You speak about the need for more effective complaint mechanisms to safeguard employees. Do you have anything to put to the committee on that?

Mr Waters—The current monitoring arrangements could certainly be enhanced and the Migration Institute would be only too happy to work with the department in the development of new arrangements, but we also believe that those arrangements should be targeted. They are certainly targeted currently but that targeting could be improved.

Mr Hitchcock—A further enhancement of the monitoring process would be for the department to have access to employees as well as employers.

Mr LAURIE FERGUSON—Some people might reach a conclusion that some elements of industry might see this as a way of breaking down conditions in the country by allowing the entry of a workforce that is more compliant and less aware of Australian conditions, standards and practices. I am not easily convinced that it is always a matter of last resort. At the same time, you talk about how dreadful it is for small employers to have to train people and how costly it is et cetera. When you put these things together, I do not think the assurances are that strong that it is always a matter of last resort.

Mr Hitchcock—In a situation where the economy is operating at full capacity, a lot of employers do not have any great choice.

Mr LAURIE FERGUSON—A lot do not have any choice, I agree. I am saying that there is an element in industry that thinks that this is very useful with regard to industrial relations issues.

Mr Waters—A lot of what we have said in that area really relates to asking for a build-up in monitoring. If employers are informed about monitoring and they know that the monitoring process is for real and is happening, and is happening extensively, they will respect this particular program in the same way perhaps as they would respect the rules of the ATO and other government institutions.

Mr LAURIE FERGUSON—Finally, putting to one side the obvious labour shortages in the country and the training deficits et cetera—they are apparent to everyone and we have to do something about them—your submission puts forward nirvana: that you and the employers are doing this great thing for Australia by facilitating permanent entry, that part of what comes out of all this is permanent entry. Do you feel that there is something wrong with Australia's intake of permanent skilled workers, which has reached 97,000 in the current year?

Mr Waters—We do not think that there is anything particularly wrong with the skilled intake for the size of the program. The 457 visa program is, however, a temporary entry program; it is primarily aimed at meeting immediate skill needs and solving short- to medium-term holes in the labour market. It is true that probably half of those people who come to Australia on 457 visas subsequently stay, and in many respects that is not surprising. They will find Australia attractive and they get used to living here. They will have a job and they will have their families firmly established, with a home, kids in school and the like. So, to my mind, it is one of the best sources of skilled migrants because what you have is a person who is a proven performer rather than needing to select a skilled migrant from overseas who might have attributes that are very attractive but who does not have the runs on the board, so to speak, in Australia.

Mr LAURIE FERGUSON—Yes, but a whole lot of people who probably have skills of a higher level at the initial point cannot get in. People who have a higher level of skill and who wish to have permanent entry are basically competing with a large intake of temporaries who, admittedly, have Australian experience, which is something that Australian employers are always looking for. But these people are basically disadvantaged in a sense, aren't they?

Mr Waters—I would not have thought of it in those terms. The skill level of Australia's 457 visa holders is very high. We are talking about people who are being paid, in the main, quite substantial salaries. We are talking about average salaries of $70,000 a year plus. To my mind that is a very clear indication that those people have a high level of skill and not simply a level of, if you like, a good qualification, immediately out of a university or another training institution. These people have experience as well to warrant those sorts of salaries.

Senator POLLEY—Thank you for your submission. I am interested to know your view in relation to a visa holder who has come out, has been exploited and needs to change employers; there is a 28-day period in which they have entitlement to find a new sponsor. Do you have any view about having that period extended?

Mr Waters—We certainly believe that that period should be extended. In fact we have found that the immigration department is quite flexible in that regard. We would think that the period should be longer; although in many instances 28 days may well be enough for some people, for others it will not be. We believe that a longer period is warranted—perhaps three months or maybe slightly more.

Senator POLLEY—Have you got any comments on what could be done to ensure that people who have been exploited have avenues to raise their complaints and be safeguarded from being asked to return to their homeland?

Mr Waters—This is one of the areas where the MIA has in fact taken the initiative. We are offering a free service where we are working closely with the immigration department and the ACTU to provide advice and assistance to people who have concerns about exploitation. If they have been exploited, our migration agents will assist them to further their cause.

Senator POLLEY—I read with interest your comments about English language skill, and I asked earlier witnesses from the hospitality industry about evidence we have had, and which has also been addressed through the media, about people who have been exploited. Sometimes people come to Australia and work in restaurants and they do not have sufficient English skills to ensure they are aware of their rights and their terms and conditions and in order to work in a safe environment. Do you have any comments in relation to that issue?

Mr Waters—We believe that people need to be aware of their rights, and we see that as a very important role. In order to function in Australia a degree of English is required. But by the same token a person can be advised of their rights in languages other than English. But we certainly see this as a difficult area where, really, the right balance needs to be found.

Mr Hitchcock—If I could make an additional observation: it is interesting that when a person receives a permanent resident visa at an Australian mission overseas they are given a substantial body of information about their rights, access to agencies et cetera. To my knowledge, a person receiving a temporary resident visa does not receive that substantial body of information. My experience tells me that they receive very little. That is an area that could be improved.

Senator POLLEY—And certainly, from the evidence that has come before the committee, there should be monitoring of the employees in terms of the activities and terms and conditions of the visa, and there should also be more contact with those who are out here on the visas.

Mr Hitchcock—I think that if the monitoring process included regular access to employees there would be more respect for the rules by the employers that might want to exploit them. I would be certain of that.

Senator POLLEY—Finally, have you got any comments, or do you want to enlighten us as to any concerns you have, in relation to labour hire companies and how they operate with these visas?

Mr Waters—We have certainly got concerns with a number of the overseas companies in terms of the advice that they provide Australian employers which, if you like, almost encourages them to do the wrong thing. Our members put quite considerable store in advising Australian

employers of the immigration requirements and the law and what they need to do. Our members quite often find employers questioning the things which they are telling them in terms of, 'But I was told by this overseas agent or recruiter something quite different.' It is a matter of countering those sorts of perceptions. We would like to see the material produced by government, and we would like to see the policies reflect that to a stronger extent than they do currently.

Senator PARRY—I commend you on your detailed submission and your opening statement. It was quite enlightening. You have even covered nomenclature for the first time; it is quite a unique concept for a government department to actually have a label that fits the description. It was quite interesting; I think we will take that on board. In relation to English language, you mentioned about the Chinese chef being able to take instructions in Chinese and not requiring English. What about further down the track with integration into society? Do you think that not having adequate English would be a barrier?

Mr Waters—There is no question that lack of English would be a barrier to subsequent settlement in Australia. I look at it in two ways though. Many of the people coming out on these visas have no intention of settling, and so settlement is not necessarily the road which they will travel. Many of the people who come out on 457 visas are in Australia for six months or less. That is something that is going to have to be considered. By the same token, perhaps 50 per cent of those who get 457 visas do eventually settle in Australia. There could well be the imposition of some requirements if a person is going to be staying in Australia in the longer term.

Senator PARRY—Do you see it as a post-entry requirement that once they are here and established then if English is not up to a standard—

Mr Waters—We would see that as meeting the individual applicant's needs and most particularly the needs of Australian employers, where the need is to get a skilled worker on the job quickly.

Mr Hitchcock—The English language settings for the shift from a temporary to a permanent visa are fairly significant. It is very difficult to obtain an Australian permanent resident visa on employer sponsored or skilled selection grounds without, in effect, HSC-level English or more.

Senator PARRY—Thank you. It was just that, in your opening statement, you left the door open. It seemed that you may have considered English not even a requirement, but it is under certain circumstances. Also in your opening statement, about penalties, you said something like, 'The penalty must fit the crime,' and in 15.3 you outlined some form of penalty. Earlier today there was a suggestion that if sponsors or employers were detected doing the wrong thing, particularly in relation to industrial relations, they should be barred from ever being able to be granted sponsorship under a 457 visa. I do not know whether you were in the room at the time, but do you have a view on that?

Mr Waters—We certainly were in the room at the time that comment was made. We believe that a bar on sponsorship would be warranted.

Senator PARRY—Do you see that being lifetime?

Mr Waters—Whether it be a lifetime ban or not would be another matter. Again, I think it is a question of the penalty fitting the crime. So for what I might call the slavery type approach, then a lifetime ban may well be warranted; but for lesser breaches, perhaps not. Perhaps the employer could—rehabilitation is certainly possible.

Senator PARRY—You have been very good with providing your view of solutions. Can you put a finite time on this? Do you think there should be a five-year penalty for a breach of industrial relations legislation or a penalty time frame? Do you have a map of breaches that you think you would like to attach penalties to?

Mr Hitchcock—I think if you went and aimed for consistency with the penalties that applied in other areas of government legislation, that would be a good start. Because this is a new ballpark, you would want to make it consistent with the penalties that apply for breaches of other areas of our corporate law—for example, not being allowed to be a director hurts a company director.

Senator PARRY—That is right. Also we have to think of the Australian purpose with 457s. If we then prohibit people bringing them in for breaches, we are then harming the country as well as the individual. What about financial penalties—substantial financial fines?

Mr Hitchcock—In the area of corporate law, there are substantial financial penalties, so, again, it is an example where you could look for consistency with those financial penalties.

Senator PARRY—Thank you.

CHAIR—As I said, your initial submission was very comprehensive, and now we have your submission today. There is one thing we have not covered with you or with others today that we need to get your opinions on. You have mentioned regional certifying bodies that charge higher fees for services, with some RCBs seemingly having conflicts of interest. Could you elaborate on this and do you have any particular suggestions on how this function might be improved?

Mr Hitchcock—It seems a bit incongruous that this is a program that is a service to employers and, in effect, a service to employers in regional areas, and regional certifying bodies are charging fees to assess applications and sponsorships for employers in those areas. We had not quite thought through a solution on that one. We needed to raise it because it seemed incongruous that, in particular, with major areas of Australian government policy aiming to assist regions and to promote economic development in regions, regional certifying bodies were charging fees. I guess if there is an immediate solution it is to suggest to them: do not charge fees.

Mr Waters—That said, there are also quite differential fees charged by different regional certifying bodies which range from none to many, many hundreds of dollars.

CHAIR—So you would think it is a bit laissez faire out in the regions now?

Mr Waters—Yes.

CHAIR—Again, as Senator Parry said, you have come with up with some very good suggestions; you might want to put your mind to some solutions to some of the concerns with the regional certifying bodies which we would be happy to receive from you.

Mr Hitchcock—We would be happy to write something on that.

CHAIR—Thank you. Finally, you have been quite critical of overseas recruitment agents. Evidence has been given to this committee previously about Korean welders, for example. Some cases in Western Australia would support some of the comments you have made. Do you see that as a flaw or a greater problem being imposed on this visa subclass because of the activities of some overseas recruitment agents?

Mr Waters—Yes, we do.

CHAIR—What can we do about it?

Mr Waters—The answer, to my mind, is quite straightforward. The government should fast-track its regulation of overseas agents, give the immigration department the power to be able to say, 'We are not going to deal with you because you are not a registered agent,' and, in effect, cut them out of the process. If you are dealing with registered agents—and I would be the first to say that they are not all perfect—at least they are regulated, they are bound to a code of conduct and there are penalties involved where their registration can well and truly be cancelled if they do the wrong thing.

CHAIR—Is it your experience that people on 457 visas are paid adequately, even in the regions? Or are they competing, as some criticism has it, with Australians to bring down wages and conditions?

Mr Waters—A minimum salary level in excess of $40,000, and even with regional concessions of the order of 10 per cent, is still a wage which many Australians would aspire to. I think that the more people are paid the less is the risk of exploitation.

CHAIR—As you would be aware from the previous evidence, there have been times when people have been brought out on a particular skill set and then used in another area where there are shortages. Are you aware of this?

Mr Waters—We certainly are aware of some instances of that. The issue really comes down to where they are being used. If a geologist is brought out to Australia to fill a shortage and then works as an engineer, I do not think that there is a terrible evil to Australia as a result. It is an entirely different matter if a person is brought out as a geologist and they end up working as a labourer or the like. That then could disadvantage Australia workers, and tends to make a mockery of the skilled program.

Senator PARRY—I want to challenge a comment you made. You said the more people are paid the less chance of exploitation. Wouldn't it stand to reason that if employers are paying more they might want to exploit to recoup some of the higher wages? I just do not follow your argument.

Mr Waters—Generally speaking, I would think that higher wages equate with higher levels of education and higher levels of responsibility in the workplace.

Senator PARRY—But the exploitation is not on behalf of the employee. It is the employer who would exploit the employee, and we might then find there are ways of recouping money.

Mr Waters—What I am getting at is that a highly paid worker is likely to be much more assertive of their rights than a lowly paid and, likely, lesser educated worker.

Senator PARRY—By that comment you made earlier were you also suggesting that the minimum wage should be raised?

Mr Waters—No, I was not.

Senator PARRY—So you are talking about what an employer decides to pay above and beyond the minimum.

Mr Waters—Exactly.

Senator PARRY—Okay. Thank you.

CHAIR—We could spend much more time talking to you but we are out of time. Thank you for attending today's hearing. I would be grateful if you could send the secretariat as soon as possible any additional material you have undertaken to provide to the committee.

[12.05 pm]

MOTTO, Ms Megan, Chief Executive, Association of Consulting Engineers Australia

OSTROWSKI, Miss Caroline, Policy Officer, Association of Consulting Engineers Australia

CHAIR—Welcome. 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 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 before we proceed to questions.

Ms Motto—As noted, we are here to represent the Association of Consulting Engineers Australia and to give a brief background to our industry body. We represent the business and commercial interests of the private sector engineering and consultancy firms in Australia. We represent around 250 employers who employ around 30,000 staff in Australia in a wide range of professions ranging from engineering and highly professional related services skills through to paraprofessionals and semiskilled labour.

The skills shortage for consulting engineers has reached a critical mass. I believe that is not news to anyone; it is widely reported in the media and in broader circles. Engineers and related professionals, including paraprofessionals, have been in critical shortage in the engineering industry since early 2000 to 2003, and it is expected that those critical shortages should continue for at least another five years and possibly 10 years down the track. Indeed, some of the shortages are so critical that our members report that two-thirds of projects are being delayed either temporarily or permanently because they do not have the skilled labour to complete the projects.

CHAIR—Is that Australia wide?

Ms Motto—Yes. With around $500 billion committed in government spending on infrastructure projects over the next few years, this is representing a significant barrier to our productivity in Australia. For that reason, the skills crisis has presented a number of issues for Australian engineering and consulting services firms. We are looking at a number of solutions to address the issue, some of which are through the temporary migration and skilled migration policy areas in terms of a stopgap, if you like, and having some more immediate solutions to the crisis at hand and others which look to the education system to provide long-term support and a long-term increase in the number of engineers and highly skilled professionals to our industry.

In that respect, we are great users of the 457 visa. The project based nature of much of the engineering work and the very specialist skills sets required mean that engineers often need to be brought onto projects in very short time frames for short periods of time. That being the case, the 457 visa program is completely appropriate and well used in the engineering industry.

Over the last couple of years we have seen a significant increase, we believe, in the processing time for 457 visas. It went from about 10 to 14 days early last year through to about six to eight weeks. This is a significant problem for the Australian consulting industry because specialist expertise needs to be brought onto projects quickly and in a timely manner.

Whilst we understand that there is some misuse of the 457 visas, we would like to give a snapshot of our industry. We exist not just in the Australian environment but in a global environment of engineering skills shortage. Therefore, the engineers that we are bringing in from overseas are not underpaid by any stretch of the imagination; in fact, they are some of the most highly paid workers in Australia.

We have a system whereby these individuals are professionals: they are highly skilled, they are highly trained and they generally have fairly proficient English. Our employers scour the world for these professionals and compete with other global firms for their expertise, so the salaries are very high.

While we understand that some industries might misuse the 457 visa, ours certainly does not fall into that category. Therefore we would look to this committee and to the migration program in general to look at flexibility in the system, not tarring all employers with the same brush. We would look towards a two-tiered system whereby employers who have good track records, who pay high salaries and who have significant and critical shortages in their industries which cannot be filled by Australian employees are treated in a different manner from those industries which have a history of abuse.

We look to see a reduction in the regulatory burden for those industries, such as ours, that have a good track record. Frankly, we spend six to 12 months trying to recruit someone from another country to come to Australia and we do not want the process held up by another six to eight weeks because of regulatory burden.

The ACEA has been lucky enough to have an industry outpost officer in our association three days a week. One of our concerns is that the increased regulatory burden proposed by some of the recommendations in the discussion paper would actually be counterproductive to that process. That is, you have got someone in-house trying to streamline and assist employers of all sizes, including particularly smaller businesses, which populate our industry very heavily, as they do most industries. Then, on the other hand, you have got increased regulatory burden, which counts as a disincentive for those companies to bring skilled labour in from overseas.

Overall, in closing, I would like to see more flexibility and a two-tiered approach which does not look to all employers with the same history and track record as others.

CHAIR—Thank you very much, Ms Motto. That is a good snapshot of the situation. Why do you think Australia is in the position it is, particularly in your industry at the moment, with a shortage of engineers?

Ms Motto—Australia is not alone in that respect. We have seen a continuing trend in the school system, particularly in western countries, away from the hard sciences. This has led to fewer engineers per capita and per GDP growth entering the system. There are two issues here. One is that Australian engineers have seen about the same numbers go into and out of the

universities for about the last 10 years. We have about 11,000 engineers going in and about 5½ thousand coming out of the university system. That has stayed pretty stagnant for the last 10 years, whereas it is very obvious that the demand for engineering services has increased dramatically. A lot of our infrastructure needs to be renewed, our population has grown, we have a booming economy and the demand is very strong.

The other side of the coin is that the engineering degree over the last 10 to 15 years is now being seen in a very different light. Engineers used to finish engineering at university and have basically four choices. They would go into the private sector, into a consulting company such as ours; they might go into manufacturing; they might go into the government—the public sector—or they might go into mining engineering. These days they are also being poached by the financial services sector, project management, management consultancy and the IT&T sector. So the engineering degree is now being seen as a very broad based, analytical, problem-solving business degree of this time. It is being seen as a very broad based, technical degree, and engineers are in great demand by more industries. So, while we have still got the same pool, the pool is being dispersed into great many more sources.

CHAIR—What is your industry doing about this? If being an engineer has become so highly attractive, are you involving yourself at the school level, for example, in scholarships or promotion of this as a career path? What are you doing?

Ms Motto—We have got a number of initiatives on the go at the moment, some of which are directly with the firms. A number of firms have initiatives whereby they go directly into schools and run activities. For example, one of our firms, Connell Wagner, runs a bridge-building competition with year 9 and year 10 students in a number of secondary schools in Melbourne. So the engineers are engaging with the schools themselves at a very early age.

On top of that, one of the issues for us is that the skill set and the level of intelligence required to go into engineering in university is such that engineering is competing with similar industries such as law, medicine or veterinary science. Whilst most pupils at about 14 or 15 years of age understand what a vet is and what a vet does, and similarly with a doctor or a lawyer—particularly with *CSI* these days, they certainly know what a forensic scientist is and does, and we have more graduates coming out of forensic science than we know what to do with in this country as a result—they do not really understand what an engineer is. They have a misperception that it is dark and dirty, that it is a hard hat down a shaft. Therefore we are trying to change that perception and grow the education around engineering.

To that end, we have just completed production of a DVD that will go to all schools in Australia. It explains what engineering is and particularly the business side of engineering, which is where our members sit, and that is the consultancy services. It shows the wide range of projects that people can work on, from being a sound engineer for Sony BMG, to a rollercoaster engineer at Dreamworld, to a wind services engineer on a wind farm. So it shows a more varied idea of what engineers are and what engineers do.

Senator PARRY—Get Channel Nine to run a TV show and you'd be right!

Ms Motto—We would love for that to happen—although we do have Mark Beretta, who presents the DVD for us, and he is on Channel 7, so there might be some conflict of interest there!

CHAIR—You, along with everyone else, have pointed out the delays from a departmental point of view. I think you said you spend something like six to 12 weeks—is that right?

Ms Motto—About six to eight.

CHAIR—Six to eight weeks—sorry; I do not want verbal you—preparing your side of the search, and then the same is happening now, or even more. Why do you think that is happening? Do you have any suggestions on how it can be expedited? The previous witnesses talked about expediting it in terms of people with good conduct and good track records et cetera. They suggested that it would almost be a contracting out to migration agents et cetera. Do you have any further views on that and on the reasons for the foot on the hose?

Ms Motto—To answer the second part of your question first: many of our member firms employ their own in-house migration agents or else conduct that function in-house themselves. But I think it really comes down to the employer's reputation rather than the migration agent's reputation. Some employers, such as the top-tier consulting firms, the top-tier financial institutions in Australia or the top-tier IT&T consultancies, are firms with significant global reputations. I see that it would not matter which migration agent they used; the migration agent would be irrelevant in terms of the employment conditions once a temporary visa holder came on shore. These are companies which employ highly skilled, highly knowledgeable and usually very proficient workers. So I would propose, from ACEA's perspective, that we would not look at a certification of migration agents but rather a certification of sorts of major employers, or it may be even—

CHAIR—It is a bit like a points test for Jobstart agencies.

Ms Motto—That is right. So you might have a gold-star-rated employer or an employer on a preferred employers list. There are a number of mechanisms which can be used. But we think that the mainstay of this program is the employer's reputation, rather than that of a particular migration agent who can move along. Many of these migration agents' personal values, philosophies and ethics come into play when they are accepting migrants and acting as the conduit between the temporary visa holder and the company. As we all know, these situations can change with a change of personnel, so I think that it is the reputation of the company, which is a more corporatised structure, which should be held at the foremost.

CHAIR—Are you able to tell us about DIAC's response when you deal with them, when you obviously register your disappointment at the delays? What is the response to you as to the blow-out?

Ms Motto—We have, as you said, a DIAC officer in-house who works with us three days a week. He does his very best to fast-track any hold-ups that might occur in the system from time to time. To be honest, I think our members do not complain as vociferously as they might because they are just so worn down by the long-term crisis of the skills shortage. Quite frankly,

they are used to having to wait a long time to get personnel; and, therefore, whilst it is disappointing, I do not think that they are as vociferous about their concerns as they might be.

Senator POLLEY—Approximately how many employees do you have in the industry who are here on 457 visas?

Ms Motto—It would be in the hundreds. I would have to take the question on notice for specific numbers.

Senator POLLEY—It would be good if you could provide that as well as the country of origin.

Ms Motto—Sure.

Senator POLLEY—At a hearing in WA recently, we had submissions in relation to the mining industry and how it perceives some problems with allocating not only a salary but also an allowance for working in isolated areas for those on 457 visas as opposed to Australian workers. Do you have any concerns there and would you seek any exemptions on that basis?

Ms Motto—We have employees who are in areas of isolation, so it is also an issue for us. One of the issues that we see with the salary levels is that there is no exemption for employers who have to pay extraordinary salaries in order to attract workers and who also have to pay the additional compliance costs such as fees for relocation, education, medical benefits for private medical health care et cetera. Where an employee is receiving $90,000 to $100,000 or above in salary, we see that they are able to commit to the same circumstances as an Australian employee on the same salary level and with the same conditions—that is, a working away from home allowance is provided to Australian employees as well as temporary migrant employees. But costs for education in New South Wales and health care elsewhere around the country should not be additional costs on the employer.

Senator POLLEY—Some people who come out on these visas act more or less as a pool of employees who go from country to country to work in specific areas. I would imagine that that would occur in your industry. Are there concerns about this because of complications with taxation? People might prefer to have their wages paid into an account in their country rather than into one in Australia for which they would have to go through the Australian taxation system.

Ms Motto—I will have to take that question on notice.

Senator POLLEY—You have commented that your industry is not in favour of labour agreements or that it does not see them as being relevant. Do you have anything further to add to that?

Ms Motto—Our industry is not a great user of labour agreements. Most employees are on individual contracts at very high salary levels. Quite frankly, most of our firms have scoured the world for these employees, so they are not brought in through a labour hire agreement.

Senator POLLEY—Do you have an average length of time that you would use a visa for people coming into the country? Are they here for a month on average?

Ms Motto—It varies from project to project. Sometimes you might need a niche specialist skills set—for example, a certain type of fire engineer or acoustic engineer. It may be that only four or five people throughout the entire world have the expertise level that you need on a particular project. So they might come for shorter periods of time, in which they will comment on the areas of design that they are required for on a project, and then go back to their country of origin. On other projects, it might be that an engineer with a more generalist field of civil or structural engineering is required for a three- to six-month period.

Senator POLLEY—In relation to the monitoring of the 457 visas, concerns have been raised with us in submissions that in some areas and in particular industries the abuse of those workers is more prevalent. Do you see your area as being one that should be under a different classification?

Ms Motto—Yes. At the salary levels that our employees—both Australian and overseas employees—are being paid, there is certainly no misuse of the visa 457 category in our industry. We would see our industry being one of those that should be fast-tracked.

Senator PARRY—I have thought of a name for your show. 'Desperate engineers' I think would go down well!

Ms Motto—We have had a few very interesting suggestions.

Senator PARRY—I can well imagine. Regarding the two-tier structure that you are suggesting, who would validate that your industry has a desperate and a strategic need? Apart from what you are telling us, we need a validation process, otherwise it would be very difficult to implement.

Ms Motto—I would think that the MODL skills lists would be one aspect of evidence required for validation. If you have a significant amount of industry sectors or disciplinary sectors on the MODL skills shortage lists, that might be a reason to have you on the fast-track. I think it comes down to the number of visa applications you are processing per year. Many of our firms are processing 100 or more visa applications per year. I think it comes down to numbers. If you are seen to be abusing, you come off the short-track list. I think we should assume that many of our employees—

Senator PARRY—Would you take the entire industry grouping off the first-tier list, where you can fast-track, if one individual firm—

Ms Motto—No.

Senator PARRY—You would just take off the one individual—

Ms Motto—Yes. It has to be flexible and it has to be by firm, not by industry. As the previous speaker rightly pointed out, the entire Australian economy would be tarred because of one employer doing the wrong thing.

Senator PARRY—There does not seem to be any provision at the moment for someone to come out and visit Australia for a week to solve a problem when you might need them urgently. Is it an emerging issue within your industry that, when people are required for a very short period, by the time you go through the process it is almost not worth getting them here?

Ms Motto—It has been an issue for our industry for quite some time. Generally speaking, when we need to put project teams together—say a consultancy service's company has won a tender on a job and they need to get it done very quickly and the client seeks assurance of who the A-team are very quickly—there are many circumstances when we need fast-tracked two-day to three-day recognition.

Senator PARRY—Are there issues? It might be a thing like a fire on an oil rig, when you need a particular type of skill or engineer to assist with putting it out. Do you have examples of that that you can provide to the committee?

Ms Motto—I would have examples of that, yes.

Senator PARRY—Anything where there is a fast need to bring in someone on a temporary work visa would be great.

Mr LAURIE FERGUSON—You said that you go down to the skill level of paraprofessionals. As an example of what we are talking about, who would be paraprofessionals?

Ms Motto—Drafters, engineering technicians.

Mr LAURIE FERGUSON—We talk about television shows and what is popular et cetera, but the overall point you make is that there has been no increase in the number of places in university in engineering. Are there any other structural reasons, beside popularity, in tertiary institutions, in HECS or in anything else that are leading to this?

Ms Motto—Our research has indicated to us that, whilst HECS overall is an issue for university graduates, it is not a particular impediment to going into engineering at university. It is more that the level of science and maths that is attained in the high school system is not encouraging those students to go into engineering. It has, as I said, the wrong perception in the minds of many students. There are plenty of lawyer jokes but there are also plenty of engineering jokes that go around about the type of person who goes into engineering—

CHAIR—It is more of a boys club?

Ms Motto—Yes, a little bit of a boys club. The jokes are more about a very technical person, possibly with limited social skills. They are completely without evidence and are very detrimental to the perception of engineering and, therefore, detrimental to the industry.

There is also these days far greater competition for those students that are technically skilled—that is, those who do well in maths and science. The IT&T industry and the ICT sector in general is a very attractive sector for many of those employees for reasons to do with

flexibility of the workforce, being able to telecommute in some of those professions and other such aspects. So they are seen as very attractive.

Mr LAURIE FERGUSON—You speak of increased media activity and then you speak of a more sluggish response with regard to this. Can I clarify: are you saying an average of six to eight weeks or are you saying on occasion?

Ms Motto—No, the average has now grown to six to eight weeks.

Mr LAURIE FERGUSON—I am wondering if there are other reasons. I agree with the previous witness, who had a long-term experience in the department before he went to the Migration Institute, that in a sense what you are advocating is probably happening on a lower level and that your industry is probably one that the department does not worry about too much. Is that right? Are there other possible reasons? Firstly, it is not just the media; it is the reality of complaints in the field—is that right?

Ms Motto—That is right.

Mr LAURIE FERGUSON—Are there other reasons? I am wondering, for instance, if, in your desperation, there is any change in the source countries or anything else that might be becoming a factor. Is it understaffing because of the increased demand? Is it about a media driven slight laziness or more checking?

Ms Motto—It is possibly understaffing because of the increased demand overall and possibly because our companies are going to a more diverse range of countries of origin. But we do not have evidence of that at this stage. That would be my assumption.

Senator POLLEY—I am following up, as to the information that you are going to provide to the committee, how many people that have come through your industry on these visas are actually becoming permanent residents.

Ms Motto—I do not think that we have that conversion advice. I will take it on notice and see if I can get that.

CHAIR—Anecdotally you would have to have some feedback from people who are endeavouring to get a migration outcome?

Ms Motto—Anecdotally, for certain, but I do not know that we have the hard data.

Senator POLLEY—Also a comment in relation to the shortage: from my experience the people that I know who have gone into engineering are all now working overseas. So surely that too is adding to the global shortage, and the attraction overseas to earn more money is a factor.

Ms Motto—It certainly is. We are facing a situation—and this leads to a point that we made in our submission—whereby we really need to have a look at skills mapping for engineering in this country because we do lose a significant number of engineers going overseas to get overseas experience, although many of those who work overseas are actually still employed by the home Australian company and they are sent on overseas projects. We have a very robust export

industry for the consulting engineering services sector. But we have a situation whereby the current addressing of skill shortages, even in order to create the MODL lists, is inadequate as far as we are concerned. Our employers gave up advertising ad infinitum on websites years ago. Nowadays they are going straight into the universities, and not even at year 4 but at years 2 and 3, to try to tap into the skills that are coming out of the universities. Temporary visa holders who might want to swap employers will have no shortage of offers on their books if they make themselves available. An enormous amount of poaching goes on in our industry. We are seeing behaviours that have existed in other industries in the past but not as avidly in the consulting engineering services sector as they are currently.

CHAIR—There is one point that I want to follow up. Are you aware that the federal government made available 500 scholarships for engineering students?

Ms Motto—Yes. We have been working with PM&C and also with DEST on a number of initiatives. Those 510 extra engineering places are wonderful news. However, I would also point out that we need to continue working on the secondary education sector. If we do not have students taking up the maths and science subjects that are prerequisites for entering into those engineering places and also doing well—so we have our completion rates going up—then unfortunately, given the market system of the university sector, all that will happen will be that the TER will drop and we will have a less competent cohort coming through.

CHAIR—I have some quick questions for a quick response: are you aware of the exhibitions overseas; does your association involve itself in those; and what success have you had, even with countries like Sri Lanka that have not had an exhibition?

Ms Motto—Our organisations are somewhat split in their views. Those organisations that are looking to enter into a country will attend the exhibitions and find them very useful in getting a foot in in the country of origin. Those organisations that have very well established links created through years of recruiting overseas tend to shy away from the expos because they find that being at a booth next to their competitors, because of the global shortage of engineers, becomes a bidding war in which a potential employee will go from booth to booth upping the salary rate as they go. We are in a very particular situation in engineering in which the labour set, the employees, have the power. This is an interesting situation for us, because the employers do not want to enter into an environment in which that is going to be exacerbated. So those employers that tend to be consistent employers of overseas skills have already made their own connections within the countries of origin and tend to use their own internal sources.

CHAIR—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 and I would be grateful if you could send the secretariat any additional material that you have undertaken to provide, as soon as possible.

Proceedings suspended from 12.36 pm to 1.36 pm

SCHWARTZ, Mr Andrew Geza, President, Australian Doctors Trained Overseas Association Inc.

CHAIR—Welcome 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 houses themselves. 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 Schwartz—Thank you very much. As we wrote in our submission, the association support the idea that, if there are shortages of skilled people, they should be brought in from overseas. This includes doctors, of which we all know there is a severe shortage throughout Australia, particularly out in rural and regional Australia. Over the years there has been a lot of publicity about unfair instances where so-called unscrupulous employers try to bring in people from overseas to undercut the conditions of Australian workers. This fear—that bringing in additional overseas trained doctors will cut their earning capacity—is very dominant and pre-eminent in the medical profession. I think we can go back to the nineties, when there was very considerable lobbying by the medical profession to cut the number of university places for doctors and also to limit the number of overseas trained doctors who can be recognised in Australia by limiting the number of people eligible to proceed to the Australian Medical Council examinations.

The medical profession is a highly organised, very powerful group of people. They are the backbone of the medical boards. They form the medical boards. They work for and, in the most part, make up a very considerable number of the senior managers of state health departments. We maintain that, in many ways, the decision-making process within the state health departments is based upon the views of these individuals who want to protect their own interests and maintain the status quo, as opposed to looking at the public interest.

For some reason or other, overseas trained, permanent resident doctors have been and continue to be very unpopular among certain Australian authorities. I would like to give a very clear example of that. On 16 April I was one of the guests on *Australia Talks Back* on ABC Radio National. One of the other guests was the Hon. Stephen Robertson, the Queensland Minister for Health. On that particular day, by chance, we had actually lodged a complaint with the Human Rights and Equal Opportunity Commission on behalf of one of our members for what we believed was unfair treatment while he was working in New South Wales as an intern. I was asked about that particular complaint and I made the comment that at least in New South Wales overseas trained doctors who pass the Australian Medical Council examinations are given the opportunity to work as interns and proceed to general registration. In most of the other jurisdictions, including Queensland, they prioritise the allotment of interns. Overseas trained doctors who are graduates of the Australian Medical Council examinations are placed in the last position. As a consequence, very often there are no positions for them and they end up leaving Queensland and coming mainly to New South Wales to complete their intern year.

The response by the Queensland health minister was: 'Well, I make no apologies for that.' This is at a time when there is a huge shortage of doctors. Most of these doctors would end up working in the rural and regional areas because of the restrictions on Medicare provider numbers. The Queensland government cannot find the money to fund sufficient places for both Australian graduates and graduates of the Australian Medical Council exams for them to complete their intern year, yet they can find plenty of money to fund positions for temporary residents to come into the country.

The situation in New South Wales, which I wrote to you about, has been going on for over a decade now, where basically permanent residents cannot get a position to work within the New South Wales public health system. It is just an absolute abuse of the immigration system to allow it. That is not the intention of the immigration system. It is very clear in both the legislation and the intent of it that people are to be brought in only if no locally qualified people can be found—yet it is ignored. That basically is our complaint.

CHAIR—Thank you. I will depart from the norm and ask Mr Ferguson as a New South Wales member if he would like to start off the questions to you, Mr Schwartz.

Mr LAURIE FERGUSON—Could you give me some background on these people on whose behalf you are complaining? In one sense it sounds disturbing, but in another sense I am just trying to clarify that you have a group of people here who are seemingly unemployed who are overseas trained doctors. Could you just give us some kind of overview of how they arrived here in the first place?

Mr Schwartz—Most of these people arrived in Australia as spouses of Australian citizens or permanent residents or as spouses of people admitted to Australia under the skilled workforce program.

Mr LAURIE FERGUSON—So for those who were admitted under the skilled intake, what tends to be their problem with employability?

Mr Schwartz—These people were not—

Mr LAURIE FERGUSON—We understand your complaint, but we have got a situation where they are not employed per se at the moment; what has led to that, in general?

Mr Schwartz—Again, I can only give you my opinion about it, but there appears to be very strong resistance from the authorities to employing permanent residents, as opposed to bringing in temporary residents. In my opinion, it has a lot to do with the power of the medical profession. You can always cut down the number of temporary residents who are allowed into the country—when their time has come, you do not renew their visas; if there are too many doctors, you can send them back—whereas if a permanent resident completes their qualification, they are here forever. There is far less control over the numbers. That is my opinion, for whatever that is worth.

Mr LAURIE FERGUSON—So these ones who enter as a spouse, and who are part of your organisation: are they fully qualified as Australian doctors or are you talking about a group of people who still basically are overseas trained, end of story?

Mr Schwartz—Mostly in New South Wales they are overseas trained. They have not completed their examinations here in Australia yet, but the people that are brought in are exactly the same—they are overseas trained without any Australian qualifications whatsoever. In fact, there is an example in the *Race to qualify* report of a doctor from the Philippines who was here as a permanent resident and who could not find a position. She went to the Prince of Wales Hospital here in Sydney and—heaven behold!—there was somebody who was a junior to her back in the Philippines working at the Prince of Wales Hospital. She was fine because she was only a temporary resident. They registered her and she was working on a part-time basis; she goes back after a year or two. But if the second person, as a temporary resident, is good enough on medical grounds I do not understand why a permanent resident isn't either.

Senator POLLEY—Is this a problem that only relates to here in New South Wales, to your knowledge?

Mr Schwartz—The particular problem regarding the use of occupational trainees is only related to New South Wales. It is the only state that brings in these people in such large numbers. Basically, the immigration department has an idea that anybody who is brought in and is paid a salary is not here as an occupational trainee; they are here in a service capacity. That is pretty well followed in all of the other jurisdictions to the best of my knowledge, except for New South Wales.

Senator POLLEY—Do you have any knowledge of the numbers of overseas trained doctors who are here on the 457 visas?

Mr Schwartz—The 457 visas are fairly new. It used to be the 422 visa, which was the area-of-need position. To the best of my knowledge, in Australia there are something of the order of 4,000 to 5,000 temporary resident doctors at the moment.

Senator PARRY—Mr Schwartz, you are the President of the Australian Doctors Trained Overseas Association. Are you a medical practitioner?

Mr Schwartz—No.

Senator PARRY—How many members do you represent?

Mr Schwartz—We have about 1,800 members.

Senator PARRY—Is that Australia-wide?

Mr Schwartz—Yes.

Senator PARRY—I am familiar with issues of overseas trained doctors not gaining registration in other parts of Australia. Do you monitor all parts of Australia?

Mr Schwartz—We do our best. However, our association is purely voluntary. We get virtually no government funding from anybody so we have virtually no resources. The people of our association who are active tend to live in Sydney, consequently we are far better aware of what is

happening in New South Wales than in other parts of Australia, but we have made contacts with all jurisdictions and have some knowledge of the rest of Australia.

Senator PARRY—You made some allegations—I will call them that—in your submission and your opening remarks about the Australian medical council for examinations—is that what it is, the AMCE, or have we got the name wrong?

Mr Schwartz—AMC is the Australian Medical Council. I do not remember ever having mentioned that in my submission. I made no allegations against the Australian Medical Council examinations.

Senator PARRY—Please correct the record if that is not right, but I thought you indicated that you thought it was a closed shop. You said that back in the nineties—and I wrote this down as you were speaking—there was a decision to reduce the intake at university level because medical practitioners thought they were going to be dividing their income. They are my words, but that is what you intimated. Do you agree with that?

Mr Schwartz—Yes.

Senator PARRY—Also, I think you indicated that the Australian Medical Council examinations were too tough on overseas trained doctors.

Mr Schwartz—No. The Australian Medical Council examinations are held in two parts. First of all there is a multiple choice theoretical question. If you pass that, you are eligible to proceed to a clinical examination system, after which you would complete the examination. Back in the nineties, at the request of the Australian Health Ministers Advisory Council, the AMC reduced the number of people eligible to proceed to the clinical exam to 200 per year, at the most.

Senator PARRY—What figure was it reduced from?

Mr Schwartz—It varied a lot, but it somewhere between 350 and 550 in the prior years. That restriction was abolished after about two or three years.

Senator PARRY—What do you proffer as the reason for that reduction?

Mr Schwartz—It was due to pressure on the government that there were too many doctors in Australia. I believe the Australian government at that time was concerned that a lot of the cost was supply generated—that is, it did not matter how many doctors there were, they would overservice the people. Each additional doctor was costing the government about $200,000 in Medicare benefits without any additional benefits and it was a result of overservicing.

Senator PARRY—It is skewing in another direction now. You are suggesting that the numbers were reduced at the government's direction, not the medical practitioners' influence.

Mr Schwartz—There certainly was a letter from the Australian Health Ministers Advisory Council to the Australian Medical Council asking them to reduce the number to 200. I believe that the pressure from the medical profession had a lot to do with that request.

Senator PARRY—In your opinion, do you think we need more doctors? Is there a skill shortage in Australia?

Mr Schwartz—I believe that is the generally held view. I have seen figures from the Victorian department of health that, according to their best estimates, between 2006 and 2012 they expect 4,300 doctors to retire in Victoria and there will be only 2,800 replacements.

Senator PARRY—Will those replacements be mainly from the university stream?

Mr Schwartz—I think they would make up something like two-thirds to three-quarters of the number.

Senator PARRY—You also indicate in your evidence that there are overseas trained doctors in Australia who arrived not for the purpose of becoming a doctor but ancillary to arriving they were qualified and that they could or should seek registration but registration has not been forthcoming. Is that your evidence?

Mr Schwartz—Not directly. We believe very strongly that no doctor should be allowed to practise prior to proving their competence. The statement I am making is that acts by Australian authorities such as the New South Wales Department of Health in denying them work leads to deskilling. Skills become out of date very quickly in medicine, and their chances of passing the Australian examinations and proving themselves to be competent is much reduced because of such policies.

Senator PARRY—Why is it reduced? Is it because of competency?

Mr Schwartz—It is because medicine is a profession in which knowledge changes very quickly. If you are not working within the field you become out of date. It is impossible to keep up in many professions when you are actually not working in them. It is extremely difficult. But they also have to earn a living, so instead of working in the hospital system they are out there driving taxis or delivering pizzas. This makes it very difficult to try to keep up to date with the changes in medicine.

Senator PARRY—Do you think that the system in Australia for assessing the qualifications of overseas trained doctors is adequate or not adequate?

Mr Schwartz—In my opinion there have been very few instances of doctors from overseas who have been proved to be incompetent.

Senator PARRY—By whose measure?

Mr Schwartz—I was just coming to that. I have talked to medical boards and to health care complaints commissions in various jurisdictions and asked them how the complaints and rates of incompetence of overseas trained doctors compare with Australian trained doctors. The answer has always been that it is on a pretty similar basis.

CHAIR—Mr Schwartz, in relation to your comments that genuine efforts are not being made to recruit suitably qualified permanent residents before going overseas to recruit, what changes do you think need to be made to the temporary business visa program to address your concerns?

Mr Schwartz—I believe that it should not just be automatically accepted when the state government says it cannot find locally qualified people, as it is at the moment. I do not believe that the system is administered in a fair away in that regard. Our complaint is certainly mainly about New South Wales and the use of occupational trainees, and the test is that the New South Wales health department should not be allowed to bring in people classified as occupational trainees if they are to be paid a normal salary by the department.

People who come in as occupational trainees are sent here by overseas governments. They all come here to learn some niche technique. They are not usually paid by the system to do work; they are here to learn. Their salaries are usually paid by the overseas government and system from where they come. Because the cost of living is too high in Australia to be able to live off what they are paid by their country of origin, sometimes a supplement is given; we have no objection to that. But the test should be, basically, if there is a normal salary involved they should not be classified as occupational trainees and the state government should have to go through the normal processes of showing that they cannot recruit a local doctor for that position.

Senator PARRY—Have you taken this up with the New South Wales government?

Mr Schwartz—Many times.

Senator PARRY—From your evidence, they seem to have responded negatively.

Mr Schwartz—The New South Wales government do not respond. They do not answer our letters. The New South Wales health department takes it up negatively.

CHAIR—But, eventually, people are elected to represent, and I am sure you have local representatives at a state level. I am sure you voted for one. Do you go and speak to some of your members of parliament?

Mr Schwartz—I have spoken to members of parliament and that sort of thing. As far as the New South Wales government are concerned, it is speaking to the wall. They do not want to listen.

CHAIR—And this is both parties?

Mr Schwartz—I cannot make any comments about the opposition because I have not been lobbying at a time when the coalition was in power.

CHAIR—But it was not a phenomenon when they were in power?

Mr Schwartz—I do not really know what was happening.

CHAIR—All right. I think we have enough information, unless you have anything else to add.

Mr Schwartz—No, I think I have said it.

CHAIR—Thank you very much, Mr Schwartz. Thanks for attending today's hearing. I would be grateful if you could send the secretariat any additional material that you have undertaken to provide, as soon as possible. Thanks a lot.

Mr Schwartz—Thank you very much for the opportunity.

CHAIR—A pleasure.

[2.02 pm]

BIBO, Mr David, Organiser, Liquor, Hospitality and Miscellaneous Union

KENNEDY, Mr Joseph, Legal Officer, Liquor, Hospitality and Miscellaneous Union

CHAIR—Welcome to this public meeting. 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 houses themselves. 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 Kennedy—The LHMU welcomes the opportunity to appear in this inquiry in order to represent the interests of our members, and we thank the committee for the invitation to do so. The LHMU does not doubt that the Australian labour market is, at present, undergoing a period where skilled employees are at a shortage in certain industries. This is a problem that requires forward thinking and long-term solutions from government. The LHMU views any form of temporary skilled migration program as essentially a quick fix for a skill shortage problem that needs longer term, well-researched and resourced reform.

We strongly believe that the program needs to be overhauled if the government has any intention of providing reasonable protection to those employees who partake in it. The current system does not sufficiently require employers to prove a satisfactory record of training Australians. The LHMU knows of no evidence of this requirement—although broadly contained in the regulations—being enforced. In addition, we would like to see the introduction of additional requirements for employers, provided that they are monitored and enforced. These include requiring employers to prove that all avenues for obtaining local labour have been exhausted. This would require complete labour market testing to be undertaken and provided as evidence to the department. Employers must also satisfactorily establish what training plan they have adopted to overcome ongoing shortages in the particular areas of concern. This may include cooperation with local training providers and other programs within the community, and the establishment of a central skilled workforce database, with which employees can register and which employers can contact to find suitable employees locally. And where an employer makes workers redundant they should be required to register such activity and be consequently banned from partaking in the 457 visa program for a period of 12 months.

In terms of wage rates, we find the term ‘minimum salary level’ to be misleading as it implies that employers may well pay above that level. We are not aware of any instances where this has occurred. Further, we believe that allowing employers to sponsor employees and pay them at a level below what the market would otherwise have dictated to be unsatisfactory. The salary level should be more industry specific and based on market rates for each industry. That said, however, we do know that many employers have chosen not to even comply with current requirements.

In terms of case studies, in the past few years the LHMU has become aware of many incidents of employers not complying with their obligations under the 457 visa program. In relation to these incidents, we have identified a virtual vacuum in the monitoring of employers. Further, there has been a concerning absence of penalties for participants exploiting their privilege, and no-one to enforce them. With this in mind, it is little wonder that employees are being severely exploited. The LHMU has had firsthand involvement with individuals who have been treated as slaves, who have been grossly underpaid and overworked, who have endured illegal pay deductions, who have been racially abused and physically intimidated, who have been made to pay large fees up-front and who have been forced to perform elementary tasks not befitting their skill level.

We are aware that some of our suggestions have been addressed in the recent changes by the minister. Whilst these changes come too late for individuals who have been exploited under the program, we do welcome the changes. That said, however, we are looking for additional details before we decide whether the proposed changes will or will not be sufficient.

In our opinion, monitoring and auditing of employers in the program need to be universal and regular and the department needs to be suitably resourced. Our submission details why, when one considers the potential cost, the ad hoc and spurious reporting, monitoring and enforcement system that existed in the past has been grossly insufficient. Further, sanctions need to be appropriate and employers need to be aware that if they break the rules they will be sought out and punished. This has not been the case to date and, unless the OWS and the department are properly resourced, it will continue. We also believe that the committee needs to look into ways of encouraging or facilitating employees to make complaints as we have found them to be extremely reluctant to do so in the past. This is not surprising, given their already vulnerable situations and the fact that, if their sponsorship falls through, it is likely that they will be deported.

We note that in his media release to the public in late April the Minister for Immigration and Citizenship, Mr Andrews, stated: ‘Bringing someone in on a skilled temporary visa is not a right, it’s a privilege.’ Whilst the LHMU agree, we believe that various employer associations do not. Suggestions of increasing eligible occupations to include less skilled jobs, the abolition of the minimum salary level altogether and requirements that demonstrate recruitment to training industry-wide show us that many view access to this program as a right. It is plainly not the case. Employers need to be made aware that the proper way to address skill shortages is by investing in the training of their existing and potential workforce, not by sponsoring workers on a short-term basis.

As mentioned in our submission, the number and gravity of breaches of the 457 visa program, which the LHMU is aware of firsthand, raise questions about the government’s commitment to training and to providing effective regulation of migration in the Australian labour market. Until uniform monitoring begins, guidelines and regulations are enforced, sanctions are actually imposed and the system is made transparent, we believe that these abuses will continue. We once again thank the committee for our opportunity to appear here today.

CHAIR—Mr Bibo, do you wish to make a statement?

Mr Bibo—No.

CHAIR—Thank you very much for your submission, both oral and written. You make some interesting points. I would like to begin with your point that there is little to no evidence of labour market testing to determine what workforce is out there. That is essentially what you are saying, isn't it?

Mr Kennedy—That we are aware of.

CHAIR—We have had a good deal of evidence to this inquiry from people today and in the past who have said that they have almost sent themselves broke from advertising, whether it be in the print media—which many have given up on now—on the internet or through job placements et cetera and, as a result, they cannot find workers. Anecdotal experiences from my state of Western Australia suggest that some businesses that were profitable have closed or have not expanded because they just cannot find a sufficient workforce to work for them. It is very hard to 'labour market test' a workforce that is essentially not there, particularly when there are more attractive salaries, for example, in the mining industry or the construction industry. Your point is valid, but if there is overall evidence that there are few workers to attract, it makes it very difficult to go through the process you are talking about.

Mr Bibo—We would submit that employers have an obligation to train their workforce and that if they have not contributed—

CHAIR—If they have not got a workforce in the first place, if they just cannot get workers—

Mr Bibo—The skills shortage has been coming for a long time. Everyone has been able to see it and employers have contributed nothing to their own industry.

CHAIR—We have taken evidence, not in the field that you are talking about exactly but in other areas of employment, that employers have put in measures to try and attract people into their industries, but the fact is that there are far greater attractions. I will give you an example. Just before we broke for lunch we heard from the engineers, who said they have done everything they can—other than giving prizes and going into schools and providing a whole range of incentives for people to train as engineers, or study and qualify as engineers—yet they cannot attract any more from the critical mass they are already attracting and their only way out is to sponsor people on 457 visas. That gives you a bit of a snapshot of what other employers are going through. Wouldn't it extrapolate into your industry as well?

Mr Bibo—If we make particular reference to the hospitality industry and chefs and cooks, I speak to hospitality employers and none of those employers has taken on Australian apprentices over the years. If they had contributed to the training of an apprentice there would be more chefs and cooks. They should ask themselves why no-one wants to work for them. Their solution to the skills shortage is to make the people that do work for them work longer and harder for less pay, and then they turn around and say, 'No-one wants to work for us.' Let us not be surprised.

CHAIR—For the exercise, and on balance, I suggest that after the transcript of this hearing has been published you go online and look at the submission made today by the Restaurant and Catering Industry Association of Australia. I will not regurgitate all of their evidence, but their evidence was that not only do they have trouble attracting cooks and associated people into restaurants and the service industry but also the competition from other areas where they are

better paid—construction, mining et cetera—makes it almost impossible for them to attract people into their area. It would then flow that if you cannot attract the same number of people into that industry it is going to be very hard to train them.

Mr Bibo—I read the restaurant and caterers submission this morning. I note they say that they contribute to training but I did not see any evidence that they actually do it. They talk about it but they do not do it. The base wage for a qualified cook is just over $30,000. Most qualified cooks would work about 60 hours a week. We ask ourselves why no-one wants to be a cook.

CHAIR—I have firsthand experience of this in terms of bakers. If you are paying the award rate or the base rate and they do overtime, even though it might be 60 hours a week, on an hourly rate they are getting reasonably well remunerated. Some of the experience that is around suggests that if somebody on a 457 visa comes into a workplace on the minimum salary of $41,800 and the Australian worker is on $38,000, for example, the employer is obliged to lift the Australian to the level of the person on the 457 visa, just in terms of equity and fairness. It happens on most occasions that I am aware of. The point is that it may actually have a positive effect of lifting conditions and pay by having somebody on the minimum 457 rate—which, I might add, is the base rate and then they get paid an hourly rate on top of that $41,800.

Mr Bibo—Filipino chefs who worked in Canberra were promised $39,000 before they came to Australia. When they got here they were paid $29,100, and for that they worked a 60-hour week. They got no overtime and no superannuation. Their tax was not paid, their medical insurance was not paid and a lot of them worked as pizza boys seven days a week. These are qualified cooks.

CHAIR—But weren't those employers prosecuted for that?

Mr Bibo—Two of them were prosecuted and the rest have not been prosecuted. There are still Filipino chefs in Canberra today who are being underpaid.

CHAIR—My point is that the system is working, isn't it?

Mr Bibo—Why should anyone have to go to that length—to prosecute their employer—to be paid properly? These people, and any Australian workers, are entitled to be paid properly without having to go to the Federal Court.

CHAIR—My point to you is that if people are being treated in that way, not only is it improper but I understand that it contravenes the conditions of the visa and they would lose the right to employ not only those people but any further people. That is my point when I say that I believe that the system is working. In fact, the Canberra examples that you raise probably sent a very strong signal to the industry and to DIAC that greater monitoring and surveillance in the workplace should be made. Would you agree?

Mr Bibo—No, I would not agree, sir. If the system is working, why are there Filipino cooks in Canberra city today being grossly underpaid? The system does not work. When we raised these issues with DIMIA and DEWR they had no interest at all until Senator Kate Lundy stood up in the Senate. It was only then that DIMIA and DEWR dragged their feet and finally did something.

CHAIR—Okay, I hear you. I do not want to sound like I am arguing. All I am saying is that if you have evidence like that and it is not being acted upon, you have done the right thing by going to your political representatives. But I am sure that if you can give us case studies of those that are continuing we as a committee would be happy to receive them.

Mr Bibo—I will give them to the committee.

Senator POLLEY—The hospitality industry is renowned for being low paid. We have had evidence brought before this committee of individuals in the country on 457 visas whose rights and salaries have been abused. One of the concerns that I have is that it is very difficult for those people to come forward and give evidence personally because they only have a 28-day period to find another sponsor; otherwise they can be deported. Do you have any recommendations on whether or not that period ought to be extended?

Mr Bibo—One of the problems with 457s is that the worker is tied to the employer. The members that we represented were threatened and abused by their employer, but they could not leave that employer to seek employment elsewhere because they were tied to their original employer. Yes, they were very scared to come forward because they were threatened by their employer. There were constant threats of deportation. There were constant threats of physical abuse. We had to provide our members with a lot of support and encouragement to stand up for their rights and to show them that they did not need to be treated like this in Australia.

Senator POLLEY—We have had a number of witnesses come before the committee who have concerns about the current requirements for the English language skill level that has been set. One of my concerns is that engineers are obviously very highly skilled, have a more than adequate knowledge of the English language and are able to understand their own terms and conditions. Do you see that as an area that ought to be more stringent so that people coming in on these visas—in the areas that you cover—are adequately aware of their employment conditions and are looked after as far as health and safety is concerned?

Mr Bibo—A lot of the people that we represented were provided with a one-page contract. There was no mention of their rights or entitlements or even their obligations. It was just: 'You will work for $29,100 in Australia and you will do what you are told for as long as you are told.' We find that offensive.

Senator POLLEY—Do you have any suggestions which you could put on the public record as to what mechanisms need to be put in place to enable employees who are here on 457 visas to make complaints and to give them the protection to come forward to authorities?

Mr Bibo—There needs to be some regulation and that regulation needs to be enforced. When we spoke with DIMIA, one of their solutions was that they would go and inspect the rosters at the workplace. They rang up the employer the day before and said, 'We will be coming in tomorrow to look at the roster.' The employer promptly falsified the roster and the time sheets so that when DIMIA went there to inspect them, DIMIA said, 'Everything is all right here.' What a nonsense!

Senator POLLEY—In terms of monitoring both the employee and the employer, I have come to the assessment that there is a lack of monitoring of conditions for people who are out here on

these visas and that, whether you are talking about monitoring or whether you are talking about the process of people being able to come out on these visas, the department perhaps is understaffed. Would you say that is one of the problems or is it just the lack of regulations?

Mr Bibo—I think it is a lack of intent. They do not want to do it. They need to inspect these workplaces. They need to check out the employers. And if they need more staff or more money then they should get that to do it. But DIMIA certainly had no intention of doing it until they were dragged kicking and screaming to do it.

Senator POLLEY—Do you have any indication of the number of people within your area of coverage who are out here on 457 visas?

Mr Bibo—No, I am sorry, I do not know that.

Senator POLLEY—Could you take it on notice?

Mr Bibo—Yes, we could do that.

Senator POLLEY—Do you think something that contributes to the skills shortage in the areas you cover is that the low wages and conditions that are there for Australian workers mean that people are taking other options—not just people in the mining industry but people in the hospitality industry, like chefs and cooks? My experience is that they are not good, family-friendly work hours and the hours are quite often far more extensive than any remuneration.

Mr Bibo—Absolutely. The working conditions are appalling and the wages are too low. Employers need to stop, think about things and think of a different way of doing it. Their only solution to it at the moment is to burn and churn their workers: 'We will make the ones that we have work harder.' Why not get some true flexibility and genuine negotiation into the workplace and work out things so that chefs and cooks in particular can have a decent life and not work their guts out for a pittance?

Mr Kennedy—Going back to your point regarding complaints, it was a recommendation from our submission that it be made obvious to those employees participating in the program that there is a complaints mechanism—some kind of hotline or obvious office or someone to contact in making complaints—because at the moment it is not obvious to those employees. All they are really aware of is that if they complain and their sponsorship is terminated then they are likely to be deported in four weeks.

Senator PARRY—On the last point that Senator Polley raised, Mr Bibo, I think you mentioned that a cook earns just a bit over $30,000 in Australia.

Mr Bibo—That is the basic award wage.

Senator PARRY—For an employer to bring in a 457 cook, the salary would be $41,851?

Mr Bibo—Currently it would.

Senator PARRY—Leaving aside the additional costs that it would take to source overseas labour—and it may surprise you that there are significant costs to the employer to source overseas labour; the first preference is always to source in-house—I cannot understand why, if there were cooks out there, employers would be looking overseas in the first instance.

Mr Bibo—That would be a logical and reasonable assumption, but the hospitality employers that I work with are not logical or reasonable. They drag the wages down; they do not drag the Australian worker's wages up to meet the 457 wages. In every case of those Filipino chefs in Canberra on the 457s, none was paid the proper 457 wage.

Senator PARRY—That is a reported case that has been acted upon. There have been prosecutions and we are well aware of it. But coming back to wages, have you ever considered the fact that some businesses might not be in business if they did not pay the wages they pay? It is a supply and demand issue, like in every industry. I am familiar with quite a few people in the hospitality industry. It might surprise you that some owners make less money than their cooks and, in fact, less than their waiting staff; they are looking for a long-term gain. So we have to acknowledge that it is not necessarily about employers not wanting to pay more; it is probably about their cash flow and ability to pay in a very competitive industry, especially in major parts of Australia.

Mr Bibo—I understand the competitiveness of the industry, but it is not for a worker to subsidise the employer. The worker is not some sort of welfare system for the employer.

Senator PARRY—That is correct, but cooks are paid an award wage, a base wage or an AWA wage.

Mr Bibo—Cooks are supposed to be paid a base award wage but many of them are not.

Senator PARRY—If they are not, if there is any breach of any industrial relations issue in relation to any payment of internal workers or 457 visa workers, that should be reported. In section 6.2 of your submission you say the LHMU is aware of countless examples. Apart from the Canberra example, what other examples can you give us? I mean hard evidence, not anecdotal evidence.

Mr Bibo—Chefs and cooks?

Senator PARRY—The submission says there are countless examples of these salaries not being paid.

Mr Bibo—That was in particular reference to the 457s—the chefs and cooks.

Senator PARRY—So what are the countless examples?

Mr Bibo—There were at least 20 Filipino chefs brought to Canberra. There are more in Sydney and Perth.

Senator PARRY—Have the ones in Sydney and Perth been reported?

Mr Bibo—As far as I am aware, they have been, but I do not personally know.

Senator PARRY—At section 6.2 of your submission you say there are countless examples that you are aware of. I am not saying they are not there, but if you are going to say something and have it in the transcript of evidence and have us all think there are countless examples, where are they? What are these countless examples?

Mr Bibo—They are there and, to the best of my knowledge, they have been reported.

Senator PARRY—Can you take that on notice and report back to the committee on what evidence you have of what has been reported and what these examples are? It is fairly important when a statement like that is made. It is okay to highlight the one example that the whole country knows about but, if we look at the entire percentage, it is fairly minimal. There have been union officials who have walked away with money from union coffers—and they have been prosecuted—but that does not mean the whole union, the entire workforce or the entire employer group should be labelled the same way, unless there is evidence. If it is systemic, we want to know. We on this committee come from both sides of politics. We have heard evidence of exploitation and we want that evidence to be firmed up so that this committee can take action. We are very keen to get evidence, but we cannot have statements just left out there with nothing to back them up; we need evidence.

Mr Kennedy—That is a question you would need to ask the department, in the first instance.

Senator PARRY—We are asking everyone. You are part of this process and that is why we are asking these questions.

CHAIR—We will ask the department about that, but we are asking you to corroborate that, in terms of action that has or has not been taken, so that we can take on this case with the relevant department.

Senator PARRY—You mentioned the outstanding matters that have not been acted upon by the authorities. Do you have a list of the outstanding matters that have not been acted upon? This is something else we would like to prosecute with the department.

Mr Kennedy—No.

Senator PARRY—Could you provide that on notice also?

Mr Kennedy—Yes.

Senator PARRY—You mentioned illegal pay deductions. What evidence do you have of illegal pay deductions?

Mr Bibo—I have documents from the employer. The Filipino chefs were charged 100,000 pesos in the Philippines.

Senator PARRY—Excluding that case—because it is being dealt with by the courts—are there other examples of illegal pay deductions?

Mr Bibo—In hospitality?

Senator PARRY—Yes.

Mr Bibo—Yes.

Senator PARRY—Can you provide evidence of the other illegal pay deduction issues?

Mr Bibo—Yes.

Senator PARRY—Thank you. Is it widespread? What does that involve?

Mr Bibo—I do not know if illegal pay deductions are widespread. I know that they were particularly prevalent in the Filipinos' case. The most widespread matter in hospitality would be the underpayment of award wages.

Senator PARRY—Okay. We are not now talking about 457 visa workers—

Mr Bibo—No—generally.

Senator PARRY—we are talking about just internal domestic workers, if I can call them that?

Mr Bibo—Yes.

Senator PARRY—Okay. And, every time someone is not paid award wages, is that reported?

Mr Bibo—Every time a member approaches us, we report it.

Senator PARRY—Right. Do you have statistical evidence as to how many times this has happened, on a percentage basis, and by what margin, and what action has been taken?

Mr Bibo—No.

Senator PARRY—Can that information on underpaid workers also be provided on notice?

Mr Bibo—Yes.

Mr LAURIE FERGUSON—You make a claim in the submission with regard to gazetted 457 rates that a survey or some source of information has indicated that 30 per cent are paid below the award wage. Can you give us some clarification of what the source is, where that has come from?

Mr Kennedy—That was obtained from the department. I cannot give you the exact source now, but I know that it was obtained from the department.

Mr LAURIE FERGUSON—Can you come back to us on that? It is particularly of interest if it comes from the department, of course.

Mr Kennedy—Yes.

Mr LAURIE FERGUSON—Mr Hart from Restaurant and Catering Australia gave evidence this morning—and I direct you to that evidence, on record. He did give us some worthwhile material with regard to training, to be honest with you, about the expansion of courses. But he also advocated less skilled people being allowed in on 457 visas. What is your response to that? In other words, he feels that we should allow even less skilled people in under the categories at the moment where we take 457 visa workers.

Mr Bibo—I think that is just going to deskill the industry and deskill Australian workers.

Mr LAURIE FERGUSON—This is more of a comment than a question. You put up the problem that employees are sometimes reluctant to give information against employers because they are supposed to stay with that particular employer. I put it to you that there is another aspect to this—that often these relationships between employees and employers are contrived for entry into Australia and sometimes those relationships collapse for a variety of reasons that are not related to industrial relations. This requirement on the employer to retain that relationship undermines the integrity of the immigration system. In finding a solution to this, it is not just about industrial relations issues. Letting people just walk away from employers within five minutes is the other side of it.

Mr Bibo—Yes.

Mr LAURIE FERGUSON—Could you just clarify something about your responses to Senator Parry's questions; we are not talking about just catering, are we?

Senator PARRY—No, it is a bit broader.

Mr LAURIE FERGUSON—Because one case that was covered by your union, Mr Bibo, was to do with Filipino workers in the child-care sector in Western Australia—so, across the industrial coverage of the union. That is it.

CHAIR—With regard to Mr Ferguson's second last point—and Senator Parry mentioned this—the costs associated with bringing them in and maintaining the relationship are not insurmountable costs. I think what Senator Parry was alluding to was: why would you bring somebody out who is going to cost you so much more, if you could find a worker here? One of the reasons the visa and the department's conditions encourage people to stay with their original sponsor is that a fair bit of money is expended. As I am sure your workers would know, as much as there is a 28-day time frame to find a new sponsor or a new employer, the evidence we have had is that that is relatively flexible. If they are looking, or if there are mitigating circumstances, they have some time to do that within the time of their visas. We are also taking evidence which suggests that the department might want to look at even more compassionate considerations when it comes to transferring a visa within that 28-day time frame. That might need to be passed on.

Mr LAURIE FERGUSON—There has been a focus on the restaurant, catering and that same sector, and I mentioned previously child care. Do you have any other sectors of union coverage

where 457 visas are being utilised in relatively unskilled areas? You cover security and cleaning, for instance. Is it happening there? Is there a trend to use 457s in unskilled areas such as that?

Mr Kennedy—There is across the board in aged care, as well as cleaning, as you said, and childcare, which are all areas of our coverage.

Mr LAURIE FERGUSON—So you are saying in cleaning as well?

Mr Kennedy—Yes, but—

Mr LAURIE FERGUSON—What is the extent of that?

Mr Kennedy—I am not aware of figures. I do not have exact details with me today but I guess I can provide you with that on notice.

Mr LAURIE FERGUSON—If you could.

CHAIR—Finally, as you have raised cleaning, a delegation came to see me in Perth the other day, from the Building Service Contractors Association of Australia, representing cleaners, amongst others—ground maintenance—and they say that currently in Perth, and I am talking about not being able to find workers, they have a 40 per cent undersupply of workers to do the jobs. They just cannot do the jobs.

Mr Kennedy—Comparatively across all capital cities, cleaners in Perth are paid the lowest rate per hour. So that is an interesting point.

CHAIR—It is very interesting and I will go back and talk to them about that. 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 which you have undertaken to provide, as soon as possible.

Proceedings suspended from 2.37 pm to 2.48 pm

McMULLEN, Mrs Ellison Kennedy, Legal Counsel, Australian Contract Professions Management Association

WARE, Mr Colin Frederick, Chairman, Australian Contract Professions Management Association

CHAIR—Welcome 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 houses themselves. 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 Ware—Thank you, Mr Randall. We really appreciate the opportunity to appear before your committee and present our observations on the temporary business visa program. I will make a brief statement and then ask Mrs McMullen, our legal counsel, to comment on the program and its way forward, especially the implications of labour agreements.

I would like to slightly amend our submission by deleting the comments appearing at the top of page 6 of the submission, relating to single-purpose companies. The comments read as follows:

... single purpose companies which are established for one project and do not have the experience to run the program ...

Whilst there is anecdotal evidence that these companies are used, we have not been able to identify any specific instances. In all other respects, our submission remains unaltered.

CHAIR—Thank you.

Mr Ware—I am here as Chairman of the ACPMA, which is known by its acronym. By way of background, I would like to acquaint you with some of the details about ACPMA. I have copies of our opening remarks to leave with the committee if you so desire. ACPMA was formed in 2000 and represents various contract management companies. It currently has four members, which collectively are responsible for payrolling a total of 3,034 employees, of whom 941 are sponsored and 125 are internal staff. Additionally, members maintain payroll services for various organisations and collectively have 661 individuals under contract. In summary, our members are responsible for 3,695 individuals who primarily are engaged in the IT, accounting and engineering professions.

From the above, it can be seen that the members are substantial users of the 457 visa program, currently having 941 sponsored employees. It should be noted that the churn rate, or the turnover rate, means that members will access the program throughout the currency of their licence, according to their allocation. It should also be noted that our members only sponsor those people who fall within the ASCO groups of 1 to 3 and thus are in the highly skilled categories.

Members of ACPMA have offices in the five mainland states of Australia, including WA, and in the ACT. Collectively, members have offices in 12 overseas countries. All members operate under the business sponsorship licences granted by DIAC for a period of two years. They are renewed every two years. The members have had and continue to have a major influence on the Australian economy. They have either dealt with or have current dealings with many of the top 150 companies in Australia, including the National Australia Bank, the Commonwealth Bank, the Macquarie Bank, St George Bank, the Seven Network, Smorgon Steel, Lendlease, Woolworths, CSR, QBE Insurance, Insurance Australia Group, Ten Network, Qantas, Harvey Norman and Telstra. Also, we have supplied services to foreign companies operating in Australia, including Alliance, Alcatel, American Express, Cadbury Schweppes, Citibank, Hewlett-Packard, Johnson & Johnson, Oracle, Reuters, Rio Tinto, the Royal Bank of Canada and Toyota. We also have supplied services to government agencies, universities and community groups, including the ABC; the ATO; DIAC itself; ASIC; the Australian Museum; the Australian Tourist Commission; the City of Sydney council; the Commonwealth Department of Veterans' Affairs; the CSIRO; the Department of Defence; the New South Wales Attorney General's Department; the AGSM in Melbourne; universities including the ANU, Deakin University, the University of Melbourne, the University of Sydney, the University of Newcastle and the University of New South Wales; Sydney Water; many local government councils; Anglicare; Australian Business Ltd; the Australian Consumers Association; Australian Rugby Union; Diabetes Australia; the Legal Aid Commission; and Mission Australia. This is not an exhaustive list but illustrative of where we operate.

From this it will be obvious that our members provide a fundamentally important service to many facets of industry in Australia and play a significant role in supporting and enhancing the Australian economy. We are therefore concerned that some of the changes being suggested in the COAG working party paper will disrupt the smooth operation of the visa program. In particular, there is the suggestion that this program should only be available to the on-hire industry, of which we are part, via a labour agreement mechanism. I know that labour agreements are part of your terms of reference. Shortly I will ask Mrs McMullen to elaborate on the difficulties we see in such an approach, particularly those relating to giving detailed estimates of future occupation requirements and training.

It is fair to say that the labour market world wide has changed forever. Employers and employees demand flexibility in temporary entry into a country and remuneration payments. The reward for Australia is the international transfer of knowledge and skills that lead to significant upskilling of our population. This has been acknowledged both locally and overseas. It is imperative that legislative policy continue to focus on protecting flexibility and recognise how vital that is to our temporary business visa program as well as reflect and be responsive to the international human resources marketplace in which Australia is a part.

In a recent publication by Robert Half International—a major, worldwide recruitment company—the following points were made: the world is becoming a smaller place; businesses are going to have to respond to changes in the workforce; there is a desire for greater flexibility and an increase in global roaming among employees; Australia is running the risk of becoming an exporter of knowledge and talent if current employment practices do not change to address these issues and companies may have difficulty in finding high quality employees in the future; and the world will continue to get smaller with more consistency across borders by regulators, governments and standard-setters.

The need for the modernisation of labour laws to recognise increasingly diverse contractual forms of employment and the movement away from the standard arrangement were the subject of a green paper in 2006 by the Commission of the European Communities entitled *Modernising labour law to meet the challenges of the 21st century.* The paper said that non-standard employment status arrangements can differ significantly from the standard contractual model. In 1999, a study by the UK Department of Trade and Industry identified non-standard forms of employment as those forms of work which depart from the model of the permanent or indeterminate employment relationships constructed around a full-time continuous work week. This major trend is being experienced in Australia and any changes to the program and to the implementation of labour agreements should be cognisant of this trend.

In closing, I would like to firmly state that there has been a recurring theme in recent media reports that some overseas 457 visa holders have been subjected to abuses by unscrupulous employers. This is very much in the minority but it has received major media coverage. That instances of this have been very much in the minority was reflected in the evidence presented on 12 February of this year by the then Deputy Secretary of DIAC who told a parliamentary estimates committee that out of a program of 10,000 sponsor firms there had been about 300 investigations into allegations of breaches. An article in the *Australian Financial Review* of 27 April last reported that allegations had been made against 180 out of 10,000 firms hiring foreign workers and that more than 70 per cent of the allegations were unsubstantiated.

The system is not broken, so why do we try to fix it? However, one size does not fit all. This approach is not relevant in today's labour market. There needs to be a clear distinction between the highly-skilled occupations and those requiring lower skills. To date this has not been present and it is seen as an imperative change. In its code of conduct and rules, our association embodies a requirement that members comply with all relevant migration and employment statutes. Our membership has clearly demonstrated its commitment to complying fully with the spirit and the letter of migration regulations. Our association is also aware that many small to medium size enterprise employers who have a limited number of sponsored employees and, hence, are subject to only limited monitoring can successfully evade their responsibilities to overseas employees. In such circumstances, abuses can remain undetected, but this is often because individual visa holders do not lodge any complaints as they are too concerned that they will be deported.

Our association believes that if such individuals could be promised additional time within which to find an alternative sponsor, or if it could be made clear by publicity and extensive education that DIAC efforts would concentrate on working with the employer to rectify abuses rather than on taking punitive measures against the visa holder, the visa holder may be more inclined to report abuses. Our members believe that every sponsoring employee should be subject to the same requirements in order to be able to access the temporary business visa program. Our association, via media reports, is aware of identified abuses existing in the overseas labour hire sector. This is of special concern to ACPMA members since it reflects badly and unfairly on our industry. Consequently, we would enthusiastically support any measures that seek to curtail the ability of overseas labour hire entities to sponsor employees to work in Australia. As an alternative, such companies could be required to lodge a monetary bond with the Commonwealth government as security against any proven breaches of employment or migration regulations. Earlier I mentioned that labour agreements form part of your committee's terms of reference. They are also a discussion point in the COAG working party paper relating to the on-hire industry.

I would now like Mrs McMullen to introduce herself and talk briefly on our perceived difficulties with labour agreements.

CHAIR—That is fine, Mrs McMullen, but you might run out of time.

Mrs McMullen—My comments are all in a paper. If you wish, we could lodge that.

CHAIR—Can you speak briefly to the issues. I am sure we will have a few questions for you.

Mrs McMullen—First of all, I would like to give you a brief run-down of my part in the 457 program over the last seven years. My company is Connections Migration Law Firm. We are based in New South Wales. We represent the ACPMA as well as a number of contractual companies and about 35 of the main recruitment companies in Australia. All of these companies on hire, so we have fairly wide experience of the on-hire industry and the 457 program. We also act on behalf of many smaller companies. In all cases, we act on behalf of the companies and the visa applicants. Would you like me to address the issues of the labour hire agreement?

CHAIR—We have heard a lot about labour hire agreements.

Mrs McMullen—It is all on record.

CHAIR—Could you provide that record to us. If we wish to question you about it, you could address it then.

Mrs McMullen—Yes. We thought if we kept talking you would not have time to query us.

CHAIR—I am sorry about the time constraint, but we do want the opportunity for dialogue with you. Your submission indicated that some of the people you represent, for example, are engineers. It was put to us earlier today that companies with good workplace relations and with a good history of employing people on these visas could have their applications subcontracted out from the department so that somebody could turn them around quickly. Would you care to comment on that? Are you aware of what I am talking about?

Mr Ware—They are just fast-tracking applications.

CHAIR—There have been complaints about the turnaround time, which should be 28 days. The evidence is that it is now up to eight weeks and sometimes three months, and I think up to eight months. We have heard that certain professions and industries with good track records may have their applications subcontracted out by the department to a migration agent so that the turnaround time is quicker and so that they can be delivered when the company needs them rather than eight months after they were initially applied for. Would you see that as practicable and feasible? If so, why? If not, why not?

Mr Ware—Yes, anything that speeds up the turnaround time would be appreciated. I guess the issue is trying to prove that you are suitable for fast-tracking.

CHAIR—The downside would be that if you transgressed you would lose the ability to have any further association with this visa program.

Mr Ware—The reason that I say that it would be a really good initiative to fast-track is that our industry is demand driven. Sometimes the lead time will not allow one to wait three months for an approval. There are certain occupations and certain skill levels which clearly are in demand and therefore should be fast-tracked. Maybe Mrs McMullen, who is a registered migration agent as well, could speak a little more on that.

Mrs McMullen—I think that it would have limited use. In fact, many of the longer delays do not come from the actual processing within DIAC. They are the result of the integrity checks which they carry out. These integrity checks are linked to—

CHAIR—Can I just stop you there and say that that is contrary to the evidence that we have been given so far. The evidence given so far has been that it was with DIAC and that integrity checks overseas were the ones that were better served.

Mrs McMullen—That is certainly not our experience of the program.

CHAIR—Can you give us some evidence of that?

Mrs McMullen—Certainly. We have information from DIAC on the processing times. They are realistic processing times. They actually separate on the basis of countries and passport holders rather than on the basis of the category of employment. So you can have a chef from the UK who will be processed faster than a highly skilled engineer from the Philippines. The integrity checks are carried out overseas. If we were to try to adjust our processes in here, I think we would still be caught by the integrity checks.

CHAIR—That is interesting.

Senator POLLEY—Obviously you have views about the disadvantages of the labour agreements within the area that you operate.

Mrs McMullen—Yes.

Senator POLLEY—Can you outline those for us?

Mrs McMullen—Probably my main concern about it is that at the moment every Australian business and every Australian personage has a right of appeal if they are refused an application by the department. Where we get into a situation with a labour agreement there is a consultative process which takes place prior to any application. You have to negotiate with DIAC and DEWR and you have the needs of the employer and, in the case of the on-hire industry, the needs of the end user, who may be delaying a very important project waiting on someone coming over.

The main reason that we have the problem with the labour agreements is that if DIAC delay or if they put on the employer fairly unrealistic expectations, the employer has nowhere to go. To date I have tried to negotiate four labour agreements, and in every case the employer has said to me, 'This is too hard; let's just do a business sponsorship,' and we have gone through the business sponsorship process and the visas have been granted. The labour agreement process, as it stands at the moment, is cumbersome, they do not respond quickly and the wait time for negotiating the agreements is not suitable. Also, if you have an on-hire situation, the company

that is doing the on-hiring—the company that is sponsoring and is being the employer—has to respond to the needs of their clients. They cannot predict over a number of years what positions are going to have to be filled by overseas skilled personnel. They cannot give position descriptions and they cannot tell what training programs are going to be put in place to remedy the skills shortages. All of these are potential difficulties.

Senator POLLEY—From the evidence that I have gleaned from the witnesses that have been before us during the course of this inquiry, it depends specifically on the industry as to whether people are happy with the monitoring practices of the department and the time it takes to process applications in the first place. I was wondering if you had any comment on the monitoring and whether or not you believe there needs to be stronger mechanisms put into place for complaints from people out here on 457 visas.

Mrs McMullen—There is a very distinct difference between visa holders from high-skilled positions who are very well aware of their worth in the marketplace and many others. It is very difficult to exploit that kind of person. It is quite another thing if you have a chef from overseas who probably has fairly poor language skills, who is having to work long hours and is feeling that he is in danger and is in a vulnerable position if he reports abuses. That is the first thing. I think it is very important to differentiate between the different sectors of the people we are dealing with. Many of the labour hire companies deal with the higher end and certainly all the members of the ACPMA deal with higher skilled people. I have no knowledge of any abuses. This is the strange thing: it is very surprising to us that there has been this focus on tightening up within that area, because we have never had any evidence of reports of abuses in that sector. Yet that is the very sector that DIAC are now saying should be restricted to using labour agreements.

Senator POLLEY—Thank you.

Mr LAURIE FERGUSON—By the way, one of the major sources of that information the chair referred to today about processing was the Migration Institute.

Mrs McMullen—Yes.

Mr LAURIE FERGUSON—I have three points. Mr Ware, can I put it to you that the layperson might not be too convinced by paragraph 2.1 of your submission. In the first paragraph we are told that people will work overtime on an unpaid basis, that it is very prevalent and that basically it is par for the course. Two paragraphs later we are assured that the fact that you have these timesheets is 'built-in security'. Can I put it to you that the kinds of pressures you talk about in the first paragraph, which you are saying is basically the way it is in the whole sector, are really not covered by these timesheets. Given the kinds of pressures on individual employees in regard to those sheets and given that culture, I am not convinced by the third paragraph.

Mr Ware—Within the types of employees we have there will be a large salary or remuneration range. We have had one person at the top end earning $5,000 a day and you have others who are earning a much lower rate—$350 a day. Obviously, the higher up the rung you go the less likely you are to be paid overtime, and that is factored into the remuneration that you negotiate. Each contract is an individual contract; it is not something that we put a carte blanche

blanket across. Each contract is negotiated individually. Some will have paid overtime specifically; others will have it factored into their overall rate.

Mr LAURIE FERGUSON—You assure us in 2.2 that 'employers are best placed to determine appropriate standards of English'. That might be the case in some sense—you might have operations where person who is very proficient in English is necessary—but can I put it to you that there are sometimes other elements as to why the employer might or might not want people expert in English. It could be that in some sectors it is advantageous to the employer to have a workforce that basically do not know their rights, cannot articulate them and cannot complain. It might also be convenient in some sectors that there is not a rapport between employees. I am not really persuaded that we can leave this with the employers.

Mr Ware—Our response may have been coloured by the fact that we only deal in very highly skilled areas, and there the employer would need to be satisfied that the skill level of English is there. To that extent, I think our response might have been coloured.

Mr LAURIE FERGUSON—Finally, compared to other employer submissions today, yours is the most reticent and careful about the need for more penalties in the field and more monitoring. Even most of the industry groups today have been gung ho about complaints. But then you are 'enthusiastic' about restricting overseas contractors. Could there be a perception by some people that there is a bit of self-interest?

Mr Ware—That could be so, Mr Ferguson. I am sorry if you took that impression from our submission. We certainly are very strong on monitoring. In fact, all of our members are monitored on a very regular basis, and far more regularly than many other industries. As we mentioned earlier, there has been no reported incidence of transgressions.

Mr LAURIE FERGUSON—As I said, other industry groups today have not used language such as yours when you say you have 'reservations as to whether further measures are necessary or warranted'. You do stand out in contrast in feeling that it is all going very well.

Mr Ware—We believe that DIAC have the mechanisms there already. They do not have to be enhanced; they just have to be acted upon.

Mrs McMullen—I think that is a separate issue, especially with the passing of the employer sanctions act. There are very strong powers already there. Any company in Australia can have their business sponsorship cancelled if they transgress. It is the overseas companies where there is no accountability.

Mr LAURIE FERGUSON—I do sympathise with your positions, as with migration agents', but I am just saying that it is interesting that there is such a contrast in your not wanting anything further to happen in Australia, and being very enthusiastic about that.

Mrs McMullen—I think it is important that the monitoring is carried out to detect the abuses.

CHAIR—On that issue, in your experience or to your understanding are many of the individual 457 visa holders personally met by departmental officers on an annual basis?

Mr Ware—We have not had any reported visits by departmental officers. That does not mean to say it did not happen.

Mrs McMullen—I know of some.

Mr Ware—I do not know of any.

Mrs McMullen—Departmental officers will sometimes go into a workplace and they will interview the sponsored employee.

CHAIR—There has been a call for it to be 100 per cent. Are you aware of that?

Mrs McMullen—If it was one per cent I would be surprised. In five years I have only heard of about three or four cases.

CHAIR—That is interesting. Finally, you are obviously enthusiastic supporters of the long-stay business visas—or the skilled visas—and there has been some criticism that in certain industries they drive down wages and conditions. How do you respond to that?

Mr Ware—We do not believe it does, particularly in terms of our category of employee. Our response has been coloured by the fact that we deal only in the highly skilled areas, and those people are well aware of their market worth. In fact, if anything, they will lift the local wage level—the remuneration levels.

CHAIR—Thank you very much. We are out of time. 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 information that you have undertaken to provide, as soon as possible.

[3.18 pm]

SUTTON, Mr John David, National Secretary, Construction, Forestry, Mining and Energy Union

CHAIR—I would like to welcome the representative from the Construction, Forestry, Mining and Energy Union to this public hearing. Although the committee does not require you to give evidence under oath I should advise you that 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 Sutton—Thanks for the opportunity. I have with me today two workers, whom you would describe as victims, who have stories to tell. After I have put some matters to you, hopefully, we can turn to their stories. The CFMEU has been campaigning over a very long period indeed around the question of the abuse of migrant workers. Those abuses have reached a qualitatively new level in the recent period, with very widespread abuses now apparent to us with the subclass 457 visa. Our general approach as a union is that we believe temporary visa arrangements can have a valid place in our society, but only as a small niche program that has integrity and is not a wholesale labour market solution—which, unfortunately, we are now seeing put into practice. Temporary visa arrangements should not become a substitute for our permanent migration program or a substitute for Australians training their own skilled workforce. From our point of view, as things stand, the temporary visa program is spiralling out of control. It has largely become a quick, nasty, cheap labour scheme which more and more employers are accessing instead of meeting their obligations to their industry and to the nation.

There are three key elements which have caused the current problem. These three elements must all be addressed if integrity is to be restored to the program. Those three elements are labour market testing, market rates of pay and enforcement of the demonstrated training record rules. I will briefly go though those three elements. As you know, labour market testing was abandoned in, I think, 2002. That has, in our view, seriously damaged the integrity of the program. It must be restored. That means that would-be sponsors should go through some tangible, demonstrable efforts in order to access local labour. It is just not good enough in Australia in our society that you can have local labour available—ready, willing and able to do work—and an employer can bypass that labour and choose to bring in people from overseas. Almost invariably in the kinds of skill levels my union is interested in—that is, at the trade level and below the trade—it becomes a question of cheaper rates of pay if you can bring in that labour from many overseas destinations.

My strong view is that transparency badly needs to be introduced in the area of labour market testing, so that simply advertising for one month or three months on some sort of job search site or whatever it might be is not sufficient. We have recently put a submission into the COAG working party arguing that interested parties, stakeholders, should be given a period of time after the notification of would-be sponsorships in order to make comment to DIAC and other interested parties. I will give an example. If somebody wants to bring 20 nurses into Bendigo,

apart from advertising, what better way to test the veracity of that application than to ask the local branch of the nurses association whether there is a shortage of nurses in Bendigo? I think that principle probably already applies at higher professional levels. In my view, it should apply at all levels. And trade unions are part of that—as much as the current government is reluctant, of course, to have us in the process.

Market rates of pay are essential. The MSL is not a valid instrument for the kinds of classifications that my organisation represents. Forty-one thousand dollars for the kind of skilled trades that we represent is vastly inferior to the collective agreements that we negotiate for those classifications in various parts of the country. I would say that, in many instances, we could negotiate collective agreements that would sometimes be 2½ times the $41,000 level. The MSL is so much lower than the going rate of pay. That can only lead to one inevitable result, and we are seeing that in various parts of the country.

Thirdly, on the enforcement of the demonstrated training record requirements, those requirements have been there for a long time. A sponsor is meant to pass that test before their sponsorship is approved. In our experience, DIAC, DIMIA and all the other acronyms that have gone before do not in any way apply that test with any kind of consistency, and there are certainly no transparent criteria to it. We see all too many instances where employers that are given the sponsorships basically have no apprentices, have no intention of having apprentices and have a lousy demonstrated training record but nonetheless are given the tick and allowed to become sponsors.

I refer you to our recommendations in the paper. There are a number of suggestions there that we think can help bring integrity back to this program. That will do me at this point.

CHAIR—Thank you very much, Mr Sutton. There are a number of issues and questions we would obviously like to follow up with you. You have already said yourself that you believe there is a place for long-stay temporary visas in the Australian workforce. Is that correct?

Mr Sutton—Yes.

CHAIR—I am a member of parliament from Western Australia. Obviously we are a bit skewed in that part of the world in terms of workforce needs, but the evidence before this committee so far is that there are shortages in all ASCO codes all around Australia. When we have taken evidence from Melbourne, here, Perth and Brisbane, we have been told that there is not one industry that does not have areas of shortage. So we are probably in an unusual workforce climate, but it has been demonstrated that these visas are working in terms of filling short-term need. On that point, I understand that the New South Wales state government is the greatest sponsor of 457 visas, particularly in the health industry. How do you respond to that?

Mr Sutton—There are a number of things I would say in reply to your question. It is fascinating that, despite the boom states of Western Australia and Queensland, I am sure you have seen the statistics that show that the state that has by far and away the largest number of 457 visas in use in this country is New South Wales, where the economy is supposedly flatlining or not in great shape. So that gives the lie to the whole question about, 'Well, the 457s are meeting the market demand in the boom states.' In fact, it is in New South Wales, and I think

Victoria is next in line. So, if you look at the non-boom states, you will see that that is where most 457 visas are being granted.

There are a number of other things I would say. The industry I come from is construction. We have had a depressed construction industry here in Sydney now for the last two or maybe three years. In fact, there are a great number of unemployed construction workers here in the city that we are in at the moment. And guess what? We go onto building sites—those that are around, because there are not that many—and we see lots of 457 workers on building sites here, and we know of large numbers of unemployed construction workers, our own members, here in Sydney. Some of them, of course, if they are young and single, or desperate enough, travel north or west. But it is just not good enough.

I have made these points to DIAC and to the ministers. The current program is not responsive. The bureaucracy does not seem to be able to target where the shortages are, either geographically or in classifications, and instead you get this ham-fisted situation where there are lots of building workers coming into Sydney at the very time we do not need them. So they are some responses. There was one other point, but it has just eluded me and I might come back to it.

CHAIR—The New South Wales state government health department is the largest national sponsor.

Mr Sutton—The point I would make there is that I do not see that any state government or any employer should be using this in a wholesale fashion. We as Australians, all of us in this room, should be interested in Australians training Australians. Our organisation is absolutely against this becoming a labour market solution and large numbers of 457 visas being used in any sense. So, if that has me criticising the Labor government in New South Wales, well and good. But it is not the answer to our labour market needs in this country.

CHAIR—As chair of both this committee and a government committee, I have a few interests in migration. Members of the fabrication industry have come to me, as have the cleaners. They tell me that the prefabrication industry would take 2,000 workers tomorrow if they could—fitters, turners, welders, sheet metal workers—because, if they do not have the workers, they have to send the work to the Philippines to be done and then have it shipped back here. Doesn't that open the door for a temporary workforce immediately?

Mr Sutton—There is lots of employer propaganda in this area. Some of these stories are self-serving and exaggerated. Of course, I have been in this game so long that I have heard the argument, 'Let the market rule.' When the market works against our interests, pay rates go down; we lose rates of pay and conditions. I am interested in those employers who say they desperately need labour meeting the market, paying a premium, and attracting labour from other parts of the country. That is the way the market is used against us and that is the way it should be used in Western Australia or Queensland. I repeat that there are a lot of unemployed tradespersons in Sydney and Melbourne in all of the blue-collar trades. If those Western Australian employers want to pay the premium and get workers to travel there, they should do so. I submit that there is a great deal of propaganda in the material those employers are putting to you.

CHAIR—In your area of construction and mining, in 2006-07 there has been a 20 per cent growth in the number of construction workers on 457 visas. There were 2,040 in mining, up from 1,790—a 28 per cent increase. Doesn't supply and demand demonstrate that that is happening in any case?

Mr Sutton—The 457 visa program is growing astronomically because employers are realising it is a much quicker and cheaper way to access labour. But it is highly vulnerable labour. The workers are not in a position to complain. They might come from the Philippines, China or wherever. They are desperate for those jobs and they are in a highly vulnerable position. This has become very much a quick fix for employers. Many employers, but not all of them, are saying: 'This is the smart way to go. Why bother training apprentices? Why bother with all that old-fashioned stuff?' To me it is absolutely logical that the program is growing astronomically.

CHAIR—In New South Wales, again in your area, the average salary of a primary visa grant in mining is $88,900; in manufacturing, it is $86,100; and in construction it is $67,500. That is well and truly above the award, isn't it?

Mr Sutton—You have been around a long time. You look at averages. Averages load in the professionals and high money earners. That lumps everyone together. If you want to talk about the skilled trades in the industries you have mentioned, I vouch that the collective agreements we negotiate will be much higher than the rates you have just mentioned. In mining and in major infrastructure construction, much higher rates are paid.

Senator POLLEY—Mr Sutton, thank you for your submission. Numerous witnesses have given evidence before us that, from an employer's point of view, they would prefer to employ Australians. They say that, with the costs imposed on them for bringing out 457 visa holders, it would be easier for them just to get Australians but a lot of Australians will not work in the areas where they need them. Do you have a response to that?

Mr Sutton—There are a couple of legs to that. The one about 'Australians won't do this work'—the complete answer to that is: pay a rate of pay that will attract them to do it and they will. They will. That is how my political opponents always say the market is meant to work! But a lot of people do not want the market to work that way now.

The other point you made was about the costs that employers have to bear in bringing these workers out—well, you hear that from some employers. But we see so many examples of those costs being loaded onto the backs of workers. You will hear later from an Indian worker what he had to pay to get out here and the money that is deducted from him. This is a whole scandalous area in itself. People are supposedly getting the $41,000, the MSL, but then all these costs that the employer had to bear are subsequently being deducted from the worker. I am not saying there are no employers that are genuine and look at meeting all those costs themselves. But this program totally lacks integrity at the moment, and that is why we have COAG working parties and that is why there is movement in this area—because there are so many abuses. It has to be tightened up so much if we are going to get it all back into some sort of decent shape.

Senator POLLEY—We have had witnesses from various areas—for example, the engineering field. I was pleased to have it identified today that to get more people into

engineering it is not just about targeting universities but also about encouraging students in high school to study maths and science. They were saying that the requirement of proficiency-level English language skills is unnecessary in those higher-end, highly skilled areas. But we have also had evidence that there are people coming in and working as cooks, in the construction area or in meat abattoirs who do not have proficient English. They are saying that the answer to that is to just put up signs in Filipino or Chinese rather than expect them to be able to competently work in their industries here and be able to read and write English. Have you got a comment on that?

Mr Sutton—I think the dangers in the workplace, in heavy industry and engineering settings, the industries we represent, are apparent. There are very serious safety issues at play there. We are definitely in the camp that says there must be a sufficient level of English to be able to at least work safely. So we are quite adamant about that—and there seems to be movement from the government, as you know, about that issue. And I do not know how you can be a highly skilled worker in this country and not speak English or not have some workable level of English. It just does not seem feasible to me.

Senator POLLEY—And I would have thought it would assist those people to assimilate into our communities as well.

Mr Sutton—Absolutely.

Senator POLLEY—It appears from evidence that we have taken here that there is inadequate monitoring of those who are out here on 457 visas in terms of contact on a one-to-one basis. What is your experience within the industries that your union covers?

Mr Sutton—I learnt somewhere along the way that the department tries to visit 25 per cent of employers a year, I think—something like that—but they are mostly announced visits; they are not unannounced visits. It is all just too genteel. I have been doing this for 27 years, and a lot of the employers we have to deal with are pretty hardline customers. If you announce that you are coming to visit in two weeks time or whatever it might be, you will be given a set of books—not necessarily the correct books. The whole regime is just too weak and it is just not responsive to the kinds of abuses we are seeing in industries like construction.

Senator POLLEY—We have also had evidence, and it is fairly obvious to me at least that it would be extremely difficult for somebody who is out here on one of these visas to come forward and give evidence to this committee. Obviously, they would be concerned for their jobs and for their families. Do you have any suggestions or any views as to what we can recommend as changes to the mechanisms for complaint for the individuals out here on those visas?

Mr Sutton—A lot of it goes to the question of losing your sponsorship, and the so-called 28 days you get after your sponsorship is lost. Many workers take that at face value. I know that, in reality, the department gives more leeway than that. But many of the workers see that on paper and, of course, they have very limited knowledge of their rights. The employer will tell them or hint, or someone will tell them, that if they lose the sponsorship they will be out of the country four weeks later. That places them in a position of enormous vulnerability. They are trying to remit money back home; they are prepared to put up with just about anything to send money back home to help the family. There just has to be a way that they can be given more leeway. We

argue that they should be given three months at the very least. As you will hear today, there have been some cases of abuse. Rather than just being turfed out of Australia, these people must be given some opportunity to stay so that whoever is assisting them can prosecute the abuse.

Senator POLLEY—We have had evidence about construction, mining and energy, but are there people in the forestry industry who are out here on 457 visas?

Mr Sutton—I have heard of some instances.

CHAIR—I think you will find it is more in areas like truck driving et cetera, where there is a shortage of truck drivers and machine operators.

Mr Sutton—There have been some instances in forestry. There is one that is lurking in the back of my mind, but I cannot grab it at the moment.

Senator POLLEY—Could you take that on notice and, if you have any further information, submit it to us?

Mr Sutton—Absolutely.

Senator PARRY—You mention that, if the pay rates were higher, we would not have a need for 457 visas. But isn't it the case that we would just be robbing Peter to pay Paul? If you put the rates up, you just poach skilled labour from different parts of Australia. But there is still an underlying deficit of skilled labour.

Mr Sutton—One of the myths of the so-called skills crisis is that it is somehow totally uniform in all industries and all occupations across the country. Nothing could be further from the truth. Some parts of the construction industry are booming, but other parts of it are dead flat. In my long experience, rates of pay move up where it is booming but move down where it is dead flat. Workers in Sydney have lost $150 or $200 in the last two years because there is no work around, but in other parts of the country the pay rates are very high. That is the market at work.

CHAIR—So nobody is using the $5,000 relocation allowance to go to areas of need?

Mr Sutton—It is relatively new. I do not know if it has proven to be a useful tool. I have not heard of too many instances of it being used, so I cannot really throw much light on that.

Senator PARRY—You also mentioned advertising. You do not believe that the advertising regime employed by employers is rigorous enough to do that assessment as part of your labour market testing?

Mr Sutton—As you know, labour market testing is gone, except in the regions. The regional certifying body is meant to 'have regard'—or words to that effect—before it approves that particular sponsorship, but in the big cities et cetera it is gone; there is no labour market testing. We obviously advocate a return to labour market testing. A temporary visa program is not a new thing; we have had it for decades, probably 100 years. Up until 2002 we had labour market testing. There were good, sound and valid reasons why we had it all that time, and we should

return to it. I do not accept the department saying, 'We can't second-guess employers.' It is a very convenient way out of the issue. Labour market testing is quite fundamental, and I submit that it should involve more than just putting an ad on the JobSearch network or whatever it might be. I very much have in mind the position in New Zealand. The New Zealand government has a protocol with the New Zealand Council of Trade Unions that, as stakeholders, they get some notification. They do not get a veto, but if somebody wants to bring people into, say, the South Island in such and such an occupation there is at least knowledge of it. They get four or five weeks to say, 'Yes, there is a shortage of engineers in Christchurch,' or, 'Yes, there is a shortage of nurses.' They are stakeholders and they ought to be consulted. In my opinion, that is a key part of labour market testing.

Senator PARRY—Every employer who has given evidence to us in this inquiry so far has indicated that advertising and knowledge of job vacancies has been widespread but they just do not get the takers.

Mr Sutton—You have to accompany it with a decent rate of pay. If you accompany it with the award rate of pay, you will not have anyone—it depends on the particular market. I am sure you all know that award rates of pay are very low compared to market rates of pay. If, accompanying labour market testing, there is a requirement that you must advertise at some kind of market rate then I think that in many instances you will get the labour.

Senator PARRY—But employers are also telling us they are prepared to pay above the award rate because it is still cheaper than bringing people in on 457 visas.

Mr Sutton—In my long experience, employers give all sorts of self-serving submissions. In many instances, what you have just put is not true.

Senator PARRY—The same can be said about union representatives.

Mr Sutton—I am self-serving for my membership; that is true.

Senator PARRY—So there is an argument both ways. There is another thing I want to challenge. You mentioned that the highest volume is in New South Wales, followed by Victoria.

Mr Sutton—I might be wrong about Victoria.

Senator PARRY—They have the highest volume of 457 visas but they also have the highest population base. Do you have a percentage figure as to whether it is comparable with the population base?

Mr Sutton—I have not looked at the figures lately but my brain tells me that when I last looked at them there were something like 30,000 sponsorships in New South Wales and 5,000 in WA. Those who live in WA might be able to tell us whether the population of New South Wales is six times that of WA.

Senator PARRY—It would be fairly close.

CHAIR—Are you talking about quality or quantity?

Mr Sutton—I come from Sydney, so—

Senator PARRY—We support your comment about Australians training Australians, but there has been a regime of state governments not providing adequate training. Also, you still have to get bums on seats; you still have to get people wanting to do this. We had evidence from the engineers that people do not want to become engineers. They have been proactive in approaching schools at the secondary level rather than at the tertiary level. Do you have a comment?

Mr Sutton—If you want to track where the gap opened up and the collapse of training, it is remarkably coincident with the change of government in the mid-nineties. So I would not be putting it at the door of state governments; I would be looking at the federal government. We have had a disastrous training record for the last 10 or 11 years in this country, and at the moment we are reaping what we sowed. Employers have avoided their responsibility almost en masse—not everyone, but so many of them have. Those employers are now looking for this cheap quick fix that we now have. It is disastrous public policy and it is no good for the industry in the long run, either.

Senator PARRY—So what is your answer? If you do not want us to attract 457 workers when there are no workers in Australia, what does Australia do?

Mr Sutton—We should get serious about training with carrots and sticks. This government would never contemplate sticks, but public contracts should only be given to companies that train Australians. There would be a remarkable turnaround in a short space of time if we really started to put some obligation on companies to train Australians.

CHAIR—On that point, we took evidence from Austal Ships in Perth, which is one of the largest shipbuilding companies in Australia. They have a workforce of roughly 2,000 people, 20 per cent of their workforce are on 457 visas and they have close to 300 apprentices. So they are committed to training and apprenticeships. Isn't that a good model?

Mr Sutton—I know of other parts of the country that are improving—Tasmania is really lifting its game in training—but, with the time lag of the disastrous last 11 years or so, you cannot cure in a short space of time a problem that has been coming for more than a decade. I have a strong view that you would not need nearly so many 457 visas if you paid market rates of pay. I am not an expert on Austal Ships. I would be very interested to hear what Jock Ferguson and the AMWU have to say about it. I think they might throw a completely different light on the picture.

CHAIR—One of their reasons they gave for their productivity in their evidence in Perth was that they do not have anyone on a collective agreement.

Mr Sutton—I would expect you to say that. I fancy that you would think the AWA is an excellent instrument, but I have a different perspective.

CHAIR—Given that my electorate of Canning has 29,000 people on AWAs, I do have an interest in them.

Mr Sutton—I wonder how many are voluntary and how many are a case of, 'If you want the job, you must have the AWA.'

CHAIR—Given that I am in the role of chair and not a debater, I will take on board your submission. Thank you for attending today's hearing. The secretariat will send you a copy of the transcript so that you can make any corrections that need to be made. I would be grateful if you could also send to the secretariat as soon as possible any additional material that you have undertaken to provide.

[3.51 pm]

KANDASAMY, Mr Rajan, Member, Construction, Forestry, Mining and Energy Union

CHAIR—Welcome. Would you like to comment on the capacity in which you appear before the committee?

Mr Kandasamy—I am from India.

CHAIR—You are appearing before the committee as a worker on a 457 visa?

Mr Kandasamy—Yes.

CHAIR—Welcome. 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 proceedings of the parliament itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I also want to emphasise that anyone giving evidence at a public hearing is protected by parliamentary privilege. Essentially this means that no legal action can be taken against a person because of what they say during the hearing. Parliamentary privilege also means that it is an offence to take action against a person, or threaten them, because of evidence they may give before a committee. It is also an offence to influence another person about the evidence they may give or to try to prevent a person from giving evidence. If a witness to the inquiry feels that they have been intimidated, threatened or have suffered adverse consequences as a direct result of having given evidence to the committee, they should contact the committee secretariat immediately. Before we continue, are you happy to have the media here? We have two cameras and reporters in the room.

Mr Kandasamy—Yes.

Mr Sutton—Rajan, do you understand everything that has been said?

Mr Kandasamy—Yes.

CHAIR—Would you like to say anything before we go to evidence? Would you like to tell us your story?

Mr Sutton—You will find Rajan's English difficult to understand. He has copies of what he is about to say and it might assist you if you have a copy before you.

Senator PARRY—Who produced the transcript?

Mr Kandasamy—It was just me.

CHAIR—There being no objection, the committee will accept as evidence this copy of the speech Mr Kandasamy is about to give. Mr Kandasamy, please proceed.

Mr Kandasamy—My name is Rajan Kandasamy. Last year I came to Australia to work as a crane operator on a 457 visa. I was working in Singapore when I responded to an advertisement in the newspaper asking for crane drivers and metal fabricators to come and work for an Australian company. They told me it would be a good job, with good money, and that we would live in very good accommodation and have food provided. I was required to pay approximately $10,000 to get the job, as well as my own airfares.

Once I arrived in Australia, the company that employed me forced me to live with seven other workers in two rooms in an office above the factory. We were each required to pay $100 per week to live here. After a month with the company, my employer gave me an Australian workplace agreement and told me that the immigration department required me to sign this new contract. The contract contained a lower rate of pay than the one I signed before coming to Australia. I felt I was tricked because, after I paid thousands of dollars to come here for this work, I was told I must sign the new agreement.

When I refused to sign the AWA, I was told I had a choice under the new Australian workplace laws to either sign the agreement or have my employment terminated. I understood that if that happened my visa would no longer be valid and I would be deported from Australia after 28 days. Three other workers and I were then sacked after refusing to sign the AWAs.

I asked for advice from a member of the Indian community in Sydney and they told me to contact the Construction, Forestry, Mining and Energy Union for help. Along with several other workers, I joined the union and they were able to campaign on our behalf to have our jobs reinstated.

At no point did we receive any assistance from the Australian government to make sure we knew our rights at work and were protected from this exploitation. We were not told where to go for help and we lived in fear because we knew that if we were sacked we would be deported from Australia. For many workers, this fear forces them to suffer terrible treatment and poor safety.

I believe the Australian government needs to do more to protect guest workers and prevent bad employers from using us as cheap labour. I fully support the Australian trade union campaign to protect guest workers from being used as cheap labour. This campaign is not just against a bad government; it is a global campaign for justice.

CHAIR—We would like to ask you a few questions about your opening statement. Do you have a copy of the original agreement that you signed before you came to Australia?

Mr Kandasamy—Yes.

CHAIR—Are you able to produce that for the committee?

Mr Kandasamy—I do not have the document with me at the moment.

CHAIR—But can you do that eventually?

Mr Kandasamy—Yes.

CHAIR—Thank you. Please give that to the secretariat at some stage.

Mr Kandasamy—At the moment I do not have it. I did not bring along all my documents.

CHAIR—You do not have the original one?

Mr Kandasamy—No.

CHAIR—I can understand what you are saying, but on that basis it would be very hard to compare what you were offered when you took up your job in Australia and what you were offered on the AWA. Do you understand my point?

Mr Kandasamy—Yes. Basically, what I am saying is what they told us in the interview.

CHAIR—Can you tell me the name of the company? You are giving evidence under oath and with privilege, so it does not matter if you tell me the name of the company. Who was the company that employed you on that original agreement?

Mr Kandasamy—I cannot mention the company name because the case was taken up by the union and the Australian Industrial Relations Commission. I cannot mention the company's name.

CHAIR—Mr Sutton, can you help me?

Mr Sutton—Yes, I can clarify that for you. When the union took up the case, it found its way into the AIRC. They ended up having a private settlement, as it were. The commissioner helped to broker a settlement but it was to be on the basis of no disclosure, a confidential settlement. It is common that an employer will settle it but that the parties agree that it is not to be made public.

CHAIR—I appreciate your problem but obviously, on that basis, it is difficult for us to compare. I will understate it to that level by saying that. You do not have a copy of the original AWA for the same reasons?

Mr Kandasamy—At the moment I do not have it.

Mr Sutton—I did ask the worker today. He told me that when he was in Singapore the original agreement was $21.80 per hour.

Mr Kandasamy—The second agreement never mentioned that that was the price. They said it was the lower rate.

Mr Sutton—He told me that the AWA rate was $21.18.

CHAIR—You have told us that you have since been reinstated with the help of the union. Can you tell us what your terms and conditions are on your reinstatement?

Mr Kandasamy—What is that?

Mr Sutton—The current arrangements.

CHAIR—What are you getting paid now for how many hours a week et cetera?

Mr Kandasamy—Currently the arrangement is the same as the previous one I signed.

CHAIR—Are you working as a crane operator now?

Mr Kandasamy—Yes. I am working on the same agreement as the one I signed in Singapore.

CHAIR—That is $21 per hour?

Mr Kandasamy—Yes, $21.

CHAIR—For how many hours a week?

Mr Kandasamy—Sometimes eight hours and sometimes 10 hours.

CHAIR—After your 38-hour week, do you get paid overtime?

Mr Kandasamy—Yes, the overtime is normal time. It is a flat rate.

CHAIR—What arrangements do you now have for your accommodation? Has that become better?

Mr Kandasamy—I have my own accommodation. I arranged it.

CHAIR—You have found your own?

Mr Kandasamy—Yes.

CHAIR—With regard to the money you had to provide to come out, what has happened with your sponsor? Have you entered into an agreement about moneys that you owe, or do you not owe any?

Mr Kandasamy—No, not at all.

CHAIR—You do not owe any moneys?

Mr Kandasamy—Could you repeat that?

CHAIR—You have said here that it was $10,000 to get the job as well as your own fares. Did you have to pay any moneys over and above that $10,000 and your airfares?

Mr Kandasamy—The airfares. That was it.

CHAIR—So you do not owe that company any moneys?

Mr Kandasamy—No.

CHAIR—They are not taking any from you now?

Mr Kandasamy—At the moment they are not taking any money from my wages.

CHAIR—And you are paying your own private health insurance—

Mr Kandasamy—Yes, life insurance.

CHAIR—because that is part of the visa conditions.

Mr Kandasamy—Yes.

CHAIR—I am glad it is now resolved, and I am sure everyone involved with you is happy as well that you have reached an agreement. It is unfortunate that you got to this position, but my understanding is that, if this had been dealt with and brought to the attention of DIAC, as it is now, and you could have proven your case, the company that you were involved in would have been dealt with. Recently the sanctions became much stronger, although that does not help your previous position. Your case is one of those for which we are holding this inquiry—to find people, such as you, who might not have been treated in the way they should have been.

Senator POLLEY—I think it shows a lot of courage to come before this committee, and I appreciate it. Are you aware of other people you work with who have had the same sort of experience—who have had to pay a large sum of money upfront to get the job in the first place and then have had to pay their way out here? To your knowledge, is this a general practice?

Mr Kandasamy—Yes. With some of them, the employers collect from their wages for the previous work.

Senator POLLEY—When you arrived in the country, did the company that you were working for explain to you the health and safety requirements of the job and make you aware that there were unions and organisations available to assist you?

Mr Kandasamy—No.

Senator POLLEY—Did they do anything to enable you to settle in the community, or were you given only the option to take up the accommodation that the company had organised for you?

Mr Kandasamy—No, they never tell you anything. You arrive and the next day they bring you to the factory to work.

Senator POLLEY—What are your long-term prospects here in the country? Do you intend to go back to Singapore or India, or are you looking to stay and become a permanent resident here in Australia?

Mr Kandasamy—I want to work here as a permanent resident and work for Australian companies.

Senator POLLEY—Do you have any family, and did they come with you?

Mr Kandasamy—No, I am single. My parents live in India.

Senator POLLEY—Is there anything else that you would like to get on the public record in terms of your experience that could help to ensure that the sort of abuse that you have experienced under this visa and, more so, under the company, will not happen again?

Mr Kandasamy—That's it.

Senator POLLEY—When you first arrived and were working for the company, did you have any contact from the department as part of their monitoring process? Was there any explanation about mechanisms that you had available to you to make any complaints?

Mr Kandasamy—Not me. Before arriving, the previous worker called the OWS—that is the contact—to help fix the wages and conditions. The rate is $21.18 but, once we arrived here, they paid only $18 something for 10 months. They are working for 10 months, 10 hours a day every day, but they are paid for only eight hours. So they called our OWS to fix up these problems. After the OWS people came down and talked to the company, the company gave us a new Australian workplace agreement.

CHAIR—And did they pay you what they had agreed to pay you? Did they back pay your underpayments, for want of a better word?

Mr Kandasamy—No, there was no back pay.

Mr Sutton—My understanding is that they corrected the paperwork, the OWS officer helped, whether inadvertently or whatever, to educate the company and then a whole new set of AWAs was signed to make sure that they were protected.

Senator POLLEY—Thank you.

Senator PARRY—Thank you for your evidence. I want to talk about the statement that has been prepared. Who typed this?

Mr Kandasamy—Me.

Senator PARRY—What are your qualifications?

Mr Kandasamy—I have a diploma in mechanical engineering, a DME.

Senator PARRY—Through which institution? In India?

Mr Kandasamy—In India.

Senator PARRY—Okay. When you first applied to come to Australia, who approached you, or where did you see the opportunity?

Mr Kandasamy—I was working in Singapore. I was reading the newspapers, and in one of them an Australian company had an advertisement.

Senator PARRY—The $10,000—was that paid to a migration agent or was it paid to the employer?

Mr Kandasamy—A migration agent.

Senator PARRY—Was the migration agent the one who put you in touch with the employer?

Mr Kandasamy—Yes.

Senator PARRY—Was that after you paid the $10,000?

Mr Kandasamy—Yes.

Senator PARRY—How did you know—did you have a form or a document—or how were you informed of the costs prior to you taking up your position of employment?

Mr Kandasamy—I have all the documents at home.

Senator PARRY—So you knew before you came to Australia that you would have to pay $10,000 plus your airfares?

Mr Kandasamy—Yes.

Senator PARRY—When you arrived in Australia, where did you think you would be staying, accommodation wise?

Mr Kandasamy—They promised me that once arriving here—

Senator PARRY—Who promised you the accommodation? The migration agent or the employer?

Mr Kandasamy—The company.

Senator PARRY—Did they put that in writing to you?

Mr Kandasamy—Yes.

Senator PARRY—And did they describe the accommodation?

Mr Kandasamy—Yes.

Senator PARRY—And how did they describe it?

Mr Kandasamy—They said it was close to the factory.

Senator PARRY—They just said 'accommodation near the factory'?

Mr Kandasamy—Yes, just a kilometre from the factory.

Senator PARRY—In the statement you have said, 'I thought I was tricked because I paid thousands of dollars.' You knew that you had to pay thousands of dollars, so what other part did you think that you were tricked by? What was the part that you were tricked about?

Mr Kandasamy—Sorry?

Senator PARRY—You said in your statement of evidence—and I will read it:

> I felt I was tricked, because after I paid thousands of dollars to come here for this work, I was told I must sign the new agreement.

Was that the only aspect? It was not having paid thousands of dollars. You were not tricked into paying thousands of dollars. You thought you were tricked because you had to sign a new agreement.

Mr Kandasamy—Yes.

Senator PARRY—Is that the only way?

Mr Sutton—On a lesser rate.

Senator PARRY—On a lesser rate, yes. You have said the rates were $21.80 and then you signed the new agreement for $21.18 and that has since been rectified through the Australian Industrial Relations Commission.

Mr Kandasamy—Yes.

Senator PARRY—Okay. Thank you.

CHAIR—Thank you very much, Mr Kandasamy. We appreciate you coming here, taking the time and having the strength of purpose to bring your case before us. I think ministers have already taken up some of our recommendations on earlier evidence, so the committee may be earning its stripes as it goes. Let us hope that your case is an isolated one from now on. But you are aware that in future reporting mechanisms will be available to you, if there is any repetition of this sort of treatment. In addition, you heard my opening statement that, if anyone gives you a hard time—for want of a better word—for having given evidence here, you have options to pursue that through our committee and the parliament. 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, and I would be grateful if you could also send the secretariat any additional material that you have undertaken to provide, as soon as possible.

[4.12 pm]

HARRIS, Mr Peter, Union Organiser, Construction, Forestry, Mining and Energy Union, New South Wales Branch

SIIKALUOMA, Mr Mikko, Member, Construction, Forestry, Mining and Energy Union, through Helja Raisanen, interpreter

SUTTON, Mr John David, National Secretary, Construction, Forestry, Mining and Energy Union

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr Siikaluoma—I am a worker on a 457 visa in the building industry.

CHAIR—Construction or building?

Mr Sutton—Construction.

CHAIR—Although the committee does not require you to give evidence under oath I should advise you that these 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. You would have heard my earlier statements about protection of witnesses. Are you happy with that?

Mr Siikaluoma—Yes.

CHAIR—Are you also happy that the media is present?

Mr Siikaluoma—Yes.

CHAIR—I invite you to make a brief opening statement, if you wish, before we proceed to questions. Do you have a statement like Mr Kandasamy—a written statement—or are we going to do it some other way?

Mr Sutton—I was going to say that there are some interesting aspects of this. Probably the most telling part is to do with the question of an injured 457 worker and whether the sponsorship still exists, what rights they have to remedy their injury and whether they can stay in the country to remedy their injury. These sorts of issues will arise. Mr Harris has a statement which sequentially works through the situation that this worker was in.

CHAIR—So Mr Harris is making the statement on behalf of Mr Siikaluoma?

Mr Harris—Yes. Mr Siikaluoma has had the opportunity to read this statement. I do not think we would have any disagreement with the substance, but perhaps for the benefit of the committee—

CHAIR—When you have read the statement, I will ask that he confirms that that is his intention, if you do not mind.

Mr Harris—Certainly; thank you.

Senator PARRY—Can we clarify that Mr Siikaluoma can understand English quite clearly and he doesn't need interpretation? Can he speak it?

Mr Harris—He has conversational English, and over an extended period of time we have developed our own language, so to speak. So we do understand each other, but in terms of the transcript I think it would be advantageous for the committee if I read the statement and the committee proceeded on its usual basis—that is, to ask questions.

CHAIR—That is fine, as long as when you have finished reading, Mr Siikaluoma confirms that he is happy with the content.

Mr Harris—Certainly. By way of background, for the benefit of the committee, Mr Siikaluoma is a 43-year-old Finnish construction worker. He trained as a builder in Finland but preferably he works as a tiler. He was sponsored to come to Australia by a distant relative who owns a Toronto based building company known as TK Building Pty Ltd. He arrived in Australia on 25 June 2005 and started work with the company on 28 June. On 27 February 2006 he sustained a serious workplace injury, partly as a result, I would submit, of negligence in the workplace on the part of his employer. He has not been able to return to work since.

He was originally, we best understand, paid an annualised salary according to the regulations under the Migration Act of $41,800, evidenced by at least two of his payslips. One employer payslip dated 28 April 2006 says that he is on an annualised salary of just on $48,000. One payslip says he is on an annualised salary of $47,840 a year. Another previous payslip, dated 12 August 2005, says he is on a salary of $58,240 a year. We have not been able to ascertain what his real salary is because the employer has no proper records of time and wages, so to speak.

On 6 January 2006 he was told by his employer that he could no longer remain working unless he signed an Australian workplace agreement. That Australian workplace agreement refers to the conditions of the New South Wales state construction industry award. In all its benefits it takes those award entitlements and makes them into one all-up hourly rate. It does away with annual leave, sick leave, redundancy pay and all other reward entitlements. At the back of the document it has a separate schedule for the provision of an over-AWA rate of pay. The document was put to Mikko on 6 January 2006 but it was backdated by his employer to 19 June 2005, which was before he arrived in Australia. That document was submitted and accepted for registration on the basis that the employer swore an affidavit that the agreement was voluntary, it was entered into on the date that it was signed and it was accepted as a certified AWA.

Subsequently, when I became aware of it I raised all these matters with the Office of Workplace Services. I can best characterise their response as being one of remarkable disinterest,

even though I gave them a copy of the AWA. Mikko, because he had concerns about it, had dated the agreement, in the body of the agreement, with the date that he actually signed it. That was evidenced on the agreement that was submitted. There was no response from the Office of Workplace Services about that matter. The agreement stripped away all his award entitlements. On the date that he was injured his employer told him to go to the doctor.

CHAIR—On what date was he injured?

Mr Harris—On 27 February 2006. His employer gave Mikko instructions to tell the doctor that he had injured his shoulder playing golf, and it was not to be reported to WorkCover and made a workers compensation matter. The employer continued to pay his wages for about four weeks until he realised that this was going to go on for some time. It was coming out of his pocket. So he reduced his AWA rate from the schedule in the back of the document to the actual AWA rate, which was a $5 an hour reduction in his payments. Mikko was apprehensive about what was going on. He joined the union and our solicitors reported the matter properly to WorkCover. Consequently it was put to the employer's workers compensation insurer, QBE. They, on proper investigation and a retrospective accident report being submitted, commenced weekly payments to him. Twenty-six weeks after he had been on workers compensation his sponsoring employer simply abandoned him. They did not notify the immigration department that the relationship was coming to an end. He was still injured; even though his workers compensation was cut off by QBE on the basis that, under section 38 of the New South Wales Workers Compensation Act, 26 weeks after you have been on workers compensation you are required, even if you are still injured, to commence actively looking for work with any employer in the industry. Mikko's visa restrictions are that he must remain employed and working for his sponsor. The insurance company said, 'You must be working or looking for alternative work. You can't do that because you are a sponsored worker. The Workers Compensation Act section 38 is in conflict with the Commonwealth Migration Act so we are not going to pay you workers compensation.' They ceased that.

From 3 August 2006 until 16 February this year Mikko had no income whatsoever, until the matter went for arbitration before the New South Wales workers compensation tribunal. QBE agreed to pay his workers compensation for what is known as a closed period—that is, up to the date of the arbitration. They said, 'If you want us to keep making weekly payments then you fight us for it legally.' That issue still has not been resolved. We do not know what prevails for Mikko's annualised salary: the AWA, which was illegally certified and which refers to the state award, or the regulations of the Migration Act, which set out a schedule of $41,800 for a tiler working in Australia. Obviously now that the state award, just to confuse you a bit more, is known as a NAPSA award we do not have the capacity to pursue an underpayment of wages matter in the state jurisdiction subsequent to 27 March this year. The only alternative for Mikko is to go to the Federal Court to recover wages, which is ludicrous in the circumstances. We have a new sponsor organised for Mikko. It is being done on a pro bono basis for him through the union's lawyers. That is almost complete, but the migration agent must certify that Mikko is fit to work with his new sponsor. He is not able to do that because he has ongoing medical treatment. This will continue until he has a subsequent operation, which QBE will not pay for. He was in hospital waiting for the operation when QBE reneged on it and he had to be removed from the hospital. So ethically his migration agent is not able to certify that he is fit for work.

If the new sponsor falls over, what happens to Mikko? He has no workers compensation at the moment. If he has to return to Finland, rely on the Finnish medical system for an Australian problem and try to litigate his rights to workers compensation from Finland, it is almost impossible. It may be that he cannot return to his trade. His long-term intention, because of his European skills background, was to take out residency ultimately. Ordinarily, as an injured worker, if he were not able to return to his ordinary trade or vocation he would be able to undergo retraining. It is quite feasible that Mikko would be able to be retrained as a building estimator or a building supervisor because he has those skills in Finland, but not if he is removed from the country because we cannot finalise his subsequent sponsorship with a willing employer who has work for him. But, with his indeterminate medical condition, we do not know whether he is going to be able to fully recover. Ultimately, the immigration department are going to make a decision. If he cannot find a new sponsor, they will remove him from the country.

He came to Australia to have a new future. He had a thoroughgoing medical before he came here. He has never previously had a workplace injury in his life, and he had every expectation of a future in Australia using his skills. The best outcome at the moment would seem to be that he will be back in Finland with no means to earn an income, relying on the Finnish medical system to finish what remains of his medical treatment. Thank you.

CHAIR—Thank you. You obviously concur with all that, Mikko?

Mr Siikaluoma—Yes.

CHAIR—Thank you. You do have a difficult situation, don't you? It is highly complex and unusual, I suspect. There are a few questions that you may wish to address through any of your representatives. For example, I am concerned that you are telling me that the Office of Workplace Services is not interested in pursuing the backdated AWA.

Mr Harris—I corresponded with them. I provided them with a copy of the document, and, if necessary, Mikko is prepared to give sworn corroborating evidence. They simply addressed it as, 'That's a technical oversight.'

CHAIR—Sometimes when you have the scrutiny that you are getting it may help your case. But in this case I ask: can you provide us with that correspondence?

Mr Harris—I can provide you with a copy of the AWA—

CHAIR—No, the correspondence to the Office of Workplace Services—

Mr Harris—Yes.

CHAIR—and the correspondence you gave them which would have included the AWA et cetera.

Mr Harris—Yes, I can provide all that documentation to the committee.

CHAIR—Just to get this right, did you say at the beginning that the sponsor was a relative?

Mr Harris—A distant relative of Mikko's, yes.

CHAIR—And had belonged to which company?

Mr Harris—TK Building. T and K are the initials.

CHAIR—So who was the sponsor: the building company or the relative?

Mr Harris—The building company. The owner of the building company is the relative of Mikko. Perhaps just one other aside: when Mikko had to commence looking for alternative employment, the immigration department had copies of his original curriculum vitae, which he was required to lodge with them when he arrived in Australia. He inquired about whether he could have that so he could show it to other employers, and they actually made him make a freedom of information application to get his own CV back. I have all that documentation here as well.

CHAIR—Unfortunate, isn't it? What is the nature of the injury?

Mr Harris—He was actually injured on two occasions. He did not pay a lot of attention to the first injury, even though he went to the doctor. He received a back injury. His employer had him carrying a 25-kilogram drug of tiling cement across a building site and he injured his back. Subsequently, it has now come to light that he has actually badly fractured discs in his back. But the injury that resulted in his going on workers compensation happened when he fell down an unbarricaded open penetration on a building site—in breach of OH&S regulations—while carrying a large drum. He pulled his arm out of its socket and he has badly damaged the tendons in his shoulder. He has had one operation. The most recent prognosis is that he needs another operation immediately but there is only a 70 per cent chance at best that he will make a full recovery. When we can find out who is going to bear the cost of it, if it is the insurer, Mikko wants the operation done as quickly as possible, with the view that if he recovers he can go with his new sponsor and life may get back to some sort of normality.

CHAIR—With regard to that injury, as part of the 457 visa conditions all holders are meant to have private health insurance. Is that QBE?

Mr Harris—No, private health insurance does not cover work related injuries. It is a workers compensation matter under New South Wales workers compensation.

CHAIR—So there is no way that he can be covered by his private health insurance?

Mr Harris—The story gets even stranger. Because his sponsoring employer did not notify the department of his intention to bring the relationship to an end, it was first done by the union's lawyers acting on a pro bono basis. When they had the documentation from the sponsor and from Mikko, they said: 'We'll give you a grace period with your current visa and you will be able to transfer that to the new employer. You won't need a new visa. We will keep your current visa and you will have a new sponsor.' Then, out of the blue, a Medicare card arrived for Mikko and so we believe he has a legitimate right to use it. We are obviously litigating the insurance company's obligation at the moment, but if it all fails and Mikko is not directed to leave the country, he may be able to have the operation done through the public health system. Given that

it is a workplace injury—and no-one disputes that—it should be properly covered not by the taxpayer but by the insurance that his employer is obliged to have.

CHAIR—On that basis and because you are appearing before the committee, the committee will pass this information on to the minister's office, the Office of Workplace Services and the department to ask them to respond. As often happens, I hope that some scrutiny might bring some action.

Mr Harris—Thank you very much for your assistance, Chair and other members of the committee.

Senator POLLEY—I appreciate your coming forward and giving your evidence. In relation to the accident itself and the fact that you said that the open penetration was not barricaded off, is this not another example of where there needs to be a greater proficiency in the English language, for a start, to understand the health and safety requirements here?

Mr Harris—Mikko's sponsor spoke Finnish, so there was a means of communication other than English in the workplace. But every employer knows their obligations under OH&S legislation with respect to an obligation on a construction site to comply with those regulations, and there is no reason why Mikko should have fallen down an open penetration if there had been proper monitoring and implementation of basic site safety regulations. They are not a big building company; they are a cottage unit developer. Because we do not have unlimited resources, we do not get to those sorts of jobs in that sector of the industry as often as we probably should. It is a fact of life that there are WorkCover inspectors and so forth—and, again, they are under a lot of pressure—but it should never have happened.

Senator POLLEY—Prior to this accident, had the department actually made any assessment or monitored the 457 visa?

Mr Siikaluoma—No.

Senator POLLEY—On entry into the company and on taking up this opportunity, were the opportunities that you had to join a union and be represented explained, to ensure that you knew your rights?

Mr Siikaluoma—The other employees advised me about the union.

Mr Harris—I know for a fact that the sponsoring employer do not like unions, and I have had a lot of dealings with them.

Senator POLLEY—It was probably fortunate then that at least it was a unionised workplace to some extent and that his coworkers were able to advise him that there are organisations to protect their rights and interests. In some cases that have been given in evidence before us, there are people whose terms and conditions are abused and they are unaware that there are organisations.

Senator PARRY—Have you approached the New South Wales government about section 38 of the New South Wales Workers Compensation Act, which you mentioned in your statement? There seems to be a clear anomaly with that particular section.

Mr Harris—We have asked our principal legal officer, because there is a requirement that the act be reviewed by the parliament every five years, and that is one of the issues. We will make a submission because there is a clear—

Senator PARRY—Has this particular case been highlighted to the state?

Mr Harris—This is the first time that it has had even black-letter lawyers scratching their heads and saying, 'Hang on.' Obviously, people argue that the Commonwealth legislation will prevail, but we are about to make a submission that this in particular needs to be addressed with respect to 457 visa workers.

Senator PARRY—You mentioned that the schedule attached to the back of the Australian Workplace Agreement had a higher rate; there was a base salary rate contained in the body of the agreement. Is that right? You indicated that there was a reduction to the original amount in the agreement. Could you just clarify that.

Mr Harris—The schedule was blank. It was filled in by hand, which was clearly a negotiated or agreed rate with Mikko, because you would not get anyone to work for the AWA. Pragmatically, they had to put a higher rate in there, but it gave the employer the opportunity to pay the AWA rate out of his own pocket when there was no productive work, which he should never have been doing anyway. By law you must report a workplace accident or incident within 72 hours; that is the law. But he paid the wages for a few weeks after the golf accident, but he reduced it to the actual AWA rate, which was $5 less than the schedule rate in the back—if that is clear.

Senator PARRY—No, it is not, but we will read it when we receive the correspondence.

Mr Harris—You will receive the AWA; it will be blindingly obvious.

CHAIR—Thank you very much for bringing this case to us. On any clear interpretation, it is a highly unusual case and one that is not acceptable. As I said to you previously, by highlighting it I am sure you have done the right thing by your member. On that basis, we thank you very much for attending today's hearing. I would be grateful if you would send to the secretariat as soon as possible any additional material you have undertaken to provide.

Resolved (on motion by **Senator Polley**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 4.39 pm