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JOINT STANDING COMMITTEE ON MIGRATION

Reference: Temporary business visas

THURSDAY, 17 MAY 2007

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**JOINT STANDING COMMITTEE ON
MIGRATION**

Thursday, 17 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 Polley and Parry, and Mr Randall

Terms of reference for the inquiry:

To:

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

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Committee met at 9.32 am**COTTRILL, Mr Kevin, Chief Executive Officer, Australian Meat Industry Council****JOHNSTON, Mr Garry, National Director, Human Resources and Legal, Australian Meat Industry Council****McKELL, Mr Ken, Manager, Human Resources, Australian Meat Industry Council**

CHAIR (Mr Randall)—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 welcome the representatives from the Australian Meat Industry Council 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 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. Regarding the supplementary document that has been provided, the committee will consider the material at its next meeting and resolve its formal status. Thank you for providing that further information. Would you like to make a brief opening statement?

Mr Cottrill—We have provided you with a supplementary document today and I would like to briefly address that document. There are seven items in there. The first item is in relation to eligibility for 457 visas. The 457 visas system is based on the eligibility of ASCO levels 1 to 4. The boners and slicers classification in ASCO is incorrect. The basis of this statement is that the AQF certificate III, which is the equivalent skills for butchers, smallgoods makers and slaughter persons, should also apply to the position of boners and slicers. Many of the comments received by the joint standing committee relate to this so-called technical breach where some companies are using 457 visa skilled labour in the role of boners and slicers. Much of the debate about improper use would be removed if this error in ASCO could be remedied.

You may be aware that there are proposed changes to the 457 system, which were distributed in May 2007 for comment. Minister Andrews has distributed a document dated 19 February, and AMIC has replied to that document. Most of the matters of concern to the Commonwealth in the discussions that AMIC has had with DIAC are included in this paper. They were matters that were discussed in the labour agreement negotiations. AMIC has also advised that members should be doing audits of their current 457 employees, as requested by DIAC, because that will also assist in addressing many of the issues that are outstanding.

There has been a lot of discussion about the labour agreement for the meet industry; in particular, the fact that DIAC received a number of allegations in mid-2006. AMIC met with the then minister, Senator Vanstone, in June 2006 to discuss the allegations and, in particular, to discuss the area in ASCO. At the meeting it was requested of the minister that the gazette notice be varied to include certificate III equivalent boners and slicers. The minister advised us at that

time that that was not possible, that we should go into a labour agreement and that the labour agreement should take six to eight weeks to negotiate. AMIC would like to put on the record that if the ASCO boner and slicer classification had been correct, AMIC would not have entered into negotiations for a labour agreement. Those negotiations were extremely protracted; they went on for something like 14 meetings over seven months. Early this year the so-called Queensland labour agreement was finalised. Again, we emphasise that AMIC was not included in the final discussions with the Queensland government on that matter, but we had been involved in all discussions up to that point. The Commonwealth included many items of concern to them in the negotiations while the labour agreement was going on, and a lot of the debate that went on with the department at that time was due to the way in which the Commonwealth wanted to implement the changes. To be honest, we saw that as an extension of what were the then regulations covering the 457 system. The subsequent paper that has been released by the minister for comment has, I think, supported those opinions.

There has also been some quite considerable discussion about labour agreement availability and people signing the labour agreement. We should emphasise that at this time the only place in which a labour agreement is available is Queensland—although I put on the record my understanding that, as of this morning, the minister has announced that the labour agreement is about to be signed in Western Australia, so it could possibly be that two labour agreements will be available. The New South Wales and Victorian governments have advised that they will not be a party to the labour agreement. The South Australian and, at the time I wrote this paper, Western Australian governments are still considering the matter. Members of AMIC in all states other than Queensland do not have access to a labour agreement because the states have not accepted the Queensland labour agreement or a variation thereof. AMIC representatives met with Minister Andrews on 28 February 2007 to progress the labour agreement and, in particular, to address the issues of the states not being prepared to be a party to it. At this time the minister is still considering that position.

There has also been discussion with the committee about regional allowance and regional certifying bodies. There has been some quite adverse comment about, particularly, the rates of pay. We would like to put on the record that, prior to mid-2006, the regional certifying body could approve a wage rate for skilled meatworkers, which was the award or the rate of pay under the industrial instrument. Many of the current 457 visa holders were approved under this current arrangement. The base rate of pay under the federal meat industry award for slaughter persons is approximately \$606 a week, or \$15.95 per hour, or \$31,512 per annum. From mid-2006 the current legislation provides for a minimum salary level of \$41,850, which is \$21.18 an hour, with a regional allowance of 90 per cent of the MSL—that is, \$37,665 or \$19.06. We would like to emphasise that the legal minimum annual wage for any skilled meatworker under the 457 system who is approved after midnight 2006 is \$37,665.

There has been some discussion about AMIC members being unwilling to sign the Queensland labour agreement. We would also like to put on the record that there are several reasons that have been put to us why that is so—in particular that the access to the regional allowance, the 90 per cent of the MSL, is barred in the Queensland agreement. The second issue is that all overseas employees on a 457 visa that you currently employ have to be brought up to the current MSL. So you have to balance off the value of having additional employees on a 457 visa against the current employees that you have. It is also claimed by some companies that they have specific approval from DIAC to employ butchers, boners and slicers, as these roles were

specified in their original description, on their form 1196, of positions undertaken. They therefore claim that they are not acting unlawfully in this matter and see no advantage in signing a labour agreement. In addition to that, there are a number of other issues, which include the additional costs of employment under the labour agreement, the industrial relations implications and the specific English-language requirements.

I would just like to address the English-language requirements at the moment. The labour agreement requires IELTS 4 prior to entry or within nine months of the person coming into Australia. The minister announced in April 2007 that all long-stay 457 visas would be subject to the applicant having a minimum English level of 4.5 before entering Australia. I put on the record that these requirements for English at this level in the meat industry are unreasonable and ill-founded and will limit access to skilled labour from certain countries. The argument that English at this level is required for OH&S is unsustainable, given the industry experience with employees who have limited English skills and the amount of unskilled refugee labour employed in government programs in the meat industry.

CHAIR—Thank you. I appreciate the further submission from the Australian Meat Industry Council. As I said, we will further consider that at our next formal meeting. However, you raise a number of issues and I should really cut straight to the chase and ask: is it your view that the department, in conjunction with the minister, have baulked at providing the labour to your industry, for reasons that we can further discuss?

Mr Cottrill—I think the facts are that, to the best of our knowledge, there has been no 457 labour approved since around March 2006, with the exception perhaps of the emergency labour in Western Australia, under that labour agreement, and perhaps the Queensland labour agreement with the company that signed there.

CHAIR—So there have been no visas granted. Do you think that the exposure—for want of a better word—by the meat workers unions has put the government in a position where they do not want to now address this issue?

Mr Cottrill—Obviously there have been statements and allegations made. Again, to the best of our knowledge, the inquiries that have been carried out have not come up with anything that supports those allegations. From our information, a number of inquiries have been done by government. I think the issue at the moment is that there was a labour agreement being negotiated and Senator Vanstone had a view that the way forward was to have everybody sign that labour agreement when it was put in place and therefore there would be no need for what we have termed the straight 457 visa. That is the reason why I say that there are a number of things that were being put into the labour agreement which—

CHAIR—But, in the absence of the labour agreement—other than in Queensland, where there is one—the 457 visa holders into your industry have dried up because the department and, it appears, both ministers do not want to address the sensitive political issue of 457 visa holders into your industry. Would that be a correct statement?

Mr Cottrill—Your statement, Chair.

CHAIR—I am asking: do you agree with it or not?

Mr Cottrill—All we have been told is that that they are in the process of being looked at. We have not been given reasons why.

CHAIR—If they are in the process and you are saying that it has taken 14 weeks or 14 meetings—how many weeks?

Mr Cottrill—Fourteen meetings, and it is now in excess of 12 months.

CHAIR—So what is the effect on your industry of not having addressed this issue?

Mr Cottrill—Obviously there are a number of companies that for good and valid reasons had put in applications for 457 skilled labour and they have not got that skilled labour because it has not been approved. A number of companies have advised in various forums that their capacity to process has been reduced significantly because of the absence of the skilled labour.

CHAIR—So what happens to these animals? The animals are not being slaughtered, or the same people are working longer hours? What is happening?

Mr Cottrill—In some cases, depending on the capacity of the plant, there would be animals not being slaughtered. In other areas, perhaps, overtime would take over and people would be asked to work extended shifts to handle the throughput.

CHAIR—The other members might have a clearer view than me, but it appears to me, from evidence given, that the allegation is that there are plenty of workers out in regional Australia, but you are just not looking hard enough and you are not taking all measures to address transferring workers from an area where there is excess capacity, and that, given that it is probably cheaper to do that than bring in a 457 visa holder, you are really not seriously addressing the capacity in the Australian workforce. How do you respond to that?

Mr Cottrill—That argument is not sustainable.

Mr Johnston—Mr Chair, can I just add to that. I cannot tell you how many meetings the people at this table have sat in over the last five years with representatives of various government departments, federal and state, to do just that—to try to get local labour from the various organisations that are involved in providing that labour to the plants and the environment in the meat industry. It has been near impossible to raise the amount of skilled labour from that area.

CHAIR—You would be aware of the pilot and now, in the budget, substantial funds—I think it is about \$5,000 per person—to transfer people from areas of Australia where there are high levels of unemployment to areas of need. Has anyone used that opportunity?

Mr Cottrill—I am not aware of that specific opportunity being used, but I am certainly aware of the fact that a number of organisations advertise nationally for staff, not just locally, and there is a general skills shortage in our industry.

CHAIR—When we spoke to Mr Sutton, the general secretary from the CFMEU, about this yesterday, he basically dismissed your claim that you have advertised widely as a strategy not to

look for Australian workers, because you are not working hard enough to do it—you are not seriously trying to seek Australian workers through every form of advertising or recruitment before you look at overseas workers. So on one hand we have unions—Mr Sutton—making this allegation, and on the other hand you are saying that you cannot find them. The evidence from the union in Queensland, when we took evidence there, said there should not be one 457 visa holder because there is no need for them. You might care to respond to that.

Mr Cottrill—My understanding is that the union in Queensland has recognised that there is a skills shortage and in fact encouraged the labour agreement in Queensland. The other issue, though, is that—

CHAIR—Was it the Northern Territory?

Senator POLLEY—They had basic concerns about the necessary amount of 457 visas coming in.

CHAIR—Sorry. So you are saying that the union in Queensland does endorse—

Mr Cottrill—They supported the labour agreement to get skilled labour into Queensland.

CHAIR—The labour agreement, yes.

Mr Cottrill—I think it gets back again to the fact that the industry is short of skilled labour and that companies, as a requirement of going into the 457 system, have to show no disadvantage to Australian labour and demonstrate that there is a shortage. That is a requirement.

CHAIR—Another issue that was raised was that, because it is often seasonal work, you are unable to provide continuous employment to some of the workers and that this affected the ability to attract workers.

Mr Johnston—That is not so. I have been involved in every major industrial case in this industry for the last decade. We put evidence before the commission that the majority of plants, the larger ones, the top half of the industry, are working 48 to 52 weeks a year, and the union has been involved in those cases. That is not a correct statement.

CHAIR—Okay. I was just putting it to you, and you have adamantly refuted that suggestion. There are other things I would be happy to talk to you about—English et cetera—but I think I should give other members of the committee an opportunity while we have time.

Senator POLLEY—Thank you for your submission. This committee has taken evidence that perhaps the reason you are failing to attract people to your industry is the changes that have been made with AWAs and the terms and conditions of people's employment. In my home state, it is well documented that a number of companies have reduced their workforce and brought on contractors and they are therefore having trouble because there is no stability in that industry.

CHAIR—Senator Polley comes from Tasmania.

Mr Johnston—I think I was involved in the first AWA in this industry a long time ago. Mr McKell, who is also at the table, has also been involved in many AWAs. I do not think we can say that across the board there has been a reduction in wages and conditions. There is certainly flexibility in Australian workplace agreements, but I have not been involved in an AWA that has reduced the wages in the industry compared to the federal award. The federal award has been simplified over the past decade. The last time it was simplified was in 2000, by the Australian commission. I do not think it is correct to say that the wages in AWAs or certified agreements have been reduced across the board. There are plants where both AWAs and certified agreements apply one on one, for a number of reasons, and the wages and conditions in the documents are the same.

Senator POLLEY—If there is a shortage—for instance, with the labour agreement that is in place in Queensland—why have the majority of companies failed to sign up to that?

Mr Cottrill—For the reasons which I explained in the paper that we handed up to you this morning. There are issues in relation to additional cost under the labour agreement from the current 457 system—particularly the absence of the regional allowance; the requirement to pay all the 457s at the current MSL as opposed to what they approved prior to mid-2006, which is the award or their industrial instrument; and the industrial relations implications that flow from that.

Senator POLLEY—I was very interested in your comments on the new standard of English that is expected of those coming out on 457 visas. The committee has had evidence in relation to the necessity of ensuring adequate English skills—ensuring that people are able to read, write and communicate efficiently in English—because of health and safety and also, particularly in the interests of your industry, from a hygienic point of view. Do you want to add anything to your opening statement?

Mr Cottrill—The industry is very experienced in handling people with limited English. We have been dealing with this situation for as many years as meatworks have been operating. The companies are quite familiar with training people using their own language, using international language signs and so forth. I come back to the statement which I made in this paper: we do not believe that to suddenly impose a higher level of English, IELTS 4 or IELTS 4.5, is needed for the meat industry to guarantee OH&S and hygiene. It has not been there in the past and yet we are meeting those requirements.

Senator POLLEY—What about the ability of these visa holders to assimilate into our communities? Wouldn't it be easier for them if they were more proficient in our language?

Mr Cottrill—That is not a matter for the meat industry, with respect; that is a matter for Australia.

Senator POLLEY—If you are bringing people out here on these visas to work in your industry, surely the onus is also on you to see that they assimilate and are comfortable in our community.

Mr Cottrill—We also employ a lot of refugee labour, and their English is also quite limited. The issue for us is that we need to take care of our requirements. What the company does in

terms of those employees in the community depends on that particular community. A lot of the companies have active programs to do exactly what you are suggesting. We are very conscious of the fact that these people have to be able to live in the community and therefore there are a number of programs that each of the individual companies are addressing or have addressed in the past. The real issue for us, though, is English in the workplace.

Mr Johnston—This is not new to the industry. All throughout the 1990s, in meat plants there were limited problems in terms of communication using the English language. The companies put in place induction programs at that time. So it is not something that is unusual for the meat industry to adopt.

CHAIR—You have said here that it worked very well with the requirement for IELTS 4 prior to entry or within nine months of entering. Has the experience been that within nine months they can reach that level? Mr Johnston said that there were programs in place. Can you tell us about these programs? Are they sponsored by the abattoir—the employer—or do they outsource the English teaching? Who is monitoring this? Who is measuring that within nine months they have reached that?

Mr Cottrill—I will deal with two issues here. Mr Johnston will deal with where the industry has been in the past. One issue is that the minister has announced a requirement for IELTS 4.5 before entry into Australia for people on a 457 visa. That was a doorstep announcement and I have not seen any formal notification. But that is what has been announced. The labour agreement has a number of clauses in it relating to English. IELTS 4 is required before entry or within nine months after entry. If not, then remedial action is taken until the person finally gets to IELTS 4. The answer to your question is that there is a program. English is being taught. If you are under a labour arrangement, it will be tested and you will have to have remedial action until you get to the point where you reach level 4. Is that a concern to the industry? Yes, it is, because on the information that we have had given to us there are people from a number of countries where the native tongue is not English who will on average have great difficulty in getting to level 4 for written and spoken English. The department has said to us that there may be a variation—and this is not their exact words—in that it could be level 3 written and level 4.5 spoken, with the average being level 4. That still gives us some concern. In terms of where the industry has been and how it has dealt with people with limited English before 457 visas, Mr Johnston will address that.

Mr Johnston—They are people who have been here. Induction programs have taken place in relation to people who come onto the plants, but this is a different issue now to that which was confronted by the industry in the 1990s.

Mr Cottrill—There was extensive teaching during the 1990s of English in the workplace. Programs were being run by companies during the 1990s.

Senator POLLEY—So what is happening now? Can you submit anything to the committee in relation to what training is undertaken to upskill the English language skills of 457 visa holders when they get here?

Mr Cottrill—Many of the individual companies are running English in the workplace programs at the moment. I do not have the information with me, but we can do an inquiry and provide it to you.

Senator POLLEY—Obviously your industry in particular has had a fair bit of media coverage—we will agree to disagree in relation to why you are having trouble attracting people into your industry. In terms of monitoring those people who are out here on 457 visas, we have had a lot of evidence across the board and from ranges of industries that there has been a lack of monitoring in terms of the department getting onto work sites rather than you just submitting forms and a few phone calls. How can that be improved? Secondly, there is obviously a huge gap in the ability of those people out here on visas to have a formal process for raising their concerns about any abuse they are suffering. Are there any mechanisms that you can put forward?

Mr Cottrill—I have heard the allegations that people cannot raise their concerns, but the industry is working very heavily with on-site interpreters. There are opportunities for people to raise issues in their native tongue, and to have the interpreter take those matters forward. In a lot of cases, those interpreters are fellow workers on the site. The fact that the allegations have been made—and in most cases the allegations have not been sustained—indicates that the department has not been monitoring because it cannot say yes or no to a lot of the allegations. Obviously there is a weakness, and the fact that the labour agreement has a whole program built into it about monitoring indicates that the department felt that there was a weakness and that they wanted to build into the labour agreement a raft of monitoring matters. We have agreed to that; we do not have a problem with that.

Senator POLLEY—So you are quite happy; you believe that the complaints mechanism for those out here on the visas is adequate?

Mr Cottrill—In the meat industry. I am talking only about the meat industry. In my discussions with the department, I am aware of a number of allegations that have been made, but each time I have asked, ‘Does this relate to the meat industry or is this 457 generally?’ the indication has not been that it has been the meat industry. I expect that some of the complaints that are out there are in other industries.

Senator PARRY—With respect to the post farmgate meat industry: you have indicated in your written submission to us on 2 February that you represent some 2,500 members. What percentage is that of the post farmgate meat industry?

Mr Cottrill—We represent upwards of 95 per cent of the abattoirs and boning rooms, and we represent about two-thirds of the independent butchers in Australia.

Senator PARRY—So you are certainly well and truly the peak body.

Mr Cottrill—Yes.

Senator PARRY—Can you refute the advertising allegations from various sources that the meat industry, in particular, has not adequately spent money and time trying to recruit, by way of production of written advertising or any other media that you have used?

Mr Cottrill—Individual companies have records of how much money they have spent, and I understand that individual companies have provided information to DIAC specific to the advertising dollars they have spent. I have not seen a lot of that information because it was commercial-in-confidence. Some surveys have been done, but from my own personal experience—in looking at country newspapers, advertisements in employment agencies in country areas and so forth—it is extensive.

Senator PARRY—What would normally happen to recruit meat industry workers? Would it normally be newspaper advertising, or is it word of mouth? What would be the norm, prior to the skill shortage?

Mr Cottrill—The industry is very much built, in regional areas, on the extended family. It is not unusual to find the father, the son and the grandson working in the operation and the wife working in a packing room or something like that. So families tend to follow families into the businesses. But, because of the lack of available labour, there has also been extensive newspaper advertising. Contract labour has even been used in certain areas; we have gone to a contract company to obtain labour.

Senator PARRY—So would your view be that the main reason for the decline in availability of skilled workers for the meat industry is that they have been drawn to other areas, either geographically or to other industries, in particular with the resource boom?

Mr Cottrill—The work that we have done on it indicates that, first of all, the traditional skills, if I can use that expression—the old trades—are suffering badly in Australia, because there are other more attractive roles that people can take in employment. We have suffered by not being able to attract sufficient people, particularly young people, into the industry. And a lot of the people that we have had in the industry either do not want to be trained or cannot be trained. That has been part of our difficulty.

Senator PARRY—Have you examined trends in other parts of the world? Is this a worldwide shortage in the skills that you require, or is it Australia-specific?

Mr Johnston—I cannot answer that, except with one example. The CEO of one of our major members is of Dutch origin. He described the industry back in Europe—in Holland and in associated areas—as being very different from here. The industry back there is regarded, so he tells me, as a very skilled operation in terms of the way it is run compared with here and it cannot be compared—

CHAIR—How do we compare with New Zealand, though? Do they have a shortage?

Mr Cottrill—We understand that a number of people have come from New Zealand to Australia to work in the meat industry, but it is becoming increasingly more difficult to get New Zealanders. Again, anecdotally, they are not available. Whether that is because of Australian conditions or better conditions in New Zealand, I cannot say.

Senator PARRY—So what is suffering? Is our export industry suffering? If we are not slaughtering livestock and producing meat, where is the downturn? What is the net effect of this?

Mr Cottrill—We have not met the US quota for several years. I do not think we have ever met the European quota. But we also need to take into account that in the last couple of years we have been affected fairly significantly by drought conditions, so the number of animals that have been available has also been down. But a number of companies have certainly reported to us that they have not been able to meet their requirements for export.

Senator PARRY—So are we fortunate, if I can use that word, to have a drought coinciding with the skills shortage, because otherwise we would be in more dire circumstances?

Mr Cottrill—It worked the other way in 2006, when the drought was really starting to bite and people were turning off animals at a fairly significant rate. The abattoirs were almost at capacity. That is where the knock-on effect can go to people not purchasing, particularly in sales, and the price, the return, falls. That goes to some of those reports that you would have seen in the newspapers about low prices. Had the industry been able to slaughter at the required rate then perhaps the prices would have been higher.

Senator PARRY—Do you feel as though we are going to move into a supply and demand issue, where the price of meat will go up so you can actually pay higher rates to attract slaughtermen and people you need? Or do you not see that as being a carrot to getting skilled labour?

Mr Cottrill—Again, we need to be aware of what has been, in recent years anyway, a very high Australian dollar, which is actually working against the export meat industry. We are facing, on all available information, a shortage of stock in the latter part of 2007. But that shortage will be uneven, if I can use that expression, over Australia. In certain areas it could be very serious; in other areas it depends on whether it rains. If it rains people will probably withhold stock from the market. If the drought continues, the remaining stock will be pushed onto the market. So it is very difficult to sit here and predict what will happen with prices. From my personal experience—I went to Perth the other day—Western Australia at least has had some rain. South Australia at least has had some rain and in recent times Victoria has had rain. We have seen the effects of that already in Victoria, where stock in the last couple of weeks were shortened up in that state.

Mr Johnston—There are three matters. You have touched on labour agreements. I think you would understand that the labour agreement in Queensland will only be signed, at the present time, by the top three companies up there, and those top three companies are able to sign the labour agreement because it is commercial for them to do so. In other words, their operations are such in terms of size that the costs can be spread across the board. For the majority of the industry, having regard to what the CEO of AMIC has said in these proceedings, it is not possible at this point for them to meet a commercial arrangement by signing that agreement.

Senator PARRY—What percentage of Queensland post farmgate livestock would those top three companies represent?

Mr Johnston—The CEO says 75 per cent. The second point is that in most of the slaughtering industry labouring costs represent at least 60 per cent of the total cost of the operations. The third point is that I have been in meetings over the last couple of years where abattoir owners, representatives and HR people have said that, in terms of advertising,

Queensland people are going to South Australia and New South Wales to advertise, and vice versa, because it is a matter of picking up the staff and the employees whenever they can and that is by radio and by advertising in those local papers.

Senator POLLEY—Evidence has been given to us that there have been concerns about the skill level of those being brought into the country on these 457 visas, particularly in your industry. Do you have a comment on that?

CHAIR—As a supplementary question to that, it is not only to do with skill levels. You bring out people such as meat workers, butchers or whatever and then end up using them in some other lesser skilled area. That contravenes the visa stipulations.

Mr Cottrill—That is the allegation which is being made. A number of people—and the companies agree this is happening—are brought into Australia on 457 visas and they are being used as boners and slicers. This is the technical breach that we originally spoke to Senator Vanstone about. There is no argument that ASCO is wrong. No-one has put an argument forward that says ASCO is right. The issue with it is that these are equivalent AQF certificate III—they are skills commensurate with AQF certificate III. Have these people been properly assessed and do they have the skills? The evidence says that they are because most of these people have been gainfully employed on the slaughter floor as boners and slicers. I understand that something like 2,000 people have been brought into Australia on 457 visas in the meat industry. Some of these people have had difficulty adapting to the type of operation that they have gone into, be it a high-speed operation or a particular skill that was required, and therefore they have required more training—that is true. But in terms of their basic skills, my understanding is that they have been assessed.

Obviously, an extension of the skills testing has been built into the labour agreement and there are certain safeguards that have been built back—the employer has to reassess the person within four weeks of them arriving in the country and guarantee that those people have those skills. Whatever faults may have been there in the past, mechanisms are now being looked at in the meat industry to ensure that they are not there in the future.

Senator PARRY—Can we briefly rank where people fit within the skills sets? We have butcher, smallgoods maker, slaughterperson, boner, slicer—they are the five skills sets, if you like; I might be wrong. Have I broken those down correctly? That is the first question: is that the correct breakdown?

Mr Cottrill—Let us put the smallgoods makers to the side because it is away from the abattoir and boning room operation generally.

Senator PARRY—So butcher, slaughterperson, boner, slicer.

Mr Cottrill—The AQF certificate III applies equally across them. The skill requirement, it would be argued I think by most employers, for boner and slicer would be ahead of slaughterperson. That is probably to do with industry changes where the quality and work that was referred to earlier now requires people to take great care. A lot of the boning rooms are turning out product which is retail ready, so they are moving down the line further towards

butcher. A traditional butcher was a person who could do all skills from slaughter right through to serving the customer.

Senator PARRY—That would be the senior classification.

Mr Cottrill—That is probably the peak person.

Senator PARRY—What have you been bringing into the country; what is the predominant classification?

Mr Cottrill—The predominant one is people who have got slaughter skills and boning and slicing skills. There have been retail and other butchers come in but they are not part of the labour agreement.

CHAIR—We are out of time but I have a quick couple of questions—and quick answer if we could. To your knowledge, what is the cost of bringing out a meatworker on a 457 visa?

Mr Cottrill—Probably in the order of, given the current MSL, \$55,000 to \$60,000 for a year—to bring the person out.

CHAIR—Plus salary.

Mr Cottrill—That cost includes airfares, bringing the person in and settling them in.

CHAIR—To your knowledge, are people coming on these visas seeking a migration outcome?

Mr Cottrill—I am told by the department that the expectation is that a lot will, and the labour agreement certainly anticipates that it is a path to permanent residency.

CHAIR—Do many of them bring their families?

Mr Cottrill—Increasingly. Families as secondary visa holders are coming.

CHAIR—As part of your objection to the labour agreement, you talk about the 10 per cent regional concession. I would have thought that if there is a shortage of skilled workers, particularly as part of an AWA, you might want to pay them more. The allegation from the unions and others is that you cannot attract workers to your industry because you do not pay them enough, particularly when there are competing industries around Australia in construction, mining and hospitality that are paying more. The real reason why you are having trouble attracting workers is that you do not pay them over and above what they could get elsewhere.

Mr Cottrill—The converse of that is that when the mining industry goes down, do we pay them less? I do not agree with that statement; I do not agree that that is the problem either. I think that the issue with us at the moment is that we pay the appropriate rate of pay in the area to attract the people that we need.

CHAIR—Would you then say that if you did pay more you would have fewer problems attracting workers?

Mr Cottrill—The evidence on the work that we have done on attracting and retraining people in the industry does not suggest that it is a matter of simply paying money; it is much more complex.

CHAIR—So it is not just money.

Mr Cottrill—It is much more complex than that.

CHAIR—Finally, and this may be a little confrontational, from the evidence we have received your industry seems to be the one that has greater compliance issues which means that you are not getting the flow of subclass 457 visa holders. It appears that both DEWR, the Department of Employment and Workplace Relations, and DIAC have put their foot on the hose in some respects in terms of supply. This might be because there seem to be more complaints in the areas of compliance and underperformance from employers in the meat industry. As a result these two departments have taken a hard line on you. Do you think the negative feedback in the media is the reason why these departments have run shy of you?

Mr Cottrill—There is no question that we have had more than our fair share of media coverage and accusations made. The real issue with this is that both DEWR and DIAC have the capability to resolve whatever issues there are out there. These people have been approved to come into Australia under the 457 system to take up a particular occupation. If they are not employed according to that then the power lies with DIAC and with DEWR to take appropriate action.

CHAIR—So from your point of view the ball is in their court: they should be taking appropriate action to address the anomalies in the ASCO codes and that would take a lot of the heat out of this issue. There is a second and final part to my question. You alluded to the fact that DIAC does not seem to be doing enough monitoring and on-site liaison with visa holders. Would that be correct?

Mr Cottrill—It is alleged that DIAC have already approved people to come in under job description roles as boners and slicers for some companies, so they are a party to the problem which is being alleged—

CHAIR—But should they be in the workplace more often than they are?

Mr Cottrill—Absolutely. The industry encourages it. We do not have a problem with them coming in and doing the appropriate audits. We would encourage that. I think that at the end of the day a lot of these allegations will either disappear or people will be found to have operated illegally. AMIC does not support people operating illegally.

CHAIR—We have certainly heard loud and clear your concerns about the ASCO classifications.

Senator POLLEY—I have one more question, and I am trying to end on a positive note. Can you outline for us what your industry is doing to alleviate the long-term need to bring in 457 visa holders to attract people into your industry? What sort of training are you doing to attract people to your industry?

Mr Cottrill—The industry has its own body which develops training packages for it: MINTRAC. You would have heard about that in previous submissions. This industry has a record of expenditure, as you alluded to earlier, particularly to do with things like hygiene, export requirements and OH&S issues. So we have an extensive range of training programs which are implemented and which have proven to be very effective over a long period of time. If the industry can get the appropriate people then it will continue to train. It will obviously train people to get them to move through the ranks to become slaughtermen, boners and slicers.

Mr McKell—I have not had much to say so far, but I would like to add something in answer to that particular question. I can say that, particularly in New South Wales, there are a couple of plants that have gone into a program AMIC was directly involved with. That was to do with the expansion of work experience as a stepping stone to get new people into the industry. That was a project run in conjunction with the NSW Department of Training and Education. As a result, I think earlier this year a couple of plants commenced direct negotiations with careers advisers at schools in terms of work experience. Subsequently, down the track, hopefully those people will come into the industry. As I said, it is only just starting but it is a positive development in order to not only highlight the opportunities for young school leavers but also improve the image of the industry.

CHAIR—You might wish to stay and hear another point of view, from the Australian Manufacturing Workers Union. Thank you for attending today's hearing. I will be grateful if you could send the secretariat as soon as possible any additional material that you have undertaken to provide.

[10.25 am]

CONROY, Mr Pat, National Project Officer, Australian Manufacturing Workers Union

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

Mr Conroy—I thank the committee for inviting the AMWU to present its submission. I will make a brief statement initially. Jack Zhang paid \$10,000 to a Chinese employment agency to get work in Australia. He worked at Aprint on an hourly rate of \$12.53 for a 60-hour week. Mr Zhang was forced to pay \$200 a week for lawyer expenses to his employer. Once he had paid \$10,000 to Aprint, he was sacked. Fu Zhihong paid \$27,000 to an Australian company to broker a visa to enter this country. His contract with Lakeside Packaging included illegal non-union clauses. He broke his arm. His manager's son prevented him from going to hospital. Later on he injured his other arm and was sacked. Victor Castor was paid considerably less than his contract that he had signed in the Philippines promised, although it was above the minimum salary level so he was unable to recover any moneys. When he complained and sought other work, he was given three hours to leave the country. These are just three examples of the gross exploitation that occurs under the section 457 system. This system brings no credit to Australia. It is conceived to provide short-run profits to the most unscrupulous of employers—myopic employers who refuse to invest in their workforce, instead choosing short-term fixes that ultimately undermine Australian skills development, reducing equity and fairness and dividing workplaces. In the end, Australia will be poorer, both materially and in terms of our international reputation, for this system.

In the last five years we have seen a massive growth in 457 visas, and it is the AMWU's submission that the current eligibility requirements are insufficient to ensure appropriate skills are held by the 457 workers and that they are not subject to exploitation. For the first time in Australian history there are more 457 workers entering the country than those on skilled permanent visas. Since 1998, 457 growth has considerably outpaced employment growth in the wider economy, and in the last year manufacturing 457 approvals doubled.

The key changes in this system that opened up the floodgates were made in 2001, when market testing, with the exception of regional exemptions, was abolished. The requirements that it be a key activity that the skill was filling, that they had to demonstrate a training benefit to Australian workers and that there was credentialing of overseas qualifications were all removed, and this led to an explosion in 457 applications for all the wrong reasons. We admit that significant parts of the growth are going to fill particular occupational and geographical skill shortages, but significant levels of growth are also going not to compensate for skill shortages but to allow employers to exploit the wage gap between the minimum salary level that they have to pay 457 workers and the market rate that Australian based tradespeople would demand.

The AMWU submits that this system was designed to undermine wages from the inception of the current requirements. In 2001, as a trade off for the removal of market testing, there was the introduction of a minimum annual salary. This was set at \$34,000, which was derived from the ABS survey of average weekly earnings. But the ABS included in its survey unskilled categories that were not eligible for 457 and part-time workers, even though 457 workers have to be paid for full-time work. So the minimum salary level from the start was considerably lower than other wage benchmarks for skilled workers. What is even worse is that this wage has failed to keep up with this minimum salary level. If it had followed the wage indices it was set against in 2001, the minimum salary level as of May 2006 would have been \$43,000, not what it is now.

The AMWU submits that the then immigration minister, Amanda Vanstone, has admitted that the motive of many employers who are utilising 457 workers is to suppress wage claims. But even with a minimum wage that is artificially low, a significant number of employers are not even paying that. According to the department of immigration's official statistics, in 2003-04, 25 per cent of tradespeople on 457 visas were paid less than the minimum salary level.

The AMWU also submits that the increase in the use of 457 workers is undermining skills formation in Australia, thereby reducing the long-term productive potential of the Australian economy. At the same time this feeds a growth that sets worker against worker, potentially divides communities and exposes temporary migrants to distressing levels of exploitation. It is a classic example of the short-termism that plagues some sections of Australian business and the Commonwealth government.

Temporary entry is concerned primarily with satisfying employers' immediate needs. Temporary labour flows will not contribute to skills formation through vocational training. Skills learnt or developed by temporary entrants will be enterprise based and not broadly portable. Temporary entrants will not be available to train and mentor younger junior workers in the medium term or move into the VET sector as teachers. An overreliance on temporary labour flows will exacerbate rather than ameliorate the impact on employers in relation to the quality and appropriateness of the available skills and the longer term skills gap. The dramatic increase in temporary trades labour flows will undermine the recent lift in domestic apprenticeship training by reducing incentives for employers to fund training due to competition from other employers who do not invest in training and by making apprenticeships less attractive to prospective apprentices because of the 457 system lowering average wage rates.

The 457 visas are being used to undercut the wages and conditions of Australian workers and permanent migrants. They are being used to replace locked out workers and they are reducing the bargaining power of employees. As part of this process, these migrants are being heartbreakingly exploited by unscrupulous employers. They are being underpaid, forced to work incredibly long hours, massively overcharged for company accommodation and transport and preyed upon by predatory migration agents. If they attempt to exercise their rights—some as basic as access to medical care after an injury—they are threatened with deportation.

What is required is a strategy to address these questions of emerging skills shortages and to provide the basis for improved productive performance through broad based skills and qualifications. An essential part of this is reform to the temporary skilled visa system. The AMWU has put forward a series of recommendations that will ensure that the 457 system does not undermine training and skills development in Australia or lead to exploitation of these visa

holders. There are 16 recommendations and if they are implemented we are confident that they will result in a system that adequately fulfils the only respectable role temporary skilled migration has—that is, as a last resort to fill short-term skill gaps.

It is only fair that employers must demonstrate that they have attempted to fill the position locally, that they have a good training record and that they have not made Australian workers redundant in the area of the skills shortage or have refused to train redundant workers in the area of the shortage. As companies must have a good training record prior to visa approval, it is necessary to exclude overseas based companies from the program. If they have no Australian presence prior to applying for this visa, how can they demonstrate an adequate training record? The qualifications of 457 visa applicants must be accredited prior to approval and, if necessary, it should be done overseas if they are applying while overseas.

As the only justifiable motive for temporary skilled migration is to plug a skills gap, rather than to undercut wages and conditions of Australian workers, temporary migrants must be paid the market rate for the skilled position in that locality. Anything less is unacceptable. Once a migrant is working in Australia, they must have the same rights and protections that Australian workers have, most especially in the areas of occupational health and safety. They should not have any deductions made for accommodation, transport or health care unless they have been independently advised of their rights and responsibilities, have freely agreed to them, and the rates charged by the employer and related entities are fair. With these improvements in place, the 457 system can actually help the Australian economy, avoid retarding domestic skills formation, not undercut wages and conditions, and afford temporary migrants the rights and protections all workers are entitled to. I thank you for the opportunity to present our submission.

CHAIR—You paint a very bleak picture of the current situation, but I am pleased that you have, on behalf of your union, submitted a number of recommendations as to where you believe things could go forward. We will go through some of those recommendations, but I would like to make a general observation before I move to the other members of the committee. You outlined a few test cases where individuals were being exploited. Can I just say, maybe naively, that it appears that the people who were doing this to their employees on the 457 visa were contravening the conditions of the visa and they were liable themselves for sanctions and other measures, even before the recently announced measures. For example, they would not be allowed to have any more people working for them. And the Office of Workplace Services would have a role in dealing with any company that treated their workers like that.

Mr Conroy—In some cases, yes, they are contravening the visa obligations. We would argue that, first of all, these cases are only drawn to attention when a union is alerted or the media is notified and that the inspectorate powers of DIAC and OWS are inadequate and there are huge gaps between the two roles that people can slip through. But in other cases employers are not breaking the law and they are still able to exploit workers. One example is something that we have seen a lot with Filipino welders. If an employer goes to the Philippines and promises a certain pay rate and then does not pay that, as long as they are paying the minimum salary level there is no opportunity to recover that money. So there are significant flaws in the construction of the system, in relation to the case studies.

CHAIR—We could go further into the role of the migration agent and the signing of the contract before the workers come—which other members may do or I will return to it—but I will

just make another observation. You mentioned somebody who had paid \$10,000 to come here and was getting \$12.50 an hour for a 60-hour week. I understand that after 38 hours at the minimum agreed salary they are entitled to overtime.

Mr Conroy—My understanding of the system is that they are not, that it is considered that the minimum salary level of \$41,000 covers a reasonable amount of overtime and it is in all-in rate. That is my understanding of the system and it is the union's understanding.

CHAIR—I will check this out, but my view is somewhat different to yours. I will check it out to see where we both stand on that.

Senator POLLEY—Thank you for your detailed submission, Mr Conroy. In the case studies that you have presented and outlined this morning and in your submission, have you got any documentation that you can table to the committee to substantiate the allegations of the amount of money that has been paid to come into the country, and anything to do with accommodation or any other deductions?

Mr Conroy—Absolutely. We have collected it on a number of cases, the most notable of which is Dartbridge Welding in Queensland, where 40 Filipino workers were paying incredible amounts of rent for accommodation on the outskirts of Brisbane. I think they were paying the equivalent of \$1,400 a week for a four-bedroom house on the outskirts of Brisbane. We can provide that evidence. I do not have that with me, but I would be happy to table it.

Senator POLLEY—If you could take it on notice, that would be great.

Mr Conroy—In some cases, when we have drawn attention to this and raised it with the authorities, the OWS, to its credit, has achieved significant levels of back pay. That in itself is proof that our accusations are accurate in those cases. But I am happy to provide evidence of those accusations and what we maintain.

Senator POLLEY—Thank you. I noticed you were in the room when our previous witnesses were giving evidence about the meat industry. From your point of view, do you see that there is adequate protection and a proper mechanism for those visa holders who have some complaints to make to come forward to the authorities?

Mr Conroy—Our view is that there are not adequate avenues to raise issues. First of all, the Senate estimates hearings that discussed this issue last year revealed that the department was issuing a pamphlet only in English to migrants about their rights and responsibilities. The recent changes setting in place a reasonable level of English may help that problem, but we would think common sense would dictate that you would have pamphlets pointing out their rights and responsibilities in all languages. That is one issue. But, quite frankly, these employees are threatened with deportation whenever they raise issues. We accept that that is against the law, but it still happens. These migrants—not all of them—are really scared at times. Some of them are treated very well and the system fulfils its duty, which is to fill short-term skills gaps. But a significant proportion of these migrants are threatened and exploited and their access to information about how to rectify their situation is very constrained.

Senator POLLEY—Do you have any comments in relation to the monitoring process that the department undertakes? We have had evidence that there are phone calls and a lot of forms that have to be filled in, but I do not recall too much evidence coming before us that there are a lot of site visits or that there is a lot of actual contact with those who are currently here on those visas.

Mr Conroy—I draw Mr Randall's and the senators' attention to the Senate estimates hearings last year in May when a significant amount of time was devoted to the actual processes in the department. What that revealed was that they rarely visited sites to audit them and that when they did visit those sites they contacted the employer to warn them that they were coming prior to arriving at that site. From our point of view, it seems quite inappropriate to warn an employer that you are coming to audit them for their 457 requirements.

Another issue is about the competency of inspectors to actually assess whether those migrants are being employed in the skilled occupations that they are supposed to be. I am not casting any aspersions on the department officials, but you cannot really expect a lot of these migration bureaucrats to understand whether someone is a boilermaker or a boiler operator. There are quite technical skills differences that require an expert understanding. There are also considerable gaps between what OWS and DIAC see as their obligations. In the Dartbridge Welding case we tried to have meetings with both agencies and we were told by both of them that it was the other group's responsibility to handle certain aspects of enforcement of these rights and responsibilities. So there are significant issues that need to be addressed.

Senator POLLEY—Where someone has been brought into the country on a 457 visa and there is a subsequent breakdown with their sponsor, there is a 28-day period for them to find another sponsor—if they are lucky enough. Do you think that that time frame is adequate?

Mr Conroy—No. Our recommendation in the submission is that it be increased to the international standard, which is three months, as we understand it, and that during those three months they be given access to employment agencies so as to try to secure them a spot. We think that the 28-day period is a problem. We also feel that in some cases they are not even given 28 days. We accept that that is illegal, but in some cases they are not being given 28 days.

Senator POLLEY—In relation to the requirements to advertise and to try to ensure that Australian workers are given the opportunity to fill these vacancies, do you believe there is adequate advertising and searching for Australian workers to go into the industries that you cover?

Mr Conroy—Unfortunately not, Senator. We think the two central recommendations of our 16 are paying market rates of pay for 457 visa holders and testing the skills shortages at the market rate of pay prior to their approval. We think that is currently inadequate.

I will give you an example. In the Pilbara region, an employer could advertise, through a regional exemption, for a boiler operator at \$37,000 a year—when, quite frankly, no Australian in the Pilbara or anywhere else would work for that amount of money. But they are considered to have market tested. That is under the regional exemptions category, where they are required to do market testing. With everyone else—where they are not applying for a regional exemption—there is no market testing required. The department certifies that that occupation is in skill shortage; thereby they bypass the market testing and they can bring in people willy-nilly, when

we argue that there are specific occupational and geographical skill shortages but they are not as widespread as people claim. If people are prepared to pay the market rate of pay, they will get Australians to do those jobs.

Senator POLLEY—Do you see that the dramatic increase in 457 visa holders coming into the country is going to fulfil the requirements that the country has in the long term for skills, whether or not there is more emphasis on training?

Mr Conroy—Definitely not, because they are not here for the long term, they are not being used to train other workers, they are purely here for job requirements. In some cases, Australians are having to train them. In the end, if you have two employers, one who is investing in training and the other who is able to import 457 workers, then the one who is investing in training will be undercut. They will be forced to use other means or go out of business. At the same time, the 457 workers will be driving down the average wage for skilled tradespeople, which will make occupations less attractive for Australian workers. Quite frankly, the current requirements to demonstrate a training record for companies are inadequate. One example that came out last year was Hanssen Construction in WA. They were given approval to import 170 skilled tradespeople on the basis that they had eight apprentices on the books at that time. There was no tracking of whether those eight apprentices would be coming out, whether they completed their apprenticeship or anything else—just that they had eight apprentices on the books and they were able to import 170 457 workers on that basis.

Senator POLLEY—Thank you.

Senator PARRY—On a couple of those issues raised by Senator Polley: we have had evidence before us that the average wage has actually been increased—that the 457 visas have actually stimulated an increase in some areas. You would be aware that the average across the country is in excess of \$70,000, so a blanket statement that the average wage has reduced cannot be substantiated.

Mr Conroy—Our contention is that they are putting pressure on the average Australian wage for tradespeople. We argue that the \$70,000 figure is misleading because it includes people on the ASCO 1 to 3—quite highly paid business executives and managers. We would have no argument about companies using them in the short term. But in terms of tradespeople, DIMA—now DIAC—did a survey which showed that 25 per cent of tradespeople in 2003-04 were being paid less than \$35,000 a year when the minimum salary level was \$37,000 a year. For tradespeople the wage is a lot less than \$70,000. In many cases it is under the minimum salary level, and it is a lot less than what Australians or permanent migrants are getting in those localities. So they are driving down wages.

Senator PARRY—Provided award conditions are met, supply and demand is going to dictate what areas are paying what rates in what particular sectors. I think you mentioned a moment ago in response to Senator Polley that some businesses could go out of business because of the competition with wages. I would put to you that some businesses will go out of business if they cannot get labour, full stop. That is what we have: a critical labour shortage. We have now got unemployment down to 4.3 per cent, and the workplace participation rate is extremely high. This is why we have a skills shortage and this is why 457 visas are increasing. To state what you

stated earlier and not put all the other bits and pieces into perspective, it is a little bit distorting. Do you have any comments about that?

Mr Conroy—We thought: ‘Let’s get to the bottom of this skills shortage issue. Is there a general skills shortage out there?’ We went and commissioned the then Australian Expert Group in Industry Studies, at the University of Western Sydney, and Dr Philip Toner, who is one of Australia’s leading experts in skills formation, to look at whether there is a general skills shortage. Their conclusion was that, on most indicators, there is not. There are geographical skills shortages and specific occupational shortages, but there is not a widespread skills shortage.

Our submission lays out the evidence for that, most notably that the wage pressure is not there to indicate that there is a massive skills shortage out there. There is one in potential but, with the exception of the Western Australian mining industry, it is not the case that we have a skills shortage. We are having apprenticeship completions increasing, but we need to maintain that for at least eight years to get back up there. We maintain that if businesses have an issue with skills shortages then they should be investing in training, which they are not.

Senator PARRY—This is now happening through the Australian technical colleges, which are filling the gap left by the states. There is a skills shortage. Evidence to us is that there is a skills shortage in certain areas. We had evidence from the meat industry just prior to your evidence.

CHAIR—Evidence given to us previously on a number of occasions is that in every ASCO code listed there are skills shortages in all areas of Australia. What you are saying is that the study by—

Mr Conroy—Dr Philip Toner.

CHAIR—Dr Philip Toner refutes that. Is that correct?

Mr Conroy—What we are arguing is that his report raises severe questions about the accuracy of those statements. If you look at the wage price index, the wage price index for tradespeople is roughly tracking the national average. If there were a massive skills shortage, you would expect the pay for tradespeople to be spiking. You would expect to have considerably lower unemployment for tradespeople, which is not the case. In some states, such as WA, the unemployment rate for tradespeople is quite low—we admit that. But in other states, such as New South Wales and Victoria, there are significant pools of unemployed tradespeople. There are significant pools of unemployed tradespeople who are not caught up in the unemployment rate because they have dropped out of the labour force. There are real issues there.

Senator PARRY—Why aren’t they applying for jobs? The job index indicates that the jobs are there.

Mr Conroy—Because in some cases employers are not prepared to pay the market rate of pay to attract them.

Senator PARRY—So you are suggesting that there is a labour force out there sitting at home on unemployment benefits rather than being gainfully employed?

Mr Conroy—No. We would argue that there are some people over the age of 50 who are probably on the disability support pension because there is an in-built bias against mature age workers—there has not been adequate resources devoted to retrain them. There are significant pools of unemployed tradespeople out there—certainly on the east coast—who are not being attracted. Our contention is that significant numbers of employers are not prepared to pay the market rate of pay to attract these people to the Pilbara or to the west coast and are instead happy to use 457 workers.

Senator PARRY—I would suggest that if a worker had a chance of working rather than being on any form of pension or unemployment or disability benefit, they would much rather work. The award rates would have to be met in any event. Whether or not your market rate and the award rate meet, I do not know. That is just supply and demand. That is what I would proffer.

CHAIR—You referred to a DIMA study on salaries for workers. Are you able to tell us the name of that study and how we can access that?

Mr Conroy—It was conducted by Khoo in 2005, and it is available from the departmental website. I am happy to email it to the committee. It was a survey of current 457 workers. It revealed significant concerns for us. They are official departmental statistics, and we are happy to provide them.

CHAIR—Thank you. I take the point in one of your recommendations about minimum salary levels and the market rate. You have referred to Western Australia and confirmed that the market rate there is higher. I suspect that some of the evidence to us suggests that around Australia employers are paying people well above the market rate to keep employees. However, I am aware of some examples in the food industry where the 457 visa holder is on a higher salary than the Australian. Can you have it both ways? Should the salary of the person on the 457 visa come back to the award salary of the Australian worker?

Mr Conroy—No, because we believe that the 457 worker is purely there to fill short-term gaps. Anything that establishes them as a permanent—that is, by lowering our wages and giving a greater incentive for employers to use them—is inappropriate. These should only be used on a short-term basis, until they have trained up Australians to fill those jobs.

CHAIR—Interesting. I must go back to your statement about the 457 visa. I think your words were that it was ‘designed to undermine Australian wages’. That has not been the evidence to this committee at all so far. In fact, as you just said then it is a short-term measure to fill temporary skill shortages, but, if anything, the evidence actually suggests people are gainfully employed because some industries would not have to fold, because some are at threat of closure through lack of workers, and in effect with the strengthening Australian economy people are being paid more.

Mr Conroy—But are the industries surviving because they have these workers because there is a massive skills shortage or because they are not prepared to pay market rates of pay for Australian tradespeople? We maintain that it is the latter and that this gives incentive for Australian employers not to invest in training and skills formation. That is the real issue that is undermining the long-term productive potential of the Australian economy.

CHAIR—We will have to weigh your evidence against the evidence given to us by others, naturally.

Mr Conroy—I understand.

CHAIR—You said Senator Vanstone made a statement to that effect. Can you also provide that to the committee?

Mr Conroy—Yes. It was reported in, I think, the *Age* last year. The reference to the media report is included in our submission, and I am happy to provide the full article as appropriate.

CHAIR—Okay. We found it very interesting talking with you in terms of your point of view. Thank you for attending today's hearing. The secretariat will send you a copy of the transcript for any corrections that need to be made. We would be grateful if you would send the secretariat any additional material that you have undertaken to provide as soon as possible.

[11.06 am]

HANG, Ms Denise, Policy Executive, Australian Financial Markets Association

LYNCH, Dr David, Director of Policy, Australian Financial Markets Association

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 the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The committee has received your submission and authorised it for publication. I now invite you to make a brief opening statement, if you wish, before we proceed to questions.

Dr Lynch—Firstly, I would like to thank the committee for the opportunity to appear before you. What I intend to do is to give you a short introduction to the association and the industry, and my colleague Denise Hang will provide a bit of background on the labour agreements we have in place. I turn firstly to AFMA. AFMA is an industry association that represents participants in the wholesale banking and financial markets. Our members include both foreign-owned and domestic institutions, and, in many instances, the business depends on the efficient mobility of capital and skills across borders. Our markets are highly regulated but very sophisticated in international terms. Our sector is highly internationalised, with domestic banks having significant operations overseas, as well as the foreign banks and securities companies having operations in Australia.

For our member organisations the availability of an efficient system to fulfil short-term employment demands that cannot be met by local markets is important. The local market is accessed for the majority of recruitment needs. This reflects the quality of the workforce available within Australia to our member firms. Australian workers in our industry are highly regarded in global terms and tend—in Sydney—to be in demand overseas, as well as here.

The 457 visa subclass is the predominant means by which members facilitate the short-term entry of overseas based staff. As I mentioned, we have a labour agreement with the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations. This is to assist our members in that respect. We think the maintenance of an effective mechanism to tap into the overseas talent—market—and assist labour mobility is consistent with a range of initiatives that governments have taken to promote Australia as a competitive centre for finance.

Ms Hang—I would like to give a brief outline of AFMA's labour agreement before addressing the inquiry's terms of reference. AFMA has had a labour agreement since 1989 to facilitate the temporary entry of employees on behalf of our members. The current labour agreement allows AFMA to facilitate entry under the 457 subclass, as well as permanent entry and transfer from temporary to permanent. The majority of applications approved through the labour agreement are 457 visas, although an increasing percentage of applications we endorse are a change from temporary to permanent.

The main purpose of the labour agreement is to provide access to skills that can be transferred to Australian employees. As such, applicants under our labour agreement are nominated for relatively senior positions. Staff brought in under the labour agreement must be executives, managers or specialists and have to satisfy minimum qualification and skill requirements. In 2005-06, nearly half of all approved applicants were executives, which fall under ASCO major group 1. The average salary of applicants endorsed by AFMA is also consistently much higher than the finance and insurance industry average, as well as the average salary for all holders of 457 visas.

We have had very positive experiences in managing the labour agreement with the department of immigration. The negotiation of the current labour agreement, as with past experience, was efficient. Processing times for applications usually range from one to two weeks. We note some comments in other submissions to the committee on the inefficiencies in negotiating a labour agreement and also the lengthening of processing times, but, over the period of time through which we have had a labour agreement, we have built up a very good working relationship with caseworkers in the department, so we have not experienced any of these observations made by the other parties.

Moving to the inquiry's terms of reference: in regard to the current eligibility requirements of 457 visas we note that, since our submission to the committee, the minister for immigration has announced the introduction of an explicit English-language requirement for 457 visas. Whilst the majority of applicants processed through the AFMA labour agreement and also individually by our members would meet these requirements, we are mindful of the risk that extra testing requirements will lengthen the application process. We agree with the Migration Institute's submission that, for the purpose of temporary business entry, English-language requirements must be flexible. Any testing requirement should take into consideration the current resource capability of testing organisations.

In terms of eligibility requirements in relation to the categorisation of occupations under the ASCO levels, AFMA is given an opportunity to review the relevance of occupation categories when our labour agreement is negotiated and renegotiated at each three-year period. This consultation process has worked well from our point of view. Also, under the terms of our labour agreement, AFMA is required to submit, on an annual basis, a monitoring report. Our experience is that the current monitoring arrangements are working well. In relation to enforcement, we have not had any experience in this aspect of the 457 visa regime, so we are not in a position to comment on this.

In closing, I would like to make a few comments on the recent policy development in this area. The integrity of the requirements and processes attached to the 457 visa subclass has been the topic of some discussion over the past year. To address these concerns, the Council of Australian Governments has commissioned a review of 457 visas. It has come to our attention that, through this process, some consideration is being given to the introduction of additional administrative requirements on sponsoring employers.

Whilst we agree that the highest accord should be given to the integrity of the temporary business visa regime, new additional requirements to address perceived issues affecting the integrity of the system should not be applied indiscriminately. In our submission, we suggest that if additional requirements were to be placed on employers then placing a cap on these

requirements so that visa holders of a certain salary level are exempt from them will produce a more beneficial outcome for compliant businesses. We also note that in other submissions to the committee it has been suggested that differentiation between higher and lower ASCO codes should be made in regard to implementing a different set of criteria and requirements. These are all possible options to avoid a blanket application of these new requirements being considered. Finally, I would like to note that the recent changes announced by the minister for immigration, particularly in regard to the introduction of civil penalties for breaches of immigration law, will also provide an additional check in the system.

CHAIR—I will go straight to some of your evidence, Ms Hang. Essentially, what you are saying is what we received in evidence yesterday—that is, certain professions, such as in your case, that have a good track record and a history of smooth running, for want of a better term, could be exempt and fast-tracked. I think the minister has also alluded to that in his recent statement. The evidence yesterday suggested that maybe we should be in some effect subcontracting out this function, maybe to selected migration agents, so that they can get on with the business of expediting these sorts of visas because they are seen to operate smoothly and have little trouble. Is that something that you are supporting? Your evidence suggested that, but I am going a bit further by saying that the department could have short-term measures and the ones you have been talking about and then, for the rest of the process, expedite it by giving it to another authority outside of the bureaucracy of the department.

Dr Lynch—I guess our starting point, as you mentioned, is that the system as it works at present is quite efficient and therefore the applications tend to be handled within a fairly short period of time.

CHAIR—What is your experience about the turnaround then? Maybe we should get your experience.

Dr Lynch—One to two weeks.

CHAIR—Excellent. Why do you think that is when we have evidence from people who talk about six to eight months?

Dr Lynch—In part it may be that our labour agreement has been in place for a number of years and therefore the processes are well understood by our members, so you have fewer instances where forms are completed incorrectly or the relevant materials that are required are not available. In other words, the administrative glitches that you might see in other cases perhaps do not occur there. On staff we have a migration agent who assists the process. A number of years ago there were changes to the requirements in terms of the management of these forms. At that time we had a member of staff take the necessary training to become an agent. They are in a position to ensure that the requirements are met in quite an efficient way. There may be scope for efficiencies within the system more generally and perhaps it might be the case that you could rely to a greater extent on verification by a migration agent who is recognised within the context of an agreement. But we suspect that it is going to be difficult to improve markedly on our experience at present.

CHAIR—Yours is an outstanding experience. You put that down largely to the labour agreement that you have in place?

Dr Lynch—To that and also the experience of people in using it. I am speculating a little bit here, but I suspect that the seniority of the executives coming into Australia means that they tend to be very highly paid and also there is a good support network around the applications—in other words, the institutions and a number of firms that we deal with have human resources departments which are experienced in this area. A feature of the industry is that it is global. Indeed, as much as our members bring in staff from overseas, they send two to three times as many Australians abroad. So they work, if you like, both sides of the equation. One of the outcomes of the process, by the way, is that it gives a little bit of balance in terms of that information and that skilled exchange between different parts of an organisation.

Senator PARRY—You are a net exporter in that regard?

Dr Lynch—Yes. That is why the initiative in terms of developing Australia as a financial centre from our point of view is significant because we have a good quality workforce. Because the markets here are quite sophisticated in global terms—and there is a variety of reasons for that, not least because of the experience in dealing with commodities and the risks associated with that—it does mean that by building on the education process, which is very good, our members can tap into that resource pool and also send that experience overseas in particular cases to help develop their business operations in those other jurisdictions.

CHAIR—You said you have an in-house migration agent. Do you ever use the good services of the Industry Outreach Officer from the immigration department?

Ms Hang—Not to my knowledge. Our liaison with the department, I have been told, really is restricted to the caseworkers that have been assigned to us.

CHAIR—I have some further questions, but I will go to Senator Polley and come back to you later.

Senator POLLEY—Thank you very much for your submission. Obviously, for your industry, the 457 visa program is working very well, and the labour agreement. I think that is excellent. Do you want to add anything more as to why you think this labour agreement has been working so effectively for you?

Dr Lynch—It is in terms of the administration within the industry and the exchange of skills which occurs. In terms of the latter, as I mentioned, the financial markets are quite open and internationalised. If you look at the range of foreign entities operating in Australia—foreign banks, securities companies—they are very well represented. They often have both global and regional operations, so you will find that in some instances one part of a transaction may be executed in Australia but another part of the process associated with the transaction may be managed elsewhere. It is just part of a hubbing process. In that context you do have a significant exchange of people within the same organisation for training and other purposes and for developing new market niches. So it is significant.

Part of the competitive edge for an institution in the financial markets area is to be innovative, and that plays two ways. With banks in Australia, consequent to the nature of the markets here—for example, being leaders in infrastructure development, private financing of infrastructure and the like—you will see demand on that expertise from abroad. You will also see, however,

products which are developed in Europe and the US and elsewhere which entities will seek to apply in the Australian context. In other words, you may have solutions which are better for industry or better for consumers who invest in product lines, and you can then bring the expertise into play from your organisation, through this visa process, to develop that market. Usually what happens is that the people who bring the expertise imbue the organisation with that expertise and then return home after a period, after the business structure has been established. That is quite important. I referred earlier to the mobility of capital. The mobility of human capital in some respects is facilitated by this process—so, from the industry perspective—and that is quite important.

In the early days, one of the reasons, from an administrative point of view, the labour agreement might have been quite useful was that, consequent to the Campbell inquiry and the opening of the financial sector and the banking sector, particularly to foreign entrants—with the expectation that competition would flow from that—there was a need to at that point resource fairly quickly new operations here. While you can cover most parts of your operation by staff sourced locally, there are issues in terms of just the internal management of your organisation and governance of your organisation initially that you would need some foreign input into. So I think early in the piece that was a factor and that then, through that process, you established an understanding of the systems and the processes and the benefits that people understood. So, when it comes to issues about responding to monitoring surveys and the like, members of firms will see the benefits at the far end of the process and therefore are more inclined to handle those things as efficiently as is reasonably possible. In other words, the benefits, I think, are more apparent to people and consequently that tends to assist the compliance process.

Senator POLLEY—There is obviously a shortage of appropriately skilled people working in your industry. Where do you see your industry going over the next decade? Are you attracting enough people into the industry so that we can start reducing the number of people coming in on 457 visas or do you see this as ongoing because of the shortage of people globally?

Dr Lynch—It will be an ongoing issue, partly because the nature of the industry is that you will have an exchange between different jurisdictions. One policy objective that we have as an organisation is to develop Australia as a financial centre, and rather than having Australians working in Singapore and Hong Kong on deals, you have them doing that from Sydney or Melbourne or Adelaide or wherever. In other words, developing the markets and our capability to retain business and bring new business here is important from our perspective. You do that notwithstanding the fact that at times there may be tightness within the market. In essence, when you look to the longer term, the proposals regarding higher education and so forth become significant in that regard. One of the consistent reports back that we receive from members is the quality of the workforce here and the capability of them in respect of their education and their consequent training. There is a process to keep the flowthrough to the industry. Frankly, I am not sufficiently expert in terms of projecting forward labour market conditions to say whether that will get worse or better, but there are certainly issues within the industry about paying more to attract people to the industry.

Senator PARRY—You really do not have a skills shortage. It seems to be an exchange of skill sets, if you like, within the banking sector in particular. Is that a correct statement? Are you really short of skills?

Dr Lynch—The people who move within the context of the labour agreement can be from quite specialised areas and quite specialised markets. If you have a market developing here involving a product which has not previously been presented to Australian clients then you may need to bring in somebody from overseas to help develop that. There is tension within the labour market which comes from the unemployment rate in terms of attracting people to an industry, so there is competition between industries. The finance sector obviously has to deal with that in the same way as other industries, so there is tightness there. You might find that within a macroeconomic sense the industry can fulfil its need but at a slightly higher cost, which creates tensions elsewhere.

Senator PARRY—I probably will use the incorrect terminology, but basically we are sending out two or three times more bankers than are coming in; however, you are saying that there are subsets of skills within those senior executives that are deployed both ways.

Dr Lynch—There are a couple of aspects to this because it is a reasonably complex issue. Of 457 visa holders that come to Australia temporarily, quite a number become long-term residents and become citizens.

Senator PARRY—Do we know what percentage?

Dr Lynch—I am hesitating because I know the numbers for recent years and they are a significant portion.

Senator PARRY—Would more than 50 per cent become permanent residents?

Dr Lynch—I would not put the number as high as that. I cannot give a definitive number because, although I can see the number that transferred to permanent residency this year, I do not know at what point of entry they came. I would need to adjust the numbers in some respect to do that. Also, the labour agreement we have covers a subset of our members who want to avail themselves of it, so we do not see the full picture for the industry as a whole. What we are reporting back in that sense is that, of the members who utilise our labour agreement, that is the experience that they report back. But anecdotally, certainly I can confirm that there is a high-level exchange of Australians moving overseas. It is as a consequence too of the way that Australian financial institutions are developing their overseas operations and trying to leverage opportunities to secure commercial benefits from what they have developed locally that you will see that movement offshore.

Senator PARRY—On page 2 of your submission there is the example of the AFMA member bank that had a 457 visa holder come into Australia who grew the business from 160 to 350 employees. That is just fantastic. Is that a typical example or is that just a highlighted outstanding example?

Dr Lynch—I suspect that is a very good example. It just serves to illustrate the drivers behind the program as we see it.

CHAIR—Your submission has been quite comprehensive. I want to address your comments on the levels of English. You seem to suggest that only functional levels of English are needed, rather than a prescribed level. Am I interpreting you correctly? There is now a prescribed level of

IELTS 4.5. Would the people that you bring out on these visas have that level? If not, does it matter?

Ms Hang—There was a reference to functional English in our submission. That would be almost a unique case in our industry. As I alluded to in my opening statement, most of the people whom our members bring in on 457 visas would meet the new requirement of 4.5 on the IELTS test.

CHAIR—So all your people, largely, would satisfy the 4.5 requirement.

Ms Hang—They would, but there might be circumstances, for instance, where a bank might bring in an offshore liaison officer or another position of that type where the person's main function would be to liaise with head office, and that head office might be in a non-English-speaking country. In those circumstances, the sponsored employee might not have as high an English standard as our usual applicant.

CHAIR—As I said, this is a very good submission. You have a specific industry classification which you represent, and your evidence has been vital. I thank you for attending today's hearing. The secretariat will send you a copy of the transcript for any corrections that need to be made. We would be grateful if you could also send the secretariat any additional material that you have undertaken to provide as soon as possible.

[11.33 am]

BROCK, Ms Jane, Executive Director, Immigrant Women's Speakout Association

MURPHY, Mr Peter, Secretary, Philippines Australia Union Link

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the 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 Brock—On behalf of the Immigrant Women's Speakout Association, the Philippine-Australia Women's Association and other organisations whom we continue to work with on the issue of 457 visas, we firmly believe that it is now becoming evident that we could link the changes to the 457 visa to industrial relations law. The former department of immigration minister, Amanda Vanstone, confirmed aspects of these changes when she said the 457 visa scheme 'stopped unions from pushing excessive wage demands'. So in that light we raise our concerns about the way that the changes were made, and this has been outlined in our submission as well as in the recommendations by our organisations based on the consultations we held with those who hold the visa.

From one case in which we helped as the Immigrant Women's Speakout Association, one thing became evident. Someone married to a 457 visa holder alleged that her husband brought her here and put her in a hotel, and one day he brought men and asked her to have sex with them. So then we thought there might be other cases that had not come to our attention and that a 457 visa in this case led to sex trafficking, if we could call it such. There is also the potential for human trafficking and having women suffer as sex slaves. It is very fortunate that this woman was able to get help from the hotel administration, and the administrator called us. That is how she got out of that relationship. The case of the nurses, whom we mentioned in our submission, is clearly a manifestation of human trafficking and slavery.

Mr Murphy—On behalf of Philippines Australia Union Links, I would like to emphasise that we have had very strong representations from unions in Australia seeking assistance from Tagalog speakers in dealing with very extreme cases of victimisation of workers under 457 visas. These requests have related to issues in Canberra, Brisbane and Perth. For more than a year we have been trying to focus some efforts on issues surrounding 457 visas. The unions in the Philippines are very anxious that people in Australia understand the very harsh conditions which motivate people to risk such a thing as the 457 visa process. They have been providing some assistance to unions in Australia to talk to Filipino workers who appear to be in trouble and distress in various cities. This is quite a big effort and use of resources by both the Australian and the Filipino unions to provide skilled people to deal with these cases. Our experience is that people on 457 visas who have come to our attention are quite frightened. They are very reluctant to talk to an Australian and they do better talking to one of their own people in establishing some sort of trust and then working it out from there.

Apart from that, our view is in our submission, but I would like to emphasise that I believe the massive expansion of 457 visa use is a sort of covert change in the immigration policy of this country. If this went on for five to 10 years we would have maybe half a million people here without equal access to citizenship or permanent residency status, which is a feature of our society. We strongly object to this visa category being used in this way; it should be what it was originally intended for: short-term visits by professionals.

CHAIR—Thank you very much. I have a few issues before I go to my colleagues. I want to go back to the case you mentioned, Ms Brock, without going into too much of the detail—maybe I was not concentrating as much as I should have. The lady you mentioned who came out here, did she come on a 457 visa and then she was locked away in a hotel room as a sex slave? What skill was she meant to have to come here?

Ms Brock—Her husband has a 457 visa.

CHAIR—So she came out with him.

Ms Brock—She came as an accompanying spouse.

CHAIR—But who forced her towards prostitution—her husband?

Ms Brock—Her own husband.

CHAIR—That does not have much to do with a visa, though, does it?

Ms Brock—Obviously her husband has a network of people.

CHAIR—Maybe her husband should be the one who has his visa cancelled and is returned, because he is the one who is contravening the terms and conditions by breaking the law. There is a character test involved with these visas.

Ms Brock—This is the reason why we really have to look at the monitoring of these visas. It is very clear in our submission that the monitoring is lacking in a lot of the important areas. That needs to be done.

CHAIR—Correct.

Ms Brock—But of course that is additional information that I have provided to you. What we have focused on is the case of the nurses whom we have consulted.

CHAIR—I will go to the nurses in a moment. I just want to make a general statement, though, which is correct. If somebody like the lady whose case you raised is involved in illegal practices, it is not necessarily a problem with visa ramifications; it is more of a problem of law. As a result, there are flow-on implications for the visa. You should use every opportunity within the Australian legal system to address that, and people will be severely dealt with. For example, the husband's sponsor would be forced to pay for him to be returned to the Philippines in this case, I suspect. I leave that with you so that you can relay that to your association.

Ms Brock—Yes, of course.

CHAIR—I want to briefly address your final statement, Mr Murphy, about 457s taking Australia in the wrong direction in relation to citizenship. These visas do lead to citizenship if, after a certain period of time, all the conditions of the visa have been satisfied. If there is an ongoing need and a working relationship, they can be converted to PR and then a citizenship outcome can be sought. I understand from the evidence given to this committee so far that many people are availing themselves of that.

Mr Murphy—I accept that there is provision for that to happen but it is certainly not a majority, from what I have heard, who are getting that. Maybe it is a little early, since it is two years before one can even ask for an extension and then two years more before the permanent residency might apply, as I understand it. So there is enormous scope for terminating contracts and people being returned to their country.

CHAIR—We were given evidence yesterday, for example—and I think it was more to do with the RCOs from Fiji—that people were willing to take up positions that were less than ideal because they saw it as a citizenship outcome in the end.

Mr Murphy—Yes. That may be their motivation, and they are being enticed, I think. But the current visa has fewer guarantees for them than the normal migration program does, and there is no certainty. We are seeing people take enormous risks and take on enormous debt to come here, with very little guarantee that it will pay off for them.

CHAIR—You see, there is not just the 457 visa program which provides an opportunity for skilled people to come to Australia. They can come in the normal stream, being sponsored by organisations or state governments or through regional sponsorship. This is just another way. I would suggest that if people had the necessary skills they could choose that route as well. The 457 is not the only opportunity for people who you are representing to come to Australia. I make that point because the figure given recently was that Australia's migration intake this year would be something like 160,000. So there is a fair bit of scope, and this is only one program.

Senator POLLEY—Could you elaborate a little further on the issues relating to nurses and RCOs and the unavailability of some of those coming out on 457 visas to undertake the further training necessary, because of the cost imposition, to be qualified here as nurses.

Ms Brock—First of all, there are the conditions under which the nurses have to work. They are given a contract which says they will be given 38 hours of work per week, so the expectation of those nurses is that they will work 38 hours per week. But in reality what happens is that they are on call 24 hours a day and they practically have to be in their uniforms 24 hours a day waiting to be called. That happened in two cases in January when two of the nurses were called an hour before their roster was due to commence even though they had to travel for two hours in order to reach the aged-care facility where they were employed. They were given only one hour's notice when they had to travel back and forth for four hours and they were paid \$15 an hour. They had to pay for their own cab fares.

CHAIR—Can you give us some evidence of that in terms of either a statement or a declaration from one of those people?

Ms Brock—Yes. Unfortunately, the person who should have come here with us—that is, one of the nurses—applied to another employer who has happily employed her and she had to undergo her medical examination this morning. She did not want to miss that because immigration has clearly said to her to get all her health check paperwork done. But, yes, we are happy to provide the case study that we have done. The Department of Immigration and Citizenship interviewed them last January with regard to this case. They took their pay slips and they also interviewed three of the nurses. There were 11 nurses who were in that situation.

CHAIR—Thank you. That will then marry up with what we may well ask the department about.

Senator POLLEY—We have had varying evidence given to us in relation to the department's process of monitoring. Some concern has been expressed to the committee by other industries that they believe monitoring is really unnecessary. Could you outline your views in relation to monitoring, or the lack of monitoring, and particularly the emphasis that needs to be placed on having regular contact with those who are out here on visas?

Ms Brock—We have clearly stated on page 5 of our submission our views on the effectiveness of the monitoring arrangements. We said that there are a lot of loopholes and opportunities for employers to delay monitoring processes and that they provide weak protections for a worker facing exploitation, unlawful treatment and victimization, and only have provision for cancellation of the business sponsor status. The monitoring procedures fail their own description, actually. One of the key principles underpinning the 457 program is to provide business with a streamlined arrangement to enable the quick transfer of key personnel. However, this must be backed by robust monitoring measures to ensure the integrity of the program.

The measures should be aimed at ensuring business sponsors comply with sponsorship obligations but in reality—and based on the case of these nurses—there is no robust type of monitoring. When monitoring begins six to 12 months after a business sponsor has been approved usually the business fails to return the form 1110 within the 28 days allowed to them. So that is why within that time they could easily be exploited further. There is no quick way to require the businesses who have sponsored them to give a report.

There is also the self-reporting of the business based on form 1110. If you look at this very closely there are a lot of weaknesses on the form. I guess what we really have to do is to have a team at the Department of Immigration and Citizenship. We have spoken to the department's staff—the relevant officers—about this and we have shown them concrete examples of how the employers are not able to do their reporting properly.

There is actually a very tricky part in all of this—transfer of responsibilities from one so-called sponsor to the other. In the case of these nurses, when they were recruited in Manila, they dealt with a local recruitment agency. When they arrived here there was another recruitment agency who had actually taken over. So that is the second recruitment agency. The promise to the nurses was that this recruitment based in Australia would be the one to allocate them work or rosters but there was no job. When they arrived here, for a month there was no job. The recruitment agency here in Australia sent them to undertake certificate III courses in aged care.

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

CHAIR—I announce that, as Senator Parry has now had to leave, the remainder of the hearing will be conducted by a subcommittee, as duly authorised by the committee on 28 February 2007. Before I proceed: the public hearing is resumed, and I would like to point out that the committee have expunged from the public record the name of the company mentioned just before we went in camera. Those present are reminded that release of the name would breach parliamentary privilege, and it should not be repeated in the public arena. Thank you. Now, we have other questions of Ms Brock, and we are getting close to time. Senator Polley?

Senator POLLEY—In relation to the mechanisms to make complaints that are currently available for people who have suffered some penalty and discrimination since coming in on the 457 visa, do you have any suggestions on what can happen and how we can address that? As far as monitoring is concerned, one of the issues that has been raised is that the department always preannounces its intention to visit a site. So, in terms of what you have said to us in camera and previously, there have obviously been people who have been disadvantaged if they have made complaints. Do you have any evidence that you can bring forward on the complaints of that nature?

Ms Brock—The experience of these nurses is a concrete example of how slowly complaints can be dealt with, and also that they do not have enough recourse to legal advice. We need to seek help from the Inner City Legal Centre in order for them to get legal advice. It is very rare that they are able to access that information because of the nature of their visa and their situation. So it is very important that, before they leave their country of origin, they be given enough information about the availability of legal services if there are things in their contract that are not clear for them, especially if they are moving from one employer to another, just like what happened in this case, when they moved from that employer to the new one. Also, I believe that they should be given all the information that is correct. What I mean here is that many times the recruitment agencies say that they are not allowed to be members of the union. The way they do that is they talk to their families in the Philippines, which is very strange—

CHAIR—Who talks to their family in the Philippines?

Ms Brock—The recruitment agency. Three agencies dealt with them; two based here and one in the Philippines. Even the one here, the second supposed-to-be employer, has been sending text messages to their families in the Philippines and urging them to text their wife here to say, ‘Do not become a member of the union because your visa will be cancelled.’ So I guess there is a lot of misinformation as well on the part of the employers. I believe that complete and correct information should be given to all 457 visa holders before they leave their country of origin, such as information on membership of the union, because that is one of the things that is very strong for them. They realise that membership of the union is very important.

Senator POLLEY—On page 8 of your submission you detail where there has been retaliation for complaints that have been made against some employers, such as denial of shifts. Obviously that would affect their salary payments. Can you provide us with any evidence of this, such as affidavits?

Ms Brock—What paragraph is that, sorry? Denial of shifts and salary payments.

Senator POLLEY—Yes, and threats in terms of their sponsorship and being deported.

Ms Brock—As I said already, when they were not given the shifts that they were supposed to have on their contract, first they were told, ‘There is not enough employment at this time because it is a holiday.’ The nurses could not understand: ‘Why? What is the relationship to that?’ In December there were not many shifts provided to them and when they complained about this those who complained were actually only given one-hour shifts. Of course there was nothing clear in terms of the employer telling them, ‘If you complain then you will not get enough shifts like the others,’ but they observed that those who just kept quiet, were nice and just accepted any kind of treatment from the employer were given a lot of shifts. One was given a one-hour shift in one week while somebody else had 40 hours of shifts—and these persons are the good people in terms of not complaining and just going wherever they are sent, even though it is in the middle of the night.

Senator POLLEY—Do you have any comment in relation to the changes that the federal government made to the English proficiency skills for those coming out on 457 visas?

Ms Brock—I have seen the actual preparation of the nurses because we also provide them a space where they can review their knowledge of English and we ask volunteers to help them go through their practise essays. Of course we see there is a rigorous demand from them. We say to them, ‘It is very important in your profession to have that, because you have to make a report and you have a duty of care. You have to correctly state what you have done or what you have given to a client. That is the reason for that.’ These nurses accept that and they know their duty of care. If they put something on their report that is not correct then the person who is on the next shift will be at a loss. She will be given an inaccurate report. So we see it as very necessary for nurses that there should be rigorous training for them to make reports and to do essays.

CHAIR—I think Senator Polley’s question was: how would the people you are representing measure up to the new English language requirements, which is 4½ on the IELTS test levels?

Ms Brock—Most of those who have taken the test have passed it—except for one.

CHAIR—That answers the question; that is fine. There is a lot more we could talk to you about. I urge you strongly to use all the offices of the Commonwealth and state departments available to you—the Office of Workplace Services, the Department of Immigration and Citizenship and, might I suggest, your federal members of parliament—if you have concerns about some of the issues you have raised, particularly those you raised in camera. Would you agree with me that this visa program would be seen as an ideal program for the residential care officers that have come out wishing to be nurses and train as registered nurses to pursue—if some of the areas of concern that you have raised are addressed—so that they would get not only a career outcome, but a migration outcome heading towards Australian citizenship?

Ms Brock—The 457 visa itself, based on what I said already, is connected to Work Choices; that is the understanding of a lot of Filipinos in our community. That is not a fair type of arrangement. So there are a lot of things that need to be discussed and there should be community consultation about this.

CHAIR—As chair I am not here to argue with you, but can I just make it clear to you that the requirements for the 457 visa have been in place for years, well before the Work Choices legislation came into the parliament—

Ms Brock—Sorry; I am referring to the most recent changes.

CHAIR—and, as a result, I would concentrate on what is available under the terms of the visa—that is, a minimum level of salary and the conditions that go with them. If they are satisfied, I hope that your people, like many other people that are on this program, will be as well. But thank you very much for your evidence and also yours, Mr Murphy. Thanks 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, as soon as possible, that you have undertaken to provide. Thank you.

Ms Brock—Thank you.

[12.22 pm]

DAVIDSON, Ms Kate, National Manager, Research and Sustainability, Tourism and Transport Forum Australia Ltd

OLSEN, Mr Peter, General Manager, Human Resources, Leighton Contractors Ltd, appearing as a member representative of Tourism and Transport Forum Australia Ltd and Infrastructure Partnerships Australia

GELDART, Mr Graeme, Director, Policy and Administration, Infrastructure Partnerships Australia

CHAIR—I would like to welcome representatives of Tourism and Transport Forum Australia and Infrastructure Partnerships Australia to this public hearing. I note, Mr Olsen, you are from Leighton; we have a lot of Leighton work in Western Australia at the moment. Although the committee does not require you to give evidence under oath, I should advise you the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the parliament 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 Geldart—Thank you, Chair. I would like to thank the committee, or the subcommittee, for providing us with this opportunity to give evidence on this issue that is vitally important to our membership. I might first of all put our organisational and membership structure in the context of why this is so important to us.

TTF Australia is a national member funded organisation representing the top 200 owners, operators and investors in tourism, transport, infrastructure and education. Its membership comprises the most significant players in those particular areas, including all of our major domestic and international airlines, our major airports, our major hotels, event venues, investment banks and of course the service providers in all of those sectors.

Infrastructure Partnerships Australia is the peak industry body particularly focused on the delivery of infrastructure at a national level and on developing the relationships between government, the private sector and the community to promote the best practice for infrastructure delivery and service provision of that infrastructure. In its membership, it therefore has all of the major banks, major investment banks and the large constructor organisations, operators and service providers. We have here today with us Peter Olsen from Leighton Contractors, who represents one of our senior members across both TTF and IPA. Peter can bring to our evidence the practical side of how these visa issues affect our membership. Peter has managed people in 16 different countries across four different continents. He has dealt with 457 visa issues since its inception, so we value his input on our behalf here.

In that context, our members are huge employers throughout the country. They are facing workforce shortages that are becoming a growing challenge for them. The efficient operation of

their businesses is essential not just for them but also for Australia's economy. If we cannot provide our members with the employees that they need, they cannot deliver the services and the infrastructure and hence the support for our economic development that is required. That is all I would like to say by way of a brief introduction. I will ask Kate Davidson specifically to highlight some of the issues that we would like to particularly bring to your attention today.

Ms Davidson—I would like to re-emphasise that, particularly on the tourism side of our business, Australia competes in a global marketplace for tourism as a destination. As far as infrastructure is concerned, we have issues on how we are going to deliver new construction projects. A number of our members are simply struggling to maintain effective operations in their existing businesses. In regard specifically to the 457 visa scheme, we recognise that it was reviewed in 1994-95 but we also recognise that the world has changed significantly in the past 12 years. The way employers seek workers has changed dramatically in the past decade. This has led to the rules as set up under the 457 visa scheme becoming increasingly restrictive and frustrating for the employers to utilise as they seek to fill job vacancies as quickly as possible.

The Australian government should also recognise that it is not just our country that is now looking for appropriately skilled labour. For example, five to 10 years ago in some of our key source markets for labour, people were pleased to be offered a job and to come to this country for a short time. Now, these same potential international markets of labour are negotiating deals with our employers, and they can choose from an array of countries.

The government also should not underestimate the integrity of the Australian private sector. Most employers want to do the right thing. It should be possible for the government to set the rules, ensure an opportunity for organisations to comply and, when they do, allow them to have preferred arrangements which enable them to solve their labour shortages in a positive and timely way. Currently, there are some procedures and processes that are frustrating TTF and IPA members. These include the preselection process to prove the need to seek labour from overseas to fill a job gap that does not correlate to the reality of the workplace. In addition, the processing time for applicants is too restrictive and limiting. Also, the strictness applied by only allowing employers to seek labour on the 457 visa scheme through the DEWR occupations list is debilitating for employers, who know there is also insufficient semiskilled labour available in Australia. TTF and IPA acknowledge that it is possible through labour agreements to recruit groups of semiskilled workers; however, this is proving to be impractical and the agreements are taking too long to instigate. Essentially, the 457 scheme is not sufficiently holistic in its approach to labour requirements in the 21st century for our tourism, transport and infrastructure industries.

In conclusion I reiterate one of our key statements from our submission: we believe it is time for a material change to the short-term business visa class. We welcome your questions and we hope that by having one of our members present from both TTF and IPA we will be able to give you real case study examples should you require them.

CHAIR—Thank you. It is a pity you were not here for the Australian Manufacturing Workers Union's evidence because it is almost contrary to what you are saying. So I ask you to read that when it goes online. You may wish to make a supplementary submission to us because this debate has become increasingly polarised over the last few days. One of the criticisms that the unions and others have made is that when people like you and the people that you represent make statements about the inability to find workers in regions it is because you are not paying

sufficient rates and that if you paid more you would be able to attract greater numbers of Australian workers into your areas of need. How do you respond to that? Mr Olsen, you have some body language that indicates you might want to respond.

Mr Olsen—I was just going to sit and see where this went. The simple answer to that is to go and have a look at the statistics. You will see that Western Australia has probably had a salary explosion of about 16.5 per cent for the same incumbent in the same position over the last three years; Queensland is in double digits. What you are actually seeing is a churn. If anyone says that you can pay more money and get more people, a quick look at a regime would show that people churn through—they are in the same organisations and they move from one company to another to another. All we are actually seeing is a spiralling of labour rates, and that does not necessarily help because me solving my problem today is causing someone else the same problem in their business. If I look across the industry that I have worked in for the last 25 years—and I still have people in each of those industries—everyone is talking the same story. I am a little bewildered by what is being said in that regard.

CHAIR—In conjunction with that, one of the things that has been raised quite often is that there should be market rates of pay or market testing so that, for a person on a 457 visa in an area—the Pilbara is an extreme example—where there is a shortage and the local market rate of pay is far and above the 457 visa base rate, that person should get the market rate of pay—for example, if the 457 visa base rate is \$38,000 and the local rate is \$45,000. How do you respond to that?

Mr Olsen—I can sit here and say quite openly that in the last 10 years I have not brought a person into this country on a 457 visa and not paid them what I would pay an Australian.

CHAIR—Someone coming into an area of your jurisdiction on a 457 visa is entitled to a certain base rate of pay, but if the other people in that area are getting paid more you pay the 457 visa holder more?

Mr Olsen—You have to look at the structure of how it works and where you go. We have legislative imposed costs inside business and we have to balance that out. The issue that is being addressed and where people are coming from is that this is about a requirement to perform work; it is not about cheap labour. It is about a requirement to perform work to meet the needs of society. People are asking for a mechanism and a vehicle to allow us to continue to keep delivering on what societal requirements are. It is not about going in there and trying to bring in a bunch of people on dirt-cheap rates because you think you are going to keep costs down. That is not the issue.

CHAIR—The Australian Manufacturing Workers Union said to us that this visa was designed to undermine and drive down wages.

Mr Olsen—That is their opinion, I suppose. I have a totally different opinion.

CHAIR—Can you back that with evidence?

Mr Olsen—I can, if push comes to shove. The bottom line is that I am currently recruiting people from overseas into the Australian market right now. I currently have people in London

trying to find engineering people, whom I cannot find in Australia. And what is the salary rate they are going to be brought into Australia on? Exactly the same as I would pay an Australian.

CHAIR—But are you satisfied that you try hard enough to find Australian workers before you are forced to look offshore?

Mr Olsen—Yes, and I think this goes back to the point that was raised before about the DEWR standards. We do not advertise for a particular class of engineers at the moment because we know there are none. That does not appear on your list, but there are a raft of engineering classifications that you cannot get in Australia. You cannot get estimators in Australia. No-one has enough estimators, so you have to go offshore to get them.

CHAIR—I might go to Senator Polley now. I have got other questions, but we are a bit hampered for time today for a few reasons.

Mr Olsen—Sure.

Senator POLLEY—With the sorts of people that you bring in on visas, I take it you are talking about skilled people, like engineers—which is quite different to bringing in people who work in the manufacturing or hospitality area.

Mr Olsen—That is right. I am talking about the people I bring in, who are engineering people. They are estimators. They are quantity surveyors. They are people associated with the construction industry.

Senator POLLEY—That is very different, though—

Mr Olsen—There is also a need, though, in the semi-skilled world, that needs to be addressed. I think you have made the point about the Pilbara and trying to find people in the Pilbara: trying to find diesel fitters in the Pilbara is almost impossible. The specific people I am referring to are in that professional zone, which is really what the 457 visa was originally crafted for, and that goes back to even before the 1996 days when it was an executive or even a specialist visa. So the journey has moved on; 457 visas have opened up. I think there is totally a window of opportunity to open them up a bit further. But the bottom line is that there are a set of rules, and there are a set of rules of racing here that need to be applied. It is a different space.

CHAIR—I think what Senator Polley is alluding to—and correct me if I am misrepresenting you, Senator—is that your application for professional people is one thing, but blue-collar workers and skilled workers are another thing which might not necessarily fit the current Australian needs in the workforce. Is that what you are suggesting, Senator Polley?

Senator POLLEY—Yes. I think it is very clear from the evidence we have been given that, with the highly skilled workers that have been brought in on these visas, there is very little complaint, if any, or concern—and I think it is recognised that we do have, obviously, a huge shortage of engineers and the like. You are trying to make comparisons with what the Australian Manufacturing Workers Union are saying, but they are not talking about engineers, and they are not talking about accountants. They are talking about people who work in their industries, and there is a big difference between the monitoring requirements that are there and the mechanisms

for reporting any concerns that those who are out here on visas have. I will move on, because we are very short of time. Could somebody tell me what the semi-skilled positions in the tourism and transport industry are that you want to expand the 457 visa program to?

Ms Davidson—We would be looking at what we call the new academic discipline, which is tourism managers, event managers, project facility and property facility managers and tourism attraction supervisors. Those classes of professions are not actually listed. Now, you could argue that under the 457 visa program there is a catch-all in a number of the classes, where they say ‘and any other’, but I think for a lot of our members that can be a little intimidating and, given that there are a number of very specific managers listed under the classifications, we would probably be seeking some additional classes and codes. We recognise that tourism and hotel management is a fairly new academic discipline. There are now 34 universities in Australia, out of 38, offering degrees in tourism and hotel management; however, less than 10 years ago there were probably only about four or five. So it is a very new academic discipline and it is something that has also probably evolved in other parts of the world. So we recognise that it should be placed in the codes. Going back to your comment on regional tourism specifically, our members are major players in the tourism industry—and I would have to dispute previous witnesses suggesting that we underpay our tourism workers. That is not the case. However, as one of our members alluded—

CHAIR—I do not think it was that you underpay; you pay the award but you should pay more to reflect the current heat in the Australian workforce.

Ms Davidson—I will give an example. There has been a suggestion that an operator should have to pay \$110,000 to find a bus driver because all the bus drivers are leaving to work in the mining and resources industry. I can assure you that to try and remain competitive in the world economy, pay a bus driver to operate a tour in Central Australia \$110,000, and then upwardly charge our customers the necessary fee to ensure that that business stays in operation is simply not practical. Yes, we might love to pay our bus drivers and our tour guides \$110,000, but, if we are to remain competitive in the tourism sector in our global economy, that is not going to be feasible. I would argue that in the Northern Territory, outside of the mining and resources industry, an average wage would not be \$110,000. If that is why people perceive that we are underpaying, we have to recognise that there are a number of industries in this country at the moment that are performing exceptionally well and have the ability for their end product to be priced upwards. Tourism does not necessarily have an ability to upwardly price its end product. We are constrained by what the consumer is prepared to pay. I again reiterate: we are in a global economy when it comes to competing in tourism.

Senator POLLEY—In terms of the transport industry, what semiskilled positions are you hoping to have on 457 visas?

Ms Davidson—We talked a little bit about this at a recent Senate transport inquiry. Coming back to drivers in particular, it is not a question anymore of just hopping onto a bus and being able to drive it. There are a number of factors these days, whether they are IT requirements, GPS requirements or occupational health and safety requirements, which are increasingly onerous for the people driving and the transport industry. We were looking more at those areas and suggesting that what we might conceptually believe a bus driver or a train driver used to do is quite different to how they currently operate.

Senator POLLEY—Your submission highlighted concerns that you have in relation to the nine per cent superannuation being paid and the fact that people who are out here on 457 visas can then access that superannuation when they leave the country. Can you elaborate further on those concerns and any solutions you may have?

Mr Olsen—If you go back to 457 visa provisions, you will see that you also have to provide medical insurance. Medical insurance is something that we provide—

CHAIR—No; medical insurance initially. My understanding is that it is medical insurance initially and then the onus is on the holder to then continue—

Mr Olsen—But you have still got to pay for it at the front end. It depends on what your job is and where you go. Then what happens is—

CHAIR—I understand it is only for a maximum of three months.

Mr Olsen—We do not read it that way. We read it a little more openly. We think there is a little bit more damage control that you need to do.

CHAIR—We will clarify that.

Mr Olsen—That is an issue. If that could be clarified it would be an outcome very much to the betterment of society. The other issue is that people cash in. It is an additional cost to the business and it is a bonus payment for someone who is only coming to Australia on a temporary basis. Yes, if the person is going to move into residency, it is quite appropriate that that is where it should sit. Our material problem is that when you add together the costs of bringing people in and providing them with what they need to set them up in the country, giving them a nine per cent bonus on the way out which does not actually get used in their retirement is a bit of a concern.

Senator POLLEY—In relation to the semiskilled areas of tourism and transport, do you have any comments to make on changing the requirement to have 4.5 English proficiency skills? The Transport Workers Union has raised some issues in relation to bringing in drivers. They have some concerns, rightly or wrongly, about safety issues.

Ms Davidson—We welcome all the statements made on budget night. We welcome the requirements for English and the requirements for, hopefully, achieving processing times faster. We also welcome the point that if, over a period of time, an employer could prove full compliance with the current scheme they should in some format or in some way be able to move more quickly on future application processing. Further to the question about the English, it is not quite the same, but recently some changes were made cojointly by Minister Andrews and Minister Bishop with regard to skilled visas for new academic completion graduates. One of those requirements also related to English, and we welcome that.

CHAIR—We are out of time, but can I gain an assurance from you that, with the recommendations you have given us, which we have and we will take into consideration, the system of using 457 visas currently provides a solution to many of the problems of the people you represent?

Ms Davidson—Absolutely. In the medium to longer term if we can find ways of upskilling our own workforce that would be terrific, but we also recognise that there is potentially in the next decade a shortage of Australian residents coming into the workforce. So we are slightly nervous about the ongoing labour supply in Australia.

CHAIR—The demographic scene as going forward?

Ms Davidson—The demographics.

CHAIR—Thank you for attending today's hearing. The secretary 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 you have undertaken to provide as soon possible. I appreciate your time.

[12.47 pm]

KINNAIRD, Mr Robert Thomas, Director, RT Kinnaird and Associates Pty Ltd

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 a contempt of the parliament. The committee has received your submission and authorised it for publication. I now invite you to make a brief opening statement, if you wish, before we proceed to questions.

Mr Kinnaird—Firstly, I will correct a typing error in the third dot point on page 3 of my submission, where it says:

... the May 2006 ICT MSL was \$5,000 less than the *median* average annual full-time pre-tax earnings.

It should read ‘median annual full-time’—that is, delete the word ‘average’. I apologise for that.

I will speak very quickly about why I think the IT area in the 457 visa program is worthy of attention by the committee. I know that the committee has been hearing a lot about different sorts of industries and different sorts of occupations. In the case of the IT sector it is worth noting that the 457 visa and temporary work visas generally operate slightly differently because the business context is different. Specifically, I am referring to the phenomenon of offshoring, or outsourcing. In the case of companies operating in Australia but engaged in offshoring of IT work, the 457 visa is used not to replace skills which are missing in the Australian context, but to substitute for them. The business model of offshoring companies involves, as far as possible, labour arbitrage within the host country. So there is an incentive for companies operating in the offshoring business context to undercut local market rates. The source for that particular approach by those companies is one of the major companies themselves—and I can give the source, if the committee wishes.

CHAIR—Yes, if you don’t mind.

Mr Kinnaird—The other thing that is worth noting about the 457 visa in the IT context—which underlines to my mind why the market rates issue is so important—is that, contrary to the rhetoric about 457 visas, which says that the visa holders have skills which Australians do not, and are training Australian workers in those skills while they are here, the 457 visa is used by offshoring firms to train their own foreign workers and to take work back to places like India and other low cost countries, where they are based. Again, the source for this particular practice is the offshoring companies themselves, and again, I can provide you with the source. In a nutshell, the 457 visa in this context, the offshoring context, is frequently used to rotate Indian based workers—in the case of Indian offshoring companies—through Australia and indeed through other higher wage cost countries.

CHAIR—You are not suggesting that when they are in Australia they are paid at an Indian rate though, are you?

Mr Kinnaird—I am not suggesting that all of them are, but certainly some of them are, as far as information reaching me.

CHAIR—If you can provide that to us, that would be good. It would be interesting to pursue that.

Mr Kinnaird—I have a clipping from the *Australian* of a couple of years ago where the IT manager for a large Australian bank was on record as saying that that is exactly what they do. In view of time perhaps I should stop there.

Senator POLLEY—Thank you for your submission. Can you elaborate a bit more on your concerns about market rates of pay?

Mr Kinnaird—Yes. The essential concern is that if a 457 visa holder is allowed to work in Australia at below local market rates of pay then that gives firms an incentive to employ that person, the 457 visa holder, over and above an Australian IT professional who is currently being paid at local rates.

Senator POLLEY—Do you have any views or experience that you can share with us in relation to the department's processes of monitoring the 457 visas?

Mr Kinnaird—In relation to the wages question?

Senator POLLEY—The wages and conditions. We have heard a lot of evidence in relation to the fact that the department always forewarns a company when they are coming to monitor and evidence has been given to us that there needs to be more monitoring and speaking to the visa holders, rather than just relying on contact with the employer.

Mr Kinnaird—Yes, I think you may be referring in part to the announcement by Minister Andrews just a few days ago about these unannounced audits on site, and I think that is a very good idea. It is certainly a preferable position as far as monitoring is concerned than the one that has obtained over the last four or five years.

I also think that talking to individual 457 visa holders is a good idea. The concern I have about the monitoring adequacy is, first, about the crucial issue of monitoring wages. As far as I know we still do not have an adequate system for monitoring the actual level of wages paid to 457 visa holders, as opposed to what the 457 sponsor states on their application they will be paying the 457 visa holder. Until we have hard and reliable data on the actual level of wages and salaries that are being paid to 457 visa holders, as opposed to what sponsoring employers state they are going to be paying, then we are really in the dark about the answer to the question: is the 457 visa scheme undercutting market rates?

At the very high end of the 457 visa program—I am talking about \$200,000 or \$300,000 people working for the big accounting firms like KPMG, Ernst et cetera—there is absolutely no problem, I am sure. That is not an issue. It is when you get further down the skill chain that the problems arise. But in the case of IT, for reasons that I tried to outline before, we have a high-skill and relatively high-wage area in the economy, which is at great potential risk via the operation of a 457 visa program, which does not require market rates to be paid.

Senator POLLEY—We have heard evidence in relation to, especially, the lower-skills end of the market, that there are concerns with compliance, and that if you have to look for a new sponsor the 28-day period is not adequate. Do you have any comments or views on that?

Mr Kinnaird—On the 28-day period my view is that, to the extent that the temporary visa holder is able to operate freely in the Australian labour market, it accords with free market principles, which I support here. Therefore it is in the interests of the community that the 457 visa holder can operate with a longer period of time than 28 days. On the other hand, unless the rest of the 457 regulation system is totally up to scratch, then the desperation of a 457 visa holder to stay in a high-wage country after having been retrenched or suspended from their current employer is very strong. Therefore the risk of that employee subsequently undercutting local market rates is quite high. I think that is the issue. The answer to your question is that my view is that a longer period is better than a shorter period but the regulation side of the visa needs to be bolstered at the same time.

I have a final quick comment on this. My view is that permanent resident migrants are better for Australia in general than temporary migrants because of the ability of permanent migrants to move and operate freely in the labour market and in the community. So the 457 program is substituting, to some extent, for the permanent migration program. To that extent, I think there is a question mark over it.

CHAIR—Amongst everybody else, you would be aware—particularly in the role you work in—that 457 visa holders have the opportunity to seek a migration outcome.

Mr Kinnaird—Yes, they do; but only after a period of time. Do you mean a permanent residence outcome?

CHAIR—That is right: permanent residence which then leads to citizenship.

Mr Kinnaird—That is right, yes. I think that is a good thing.

CHAIR—But you say ‘after a period of time’. Given the fact that people now have to wait four years on a current migration program and that this program requires four years, aren’t they almost the same?

Mr Kinnaird—I am not completely sure of my facts here, but I do not know that a 457 visa holder has to wait four years before they can apply for and be granted a permanent residence visa.

CHAIR—We will check that, but I would assume that that is the case. But we will check it.

Mr Kinnaird—I have a feeling that it might be two years only.

CHAIR—No, I suspect that it would have to be consistent and be four, but we will check it.

Mr Kinnaird—Okay. To answer your point on the assumption that application for a permanent residence visa can be made and can be successful after that period of time, my view is that, first of all, that is a good thing, both for the employer and the employee and for the

community. My concern, though, is that some 457 visa holders, particularly those with low levels of English and who may not be aware of their rights, may not be able to exercise—may not even be aware of—their rights in that regard.

CHAIR—We have taken evidence today, for example, and yesterday that, for example, for Fijian nurses, on RCOs, that is one of their main ambitions: to use it as a migration tool. So you might wish to read the evidence—

Mr Kinnaird—Yes, I certainly will. As I said earlier, I think that, just from a cursory glance at the evidence that your inquiry has received, the range of situations that are covered by this 457 visa scheme in contemporary Australia in 2007 is enormous, and compared with the situation even four or five years ago it is totally different now. It encompasses virtually everything you can think of.

CHAIR—On that basis, given some of your caveats, do you think you would say ‘good temporary migration arrangement’?

Mr Kinnaird—I think it is a better temporary migration arrangement than operates in many other countries, including the United States and the UK, in certain respects, but my concern is that, as the program moves down into the lower skilled areas, the risk for abuse and the reality of abuse increases, and therefore the requirements of the visa—the regulation regime in the visa—need to be bolstered. The original regulation structure, as we know, was essentially built up around an assumption that it would be the \$300,000 Ernst & Young types who would be using a 457 visa.

CHAIR—We have one minute left. On that point, can I just say then that you would not, given your statement then, be a supporter of another subclass of visa which looked at unskilled workers?

Mr Kinnaird—In general I would not, no.

CHAIR—The last point I will make is that, in terms of ICT, we have taken a lot of evidence from people saying that we have a huge shortage in Australia and that this visa program provides a very good temporary fix. Would that be correct?

Mr Kinnaird—Unless people putting that view forward can provide evidence to support their view, as distinct from simply expressing an opinion, then I remain a sceptic on that particular point.

CHAIR—I am sure that, if you again read some of the evidence from the people who have given it, you will be able to judge for yourself. I am sorry about this, but we have to close now.

Mr Kinnaird—Okay.

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

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.

Subcommittee adjourned at 1.04 pm