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JOINT STANDING COMMITTEE ON MIGRATION

Reference: Temporary business visas

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JOINT STANDING COMMITTEE ON

MIGRATION

Friday, 1 June 2007

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

Members in attendance: Senators Parry and Polley and Mrs Irwin and Mr Randall

Terms of reference for the inquiry:

To inquire into and report on:

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

WITNESSES

Committee met at 9.01 am

MELVILLE, Mr Anthony Peter, Director, Public Affairs and Government Relations, Australian Industry Group

WITHEFORD, Mr Andrew, Senior Adviser, Public Policy, Australian Industry Group

CHAIR (Mr Randall)—I declare open this public hearing of the Joint Standing Committee on Migration inquiry into temporary business visas. The committee is inquiring into the adequacy of current eligibility requirements and the effectiveness of compliance arrangements for temporary business visas, 457 visas and labour agreements.

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

Mr Melville—Thank you. We see the 457 visa program as an important way that companies can alleviate the impact of skills shortages, which continue to be intense. Despite the lift in training in recent years, those shortages are likely to continue for some years to come. The traditional trades, where a lot of our members have shortages, are particularly intense in terms of the shortages, and the program gives those companies a way in which they can source skilled labour. In certain cases—and in a lot of cases for many of those companies—companies cannot find labour for projects locally and it really is as a last resort that they go to the 457 program.

Certainly the cost of getting people in on 457 visas is such that companies really do exhaust every other option before they get to that point. Notably, there are high vacancies in wood trades, building, engineering, associate professionals, technicians, metals, automotive, chefs, printing and hairdressing. In regard to the terms of reference for this inquiry, we are concerned that if there are too many restrictions placed on the program it will not result in fewer jobs going to Australians, but in companies not being able to complete work or bid for contracts. We have research that backs that up, and that is referred to in our submission to the inquiry.

The question about training comes up a lot. There certainly has been a lift in training over the last couple of years as the extent and depth of the skills shortages have become known. The 457 visa program is used by our member companies not as a replacement for training but as one of the strategies that they use to fill job positions. Because of the long lead time, obviously, in training apprentices, often the needs are immediate, and they cannot meet those by waiting for three, four or five years to get a fully trained professional in those jobs. Ai Group has a group-training company, and we have 410 apprentices in training. We give support to hundreds of members every year in accessing the visa program. We help them make sure that they get their obligations correct and that they do not do the wrong thing. We hear the same story all the time from these companies; that is, that they have advertised for weeks—months in some cases—for staff and they cannot find them, so they go as a last resort to these visas.

The abuses should be dealt with. We see the abuses of the 457 system as the very small minority, but we certainly support tough action against people who do the wrong thing. It is not the case that we see this to any extent among our membership; it is very small and often it is inadvertent. We have two department of immigration officers located within Ai Group, and they help member companies get it right. Often people will ask questions to make sure that they are paying the right amount and doing the right thing in obligations such as paying for the health insurance et cetera of the visa holders. We are not worried about that. We are not worried about tough action against the small minority, but we are worried that it may become wrapped up in bureaucracy, because it is an important program for our members.

There are a couple of aspects to the English language requirements. We see occupational health and safety as very high on our list of priorities in dealing with our members and in their relationships with their workplaces. It is one of the top issues that come up all the time. How they can keep their OH&S levels, meeting all their obligations and making sure that they have safe workplaces are very high priorities. English language is quite often raised within this visa program as undermining the OH&S system, but it is industry based in a lot of ways. In a lot of industries, already quite a number of people that are employed by companies are Australians that have low levels of English. Their obligations under OH&S are met by proper signage and proper training in those languages. We have member companies that are giving advice overseas. Their call centres in Australia give advice overseas in a single language, and sometimes the people in those operations do not speak anything but Japanese or a language other than English. There are ways that you can make those workplaces safe.

We have a very large number of construction industry members. Obviously, they take OH&S very seriously. They also use the 457 visa program. They are very concerned about the English-language requirements. They are very focused on meeting those requirements and are interested in what changes may be in the wind. In terms of transitional arrangements, there are changes to bring language requirements up to the IELTS 4.5 standard. They come into effect, as I understand it, on 1 July. We urge that there be a good transitional phase for this and for any other changes that are happening in the system. It can take three months and longer—three to six months—to get people in on these visas. You may be well down the track in getting people in on a visa, only to find out that on 1 July those conditions change, so we are very interested in what transitional arrangements there might be.

My second-last point is about labour hire companies. Labour hire companies are sometimes demonised in the press. They are seen as abusing, to some extent, the 457 visa program. Again, it is the vast minority of labour hire companies and, as I understand it, it is the very small companies that are involved.

We have something like 100 labour hire companies as members. They are larger companies and do not get involved in abusing the system that sometimes gets illustrated in the press. They are doing a service for companies that do not want to have that service in-house. It is not as though the labour hire companies are just getting labour for themselves; they are doing it as a valuable service for companies that could access the visa program in their own right but decide to do it through the labour hire company. One issue often raised about labour hire companies is benching—that is, when someone is brought in on a 457 visa and there is not any work for a month, so that person is not paid at that time. I am not aware of any of our members being involved in that practice and it is certainly not a practice that we support. Industry is recognising

the importance of training, and companies such as Skilled—which is a big member of ours—are involved in very high levels of training.

Finally, temporary business visas are highly valued by industry as a means of sourcing temporary skilled labour in a time of high skill shortages, and the system has our strong support. Given the levels of skills shortages, our ageing workforce, our ageing population and very low levels of unemployment, such visa programs are likely to be part of the solution for a long time to come. Because of this, it is vital that we get the system working as well as it can.

CHAIR—Thank you very much, Mr Melville. You have reinforced many points from your submission, which is excellent. I would like to deal with a couple of issues before I go to my colleagues. You said you have two industry outreach officers attached to your organisation and that you have found them highly effective. Are they working to their full capacity?

Mr Melville—Definitely. We are a national organisation and we have two industry outreach officers: one based in Melbourne and one based in Sydney. The Sydney position is vacant at the moment; however, as part of some transfer arrangements we have a new officer starting later in the year. The Sydney industry outreach officer helps our members in Queensland and further north and our Melbourne industry outreach officer helps members in Adelaide and beyond. They have a very big area that they deal with and they attend and contribute to all our briefings that we have around the country. We have got 10,000 member companies. We have contact with around 97 per cent of our members during the year in terms of them getting advice on various things, including in the area of immigration, so our industry outreach officers are very well utilised. We requested that the positions be rolled over for another 1½ years and that was approved recently. We highly value the system.

CHAIR—Could you do with a third industry outreach officer?

Mr Melville—Initially we asked for three and the assessment was made that two would be enough for our membership. I think they are fully utilised. We could do with the third we asked for initially but we are coping with the two officers at the moment.

CHAIR—We have received a lot of evidence—and you might tell me if this is something that aligns with your experience—that the processing times have blown out; although evidence from the department seems to suggest that things are going swimmingly. The evidence we received seems to suggest that the time taken to bring somebody in on a 457 visa has gone out sometimes to six months. The ideal time was meant to be within a month. Would you care to comment?

Mr Melville—I chaired a meeting at our workplace relations conference held in Canberra about a month ago and it was a varied story. We hear of members' concerns quite regularly regarding the blow-out times in getting 457 visas approved, although one member said he got a visa approved in seven days. There is a great variation. The message that we give to members is that, if you get good advice through an organisation such as ours and through the immigration people we have got, you can cut down those approval times. Often, as we have seen, the difficulties can be in areas like health. If you approach countries like the Philippines, for example, where there is a very high level of tuberculosis, it is going to be a more difficult process and therefore a longer waiting and approval time. In other countries it will be less. We advise that it is going to vary across the board. It is also a question of how many you need. Are

you trying to get 50 people in one go and are you doing it in one go? That can push out approval times a bit. If you have never done this before and you have only got one person, then sometimes there may be a bit of user error and that is where we can help.

It is an issue. I do not know that in our particular case an extra officer would reduce the times. I think with the outreach they have, they get to a lot of our members with information, they go through our magazine which goes to all 10,000 members, they go to all the briefings we have and they are available on the phone. They are probably getting that message and helping them streamline and approve it. Labour agreements are another issue.

CHAIR—What do you think about the information we have received that people seeking a 457 visa have had to pay agents for the process? We have even been given a figure of about $30,000. Is that something you have come across?

Mr Melville—I have not been directly involved with that, but I have heard stories about it. It is a very difficult issue and I have discussed that with the department of immigration. I have not got an answer from the department on how you would restrict that and I am not sure if one is being developed, because what we are talking about here are relationships and actions that are happening outside of the visa process. What our members are interested in—

CHAIR—Do you see it as an abuse of this process where intermediaries are cashing in on what you might term the unfortunate person seeking a visa and charging them exorbitant fees?

Mr Melville—It is an abuse, but not necessarily of this process. If you look at this process, our members want to get the staff here, they follow all the processes that are laid down, and they cannot, for example, take money out of their pay to cover the costs of the process on their own part. In many cases, our members will not know that is going on. They will have people, or immigration agents in a foreign country that might be, in a lot of cases, Australians themselves, front up to them and say, 'Here are five people that want to come to Australia.' They meet all the skill requirements. Our members and the immigration department have done the right thing. I guess it is a problem that I cannot see an easy solution to. It is an abuse that we would not like to see happen and I would be very interested to hear more from the department on how they could address that. I know in China, in particular, it is a big issue and you are talking about more than $30,000 in cases over there.

CHAIR—The minister recently announced that companies with a good record would receive more favourable access to the process. We have heard some evidence that goes further than that—that companies with a good track record would almost be able to rubber stamp applications and bring them out. The sanction would be that if they transgressed they would lose that favourable status. Do you see that as a way of expediting these visas in that you almost give a star rating to companies that have a good track record so that they can expedite this process much quicker than it is now?

Mr Melville—I think it is a very good initiative. I think a lot of our members, particularly the larger ones that might try and get approvals for 50 people to come and work on a big infrastructure project—which is very important to Australia at the moment, as you know—and which have been doing the right thing for a number of years, should be fast tracked. I do not

necessarily agree with the term 'rubber stamp' because to get the approval process they will still need to meet all the tough requirements that are laid down by the department of immigration.

CHAIR—It would be expected as part of this fast tracking that all that would have been done and, given the fact that they had a good record, they were doing that in any case.

Mr Melville—They will be doing it, but rubber stamping seems to suggest that they might use the rubber stamp to hide something else and I do not think they would do that.

CHAIR—It is fraught with danger if it is too easy.

Senator POLLEY—In your submission you commented on the importance of both the sponsor and those coming out on the visas needing to be assured that they are not going to experience any abuse under these visas. There is some concern that there is not an appropriate mechanism for reporting and protection for visa holders. Have you any comments or solutions for that?

Mr Melville—Reporting and protection?

Senator POLLEY—For those people who are having concerns in their work sites, so they can come forward and make that known to the authorities without being deported from the country.

Mr Witheford—As part of the COAG consultation process that has been going on over the last year or so, DIAC has been working to improve the information flow to both visa recipients and employers. I understand that this has been an area where improvement has been occurring with regard to informing visa applicants and potential visa holders of their rights in this regard, and we have been supporting that all the way.

Senator POLLEY—Would the majority of your members be bringing people of a professional nature out? Do you have any views in relation to the semiskilled areas and the concerns that are there? I note that you have concerns about any changes, particularly with the English language aspect. I would be interested in your comments in relation to the people that come out on these visas. They do have the opportunity to stay on and become residents. So if those people are out here for up to four years, wouldn't they be able to more easily assimilate into our communities if their English language skills were at a high level?

Mr Melville—I will first add to the last question about the reporting of abuses by people with these visas. They can vote with their feet. As you would be aware, they have 28 days to change employment. They are in very high demand areas. To be on the list and to have been brought out here you can guarantee that their skills will be in great demand, and if there are abuses in their workplaces they will vote with their feet. We have quite a number of cases where we have heard that happen. I have heard of a case in Brisbane, for example, where a visa holder did not like the company they were in and they went up the road to another company and got a new sponsor, which is relatively easy under the immigration rules. The extra pay was only about $10 a week, but they did not like where they were and moved. That is a huge cost for the employer, who might have spent $5,000 or $10,000 bringing that person out here.

Senator POLLEY—Some witnesses have come before us and said there is a concern with companies bringing out people on these visas and then they hop over to a new sponsor. They are concerned about those costs. Do you have any comments on that?

Mr Melville—That is a concern, but it is a double-sided coin. If you tighten that up there would be a risk of putting too many restrictions on the workers themselves. They are definitely not indentured labourers—a term you sometimes hear thrown around. They have great flexibility in terms of their movement. The department is committed to giving more information on the rights to visa holders at the application point and beyond. I do not think we would support tightening that up—tightening up their ability to change sponsors. I am sure some companies that have lost money would be very upset, but it also encourages them to be absolutely meticulous in following the rules along the way and making for happy and healthy workplaces.

The other question was about the semiskilled coming in. When we look at that area, it is not a labour program; it is a skilled labour program, and we see it very much that way. Our members have a great need for trained workers of the level largely of that ASCO 1 to 4, which is the tradesman area. That area applies in all the cities and then goes out to lower ASCOs in regional areas—I think up to ASCO 7.

CHAIR—Would you consider truck drivers in that?

Mr Melville—Truck drivers come down into ASCO 5 or 6, I think. You mentioned truck drivers. I will diverge for a moment. There is a big difference in truck drivers as well. We have a close relationship with the Australian Constructors Association. I was talking with them this morning and one of the issues they raised is that on projects they work on, they have trucks as big as a block of flats worth $4 million. These are not very low-skilled truck drivers; these are skilled truck drivers in high demand. In a number of areas in the construction area they are very keen to get access to truck drivers for those big pieces of plant. They are really more like plant operators than just truck drivers. Certainly, that semiskilled area is, in a lot of ways, beyond our interests; our members are after the skilled side of things.

As I understand it, 20 per cent of 457 visa holders stay on. That is a process that would happen, I think, largely at the end of a number of years here. They can stay here from three months to four years, unless they are in a completely non-English language environment—and there are a number of them, as I have mentioned, but I think they would be a rarity. I think they are going to learn a lot about Australian culture. They will learn the language and they will have children going to school here. A large proportion of those on the program come with their families as well, so they will become part of the community. Those 20 per cent of 457 visa holders are probably not the ones who are coming out here for three months or six months; they would be the ones who have been here for a long time, I would imagine—though I do not have statistics on that.

Senator POLLEY—You mentioned some of the areas of industry that are having trouble filling positions—for instance, in the hospitality industry there is a shortage of chefs and apprentices across the board. Is it not a fact, though, that part of the reason why people cannot be brought into the industry—why people are not attracted to being a chef, or a cook or to work in hospitality—is the low pay and conditions and the family-unfriendly hours they are expected to work?

Mr Melville—I am not sure what your question is about. Is it just a question about training and why there are not more chefs?

Senator POLLEY—The reality is that, in this country, for more than a decade we have not focused enough on training and apprenticeships across the board. In terms of the hospitality industry, you have noted that we have to bring in chefs. Isn't one of the reasons why it is attractive to bring in overseas chefs that a lot of those people come from disadvantaged countries and it is an advantage to have them working here for the low rates that they are working for? That is not going to do anything to entice Australians into those industries.

Mr Melville—That is suggesting that the skills shortages are because of the lower pay and conditions. I think there is a lot more to the reasons why we have not trained over the years and why there are not more people doing apprenticeships. As I mentioned, apprenticeships are on the increase, but we are yet to know whether the big increase in numbers will result in more chefs, electricians and metalworkers. Certainly, we need to maintain the higher levels of apprentice training for the next 10 years to meet the shortages. Attracting people to these trades is a bigger issue. It is not just that people do not want to become chefs or hairdressers because of the pay; it is also because they have grown up in an environment where apprenticeships have been devalued over the years. We at Ai Group, and the government, have been working hard to revalue apprenticeships and try and make people see that it is a separate path from university. We are involved in trying to make apprenticeships more attractive. Ai Group has a new award—the technology cadetship program—and we have also been encouraging training within schools and relationships with businesses. Mostly, that is in the traditional engineering and building trades that we represent, but it is also relationships between schools and local restaurants which can encourage people to get into those trades. So it is a much bigger issue than visas. Also, the subtext of that question was about whether we are bringing people in to keep wages low in those industries. I do not think that is the case. I think that, in the end, even though it is not a requirement, you have to pay those people on 457 visas pretty close to the market rate or they will walk as well. So it is a difficult and complex issue.

Senator PARRY—I want to get a handle on the size of the employee base you represent. Do you have any figures—even an approximation? I gather that you represent the vast majority of industry groups within Australia. Does it go beyond industry?

Mr Melville—It does. About 70 per cent of our membership are in manufacturing, and quite a large proportion of those are smaller companies that might be making trailers in Fyshwick or Frankston. About 80 per cent of them are SMEs. We have a lot of construction members. We have labour hire companies, as I mentioned. We have a lot of companies joining us in the ICT industry.

Senator PARRY—So you would not be able to estimate the total number of employees within the group.

Mr Melville—It would be more than a million represented by our membership. When we do surveys of our members, a lot of the large companies are also members and—

Senator PARRY—Can you provide the approximate total number on notice?

Mr Melville—I can, yes.

Senator PARRY—I want to go to the two DIAC officers that you have. What does 'hosting' mean? What is the financial obligation that you have for those two DIAC officers? Do you provide accommodation?

Mr Melville—We provide accommodation for them in our offices in Sydney and Melbourne. They are responsible for their own travel when they go interstate or to see members. They have their own IT but they also have our IT available. They have their own computers that they have access to DIAC through. But the costs really are accommodation and communications.

Senator PARRY—So it is a minimal issue.

Mr Melville—It is a minimal cost, yes.

Senator PARRY—Thank you. That is all I was interested in.

Mrs IRWIN—I have two brief questions. I want to refer to your submission. I will quote a short paragraph. It states:

One aspect of compliance that has been raised by some of our members is the uncertainty regarding the obligation for sponsors to guarantee the health costs incurred by applicants through the public health system. There is a need to amend DIAC documentation (including forms) to clarify the nature and extent of sponsors' obligations in this regard.

Can you elaborate on the point that you have made in your submission.

Mr Melville—It is certainly an issue that has come up. I think it has been quite difficult for our members to understand some of their obligations on this. They have said that they really want some more clarity around that. There was one case I know of in Queensland—and I will not name the company—where it was found on investigation that it was taking some money out of pay to pay for health insurance. The minute that was found out it was corrected by the company. But it is one of those areas where some companies, because of the lack of clarity in some of the documentation, think that, while they have an obligation, if they just get the employee to pay then that obligation is gone. I was talking to one company the other day and, as I understand it, if you say to an employee on a 457 visa, 'I want you, as my employee, to get health insurance,' if that 457 visa holder then has a very serious accident and loses an arm or something like that and he has not taken out health insurance it is the employer's obligation to pay for that. We get those questions all the time, which says to me that there is a lack of clarity. Andrew might want to add to that.

Mr Witheford—We have made it clear to DIAC that there needs to be more effort made to let both employers and employees know of their obligations in this regard so that there is clarity. Ultimately, the employer and employee can come to an agreement with regard to whether the employee is going to take out private health insurance or whether the employer is going to cover it as part of the deal. But there is no obligation on the part of the employer.

Mrs IRWIN—So you are saying that we should look at making a number of changes to clarify this to the employer. They are frustrated because of the information they are being given or because of the complexity of the forms that they have to fill out.

Mr Melville—There is some uncertainty about the information that is in the forms. I am not sure how huge an issue it is but it is certainly one that has come to me a number of times. When you talk to people you find that there is uncertainty around it. We would like that to be fixed.

Mr Witheford—There is also a link here to the issue which the chair raised about agents charging up to $30,000 to put people through the process. Before we had our outposted officers we used to field a lot of calls from members about accessing the immigration system. There was a lot of confusion. They would go to the DIAC website and work out what kind of visa they were looking for and how they would go through the process. Two or three years ago it was a very confusing situation. DIAC have made substantial improvements over time, but I think it is one of those areas where continuous efforts need to be made to improve the information flow to both sides in order to minimise risks with regard to these kinds of people who, essentially, sit on the margins and see an opportunity to make money out of it.

Mrs IRWIN—You also stated in your submission:

> We do not regard it as necessary for visa holders to have a level of English higher than that required to undertake their duties in an efficient manner and to meet OH&S standards.

Can you just explain that? Why is that?

Mr Melville—As I mentioned before, a lot of our companies already do have people with English as a second language, and they work in safe workplaces and meet all their obligations. But when you are bringing in people—and we understand the level now required and we accept that—you still have obligations, regardless of their level of English. We think that companies can meet their OH&S obligations with English as a second language. They are now doing it with Australians and they should, effectively, be able to do it with people on 457 visas. I just wanted to make that connection between those two.

CHAIR—We are out of time. Finally, do you have any comments on the role and structure of the regional certifying bodies and any suggestions as to how that function might be improved?

Mr Melville—No.

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

[9.37 am]

CRAWFORD, Dr David John, Partner, Fragomen Australia

WALSH, Mr Robert, Managing Partner, Fragomen Australia

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

Mr Walsh—Thank you for the opportunity to be here this morning. We are grateful to the committee for that opportunity. In a world economy characterised by globalisation and by skills shortages in many countries, companies operating in Australia—and, indeed, in many other Western countries—irrespective of their size or ownership, have little choice but to look to the global labour market to meet their requirements for skilled workers, whether by way of intracompany transfers or by recruiting people directly from overseas. From its inception, the subclass 457 visa regime was a positive and, in many ways, a world-leading response to facilitate the movement of skilled workers to Australia. In more recent times, as we all know, problems and frustrations have emerged in the utilisation of the 457 visa, as the use of that visa has extended to a broader range of occupations, mostly in response to skills shortages in many areas. In our experience, acting for many hundreds of large and small companies—Australian owned and multinational companies—the vast majority of those companies utilising the 457 visa are not abusing that privilege and are not disadvantaging Australian workers through their recruitment or employment practices.

We do recognise that there are issues that need to be dealt with and, as the previous witnesses stated, we and our clients would fully support action being taken along those lines. I guess the major point that we want to make is that the changes that are brought in to address those public policy concerns need to be targeted and not broad brush so that they do not damage the legitimate companies operating in this area that are making use of 457 visas. There are obviously things that need to be done, but there could well be a number of unintended consequences that will be damaging not only to companies but also to the Australian economy and Australian employees of those companies. I think there are three really broad issues to look at here: firstly, is the 457 visa really appropriate for what it is being asked to do in the current labour market; secondly, what needs to be done to address the abuses that have arisen in the use of the 457 visa; and thirdly, what needs to be done to return the 457 visa regime to one that facilitates the movement of people into Australia to fill skills shortages? I might ask my colleague, David Crawford, to make a few specific comments.

Dr Crawford—I have three comments regarding the points raised in our submission. There may be other issues that you would like to raise with us. The first matter, regarding processing times, was dealt with in the previous session. A number of our large clients approached us prior to this hearing to express their concern that this issue be brought to your attention. They are very

concerned. We note, and it is great to hear, that there will be changes from 1 July whereby reputable employers will be given some credit and facilitated processing. We would hope that the changes, and we have not seen them yet, have regard not so much to average processing times—which I think goes to the point you raised earlier—but to stated processing times and delivery against stated processing times. In our view, if there is a projected processing time, let us say four weeks, one application might take one week to finalise—and that can happen—and another might take nine weeks. In neither situation is business helped. But the average might be about four weeks. We noted that there were some recommendations put to you by the MIA regarding fast-tracking of applications that have been screened by migration agents, and that is worthy of thought. We do not know the answer to this, but there may also be some experience that the tax office has in facilitating applications through tax agents and developing a risk profile in trying to crack down on those cases that may be of concern.

The second point we would make is with regard to compliance. In a conversation that we had earlier this year with a senior official, the proposals that were being considered by COAG, as we understood it, centred on trying to prevent problems arising before people are admitted on a 457 visa, and that is a salutary intention. Our strong belief, however, is that as the population of 457 visa holders increases, it will be vitally important to have an investigative and compliance regime that can keep track of any concerns, because it is in no-one's interest for the 457 program to be discredited. There was a suggestion in our paper, and there may be others, on how that investigative capability could be funded, because we strongly hope that any improvement in investigations and compliance activity and the commitment of resources to those areas does not compromise the ability to process visa applications for reputable employers.

The third point regards labour agreements. I know that you have heard evidence that labour agreement negotiations have taken a great deal of time, and that is certainly our experience. Our understanding is that resources are being committed by the department to address a backlog of matters. Our experience is that there is an increasing intention on the part of the Commonwealth to use labour agreements to bind employers from, let us say, worrying areas to criteria or processes that might be tougher than currently exist within 457 and employer nomination processes.

In our experience, labour agreements were used in the past more to facilitate entry where there were some processing concessions or other concessions that were made available on a quid pro quo so that the net outcome for the economy and the labour market was beneficial. We hope that there is still scope to have a facilitative form of labour agreement and not just a compliance-driven one. I do not see that they are mutually exclusive approaches. I think that a labour agreement has been used in the past as a real negotiation. It would be a pity if that were not the case in the future.

CHAIR—The previous witnesses did not have any opinion on regional certifying bodies and their functions. Do you?

Mr Walsh—It is only my personal point of view and only in a general sense, but my experience of dealing with regional certifying bodies on behalf of clients is that it is a very uneven experience across the country. Generally there does not appear to be a lot of rigour applied by those certifying bodies, and perhaps there is an argument that more support could be provided to regional certifying bodies by Commonwealth and state departments, which would

allow those bodies to operate with more discipline, structure and care rather than in a way based more on anecdotal experiences that the individuals have had in the area they operate in.

Dr Crawford—I would endorse that. For the most part, visa criteria are fairly clear-cut to the extent possible, and there has been a great deal of effort by the department to introduce objective criteria with the visa processes. In this regional certifying process, in my experience also, it is much more subjective and much more difficult to be clear if one goes to a new RCB.

CHAIR—You say in your evidence that you generally deal with ASCO levels 1 to 2 and rarely go much further than ASCO 4. There have been some observations that this visa program is highly appropriate for the clients that you deal with, but when it gets down to some of the ASCO 4 plus levels it is entering into competitive territory for blue-collar Australian workers, and this might not be an appropriate vehicle. I am told that in the electorate of Gilmore, for example, there is a 12 per cent unemployment rate. Maybe those people should be being sourced first, before we look at people coming to Australia on skilled visas. Do you have any comment on that?

Dr Crawford—Yes. I think Robert touched upon the issue that the 457 is being asked to cover a lot of territory—the ASCO 1 to 4 areas and those that are below. It is true that the bulk of our client base relates to those higher ASCO codes, so our exposure to some of the others is not so common. Bearing that in mind, if there were to be some adjustments to the 457 program, we would drive at trying to target changes in those areas that are most needful. I will use the example of Ireland. In January this year they introduced a visa program in which people in a skilled occupation and paid over a certain level will get a 'light touch'—to use that terminology—with their intracompany transfer capabilities. A fairly light touch will apply for people who have been employed by an employer for a length of time overseas. This is similar to the American 'L' visa. The people in the lower categories at lower levels will get closer scrutiny. I am not saying that is a solution, but it is an indication that there are different markets for people being brought into the country.

Senator POLLEY—You have made some comments in your evidence that you think the department's proposed changes are excessive and will be counterproductive to the economy. Could you elaborate a little more on why you have these views?

Dr Crawford—Those comments were based primarily on what we understood to be—and what was confirmed to be—the basis of the COAG recommendations that had been made public in the recent past. We were negotiating with the department on behalf of a number of clients, and that is where those issues arose. To be honest, I do not know the status of those recommendations. Public comments have been sought and we have provided comment. I think careful consideration is being given to some of those, so it would be difficult for me to say that there will be a problem without knowing if any of them go forward.

However, we listed a couple of the important issues. In our view, the largest problem was placing 457 visa holders on Australian payrolls and paying them in Australia dollars. For many multinational businesses that would be catastrophic and would severely compromise their ability to attract people to take up an assignment in Australia. There are some other recommendations—and I should be clear on this—that are absolutely fine. We do not believe that there is any reason to object to an annual gazettal of the minimum salary level and increased penalties for

businesses that fail to comply with rules. In fact, I think we share the view that increased compliance activity that is effective is in the interests of everybody who is interested in the integrity of the program.

Mr Walsh—Generally, when we have conversations with some of our clients, they are looking around the world to locate different functions, particularly in the Asia-Pacific region. The issues of immigration and the access to a facilitated approach from the department for visas are considered, and some clients express concern about the general drift in the discussion of the 457 visa in Australia vis-a-vis the ease of obtaining similar visas in, maybe, Singapore or Malaysia or somewhere of that sort. We do not have any direct evidence of companies moving their operations offshore, but certainly, when companies are operating on a global scale, they look at different components of the regimes in each place where they might locate their operations. Australia has gone from a situation where, in the late nineties, the 457 visa was a world-leading visa—and it was processed as such and dealt with by the department as such—to one now where it has become very clouded and companies are very concerned about the direction of the debate.

Senator POLLEY—In your submission you also make comment in relation to the labour agreements and the delays that are happening. Could you elaborate on your concerns and on any other comments that you have.

Dr Crawford—One labour agreement we started negotiating in November last year is unfinalised, which gives an indication of the time frames. I do not understand why the delays have been so lengthy, and if I did I would let you know. It has been a serious concern for the businesses that we represent, and perhaps in a way it indicates Robert's point about the drift of policy and where it was heading. We have supplied information to the department along the lines that would ordinarily be expected about the commitment to training and to the recruitment and development of local Australian staff—citizens or permanent residents—and compliance with other undertakings associated with labour agreements that have been held up until this time. We have requested that a new labour agreement be negotiated, largely on the basis that, while they existed before, we recognise that there are always changes to a labour agreement as general provisions change—and that is fine.

I will use the labour agreement I mentioned as an example. We received an extension until the end of March. In April we were asked to offer a comment on a template for a labour agreement and at the end of May we received feedback on it. That is a very lengthy process. The result is that the companies involved are concerned that it is an agreement, as it is being driven at the moment, that is very compliance minded and simply does not suit their industry needs—to the extent that they are now questioning the value of bothering with a labour agreement. The cost to them is that the facilitated permanent visa process in the agreement that existed before will be gone. These are businesses that have people in occupations on MODL in big numbers. In our experience it has been a difficult process and for our clients it has been difficult to understand.

Mr Walsh—My understanding is that for some of those labour agreements the negotiations began at the end of 2005 and have been running now for almost 18 months.

Mrs IRWIN—Why do you think DIAC is interested in using these labour agreements?

Dr Crawford—Do you mean in the way that we have discussed?

Mrs IRWIN—Yes.

Dr Crawford—I think it is a sensible approach for these compliance purposes. It is a way of tying down any interested parties that might have an interest in the operation of the agreement so that they minimise scope for criticism at a later point. For example, if there were unions involved within an industry, there would be appropriate consultation with them, as well as the employer, so that everybody was on board and felt that the agreement would deliver to everybody's satisfaction, including the business's. I have no particular argument with that at all as a concept. My concern would be the loss of flexibility for those businesses where there are no real compliance concerns as all. General concerns we have had about the drift of policy discussions over the last year have been have been the focus on the problem areas and that any changes may adversely affect companies that to date have been absolutely compliant and are needing, desperately in some cases, to recruit people from overseas.

Mrs IRWIN—You mentioned some disadvantages in using these labour agreements. What would be the advantages?

Dr Crawford—Certainty is one. If people buy into it, that is a very big point. It is like the issue of processing times—if a stated processing time is X and the delivery is pretty close to that, businesses can plan with confidence. To address the point that my colleague was making about businesses looking through the region, it is certainty that businesses look for in the out years, not an environment of uncertainty.

Mrs IRWIN—What are the significant skills shortages across your client base?

Dr Crawford—Within our client base it is civil, mechanical and mining engineering, ICT workers in highly specialised areas and generalist managers. The financial markets have huge numbers of requirements. They would be the predominant skill shortages.

Mrs IRWIN—It sounds like the list goes on and on.

Dr Crawford—I think we mention in our submission the range of our client base, and it comprises some very large businesses. All of them have considerable demand.

CHAIR—In your submission you have made comment about the difficulties with short stay 456 visas and employing specialists on short-term work assignments. Can you tell us more about these problems and is there anything else you would like to add in relation to that?

Dr Crawford—Yes. For very understandable reasons the department wants to ensure there is absolute compliance with business visitors. I think the regulations still state that people should not come in and work on those visas if they are going to displace Australian citizens or residents from employment or training opportunities. The policy that informs the application of those regulations has tightened considerably over the last few years because there have been allegations that people have been side-stepping 457 visa requirements—coming in, working, disappearing and then possibly coming back and working further. The difficulty we have is it is now at a point where there are some people who might come in for a consultancy for two or

three weeks and the message we are getting is they need to get a 457 visa. For example, there is a fellow I am dealing with at the moment who is a specialist in the United States in an area of livestock—I do not know what it is exactly—and he comes in four times a year for about two weeks on each occasion. I would have thought that is a business visit; however, he will be remunerated by the employer here and, based on advice we have previously received, he should get a 457. I worry about that level of restriction.

The idea that we presented in that submission was one that was mooted in the 1999 report: is there some ability to facilitate people in that situation for limited periods where they are between a 456 or a business visit and a 457? As you know, there can be very short-term demand to get people in quickly, not for lengthy periods, to do some work.

CHAIR—It does seem to be a bit of an issue.

Mr Walsh—Could I add a very brief comment. For our clients, a lot of the issues in this area arise because of the tension between what the migration regulations say and what the department's policy guidelines say. Arguably, there is a significant gap between those two documents. This area needs to be addressed and cleared up. Is the law the law as stated in the migration regulations? It obviously is the law. Why aren't the department's policy guidelines consistent with what that law says? If the department and the government wish to address this and change the situation, then the migration regulations should be amended to remove the confusion that is created between those two statements.

CHAIR—It is good that you raise that, because I am sure it will get back to the department. A lot of the information that has been taken in these hearings has already got back to the minister.

Briefly, in terms of the 457 visa, do you have any issues with how the occupations are defined and recognised by DIAC under the ASCO system and, if so, how might these be addressed? Can you give us some examples of skilled jobs which do not fall within the scope of the ASCO classifications?

Mr Walsh—Our very general response to that is that the ASCO dictionary needs updating. There are many occupations that are around that are widely used but are not easily defined within the current occupations. From the point of view of many of our clients, the thing that would help most would be if the ASCO dictionary were updated to reflect the reality of occupations that have arisen in the last 10 or 15 years. I cannot give any direct examples of that, but it is an issue that comes up frequently. How do you classify occupations to fit them within the ASCO code?

CHAIR—We are meeting representatives of DEWR this afternoon, and they may well hear about that too. Thank you very much for attending today's hearing. We would be grateful if you would send the secretariat any additional material that you have undertaken to provide as soon as possible.

[10.03 am]

FARY, Mr Geoff, Acting Executive Director, Association of Professional Engineers, Scientists and Managers, Australia

HARTLEY, Mr Rolfe, National President, Engineers Australia

HURFORD, Ms Kate, Associate Director, Public Policy, International and National Policy Directorate, Engineers Australia

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

Mr Hartley—Thank you. I will commence by making a brief opening statement and Mr Fary will follow with a statement that deals specifically with APESMA issues.

Engineers Australia is the peak body for engineering practitioners in Australia and represents all disciplines and branches of engineering. We have around 80,000 members Australia-wide, and we are the largest and most diverse engineering association in Australia. All members of Engineers Australia are bound by a common commitment to promote engineering and to facilitate its practice for the common good. Thank you very much for this opportunity to comment, along with our colleagues from APESMA, on temporary business 457 visas.

Migrants contribute to the economic development of Australia in many ways. Engineers Australia recognises the significant contribution made by migrant engineers to Australia's early development and their continuing contribution to Australia's economic, physical and social wellbeing. A skilled engineering workforce is essential if Australia is to achieve the quality and standard of living to which we aspire in an increasingly competitive world. As in other sectors, there are a significant number of migrant engineers entering Australia every year to cover shortfalls in engineering skills.

While supporting skilled migration generally, Engineers Australia has one particular area of concern—that is, the value of educating and developing the skills of Australians might be being overlooked by a preference to taking on large numbers of skilled migrants to overcome skill shortages. In a cost-conscious commercial environment, there is a danger that employers will be tempted to make greater use of off-the-shelf skills that are available overseas. This is especially true when there is delayed access to such skills through local training.

One of the key industries accessing engineering skills through the 457 visa stream is the mining and resources sector. While the skills shortage exacerbates and migration numbers go up to meet demand in this sector, only 250 mining and minerals engineers graduate from Australia's

universities every year. Annually, only 798 engineers graduate in all engineering disciplines in Western Australia, while only two engineers graduate in the Northern Territory.

Due to the stagnated number of Australian students graduating from engineering courses, maintaining the level of a skilled migration program has become critically important to Australian industry. Purely from a risk management approach, this vulnerability needs to be addressed. Engineers Australia is concerned that, if local training does not increase and the competition to attract skilled migrants continues to heat up, Australia might not be able to attract enough migrants to meet industry skill needs.

Until recently, only traditional migrant countries like Australia, New Zealand, Canada and the United States competed for immigrants. Now European and Asian nations in particular are entering the competition. This focus on skilled migration will only increase as more countries experience labour shortages and population pressures. Given the increased risk that Australia's skilled migrant intake might not be sustainable, enhancing and expanding Australia's skills base through investment in education and training is a preferred course of action, which is guaranteed to achieve longer term benefits for Australia.

Finally, Engineers Australia is concerned that the 457 visa system may be assuming that the skills and experience of migrant engineers are being assessed through a licensing or registration system. As we have outlined in section 4.2 of the submission, engineers who enter Australia on a 457 visa—unlike many other professionals, including architects, doctors and lawyers—are not having their qualifications assessed by a registration or licensing scheme. Other than in Queensland, skills assessment through registration for engineers is voluntary. As a result, many of the engineers entering the 457 visa system might not actually be competent to offer their skills to the Australian public. At present, we have no way of determining the skill level of engineers migrating temporarily to Australia. Engineers Australia is hopeful that the employers of these individuals are certain of their abilities.

Given the potential risk to public health and safety associated with delivering some types of engineering work, Engineers Australia believes that, given the absence of a licensing and registration system for engineers, thought must be given as to whether individuals who enter Australia under the 457 visa scheme should have to successfully undergo a skills assessment to confirm the level of their engineering expertise. Thank you very much for the opportunity to give evidence to the committee.

Mr Fary—My organisation, APESMA, represents over 25,000 professional engineers, scientists, architects, pharmacists, IT professionals, managers and various other groups in Australia. We are a registered organisation under the Workplace Relations Act and we are the only industrial organisation that exclusively represents the employment, industrial and professional interests of those groups. APESMA recognises both the historic and the current importance of skilled migration to the development of our nation and to the enrichment of our diversity. As Australia's key professional union, we have never taken a blinkered position of opposition to skilled migration, including temporary entry to meet short-term and unanticipated needs.

We join with Engineers Australia—and I reiterate the significance that this is a joint submission between APESMA and Engineers Australia—in raising those concerns about some

aspects of the section 457 visa system outlined in our submission. We make the point that some 80 per cent of the applicants coming in under section 457 visas are professional employees. So the importance of this issue to both our organisations is fairly obvious.

The objectives of the skilled migration program are to enhance the nation's competitiveness and its economic growth, but we believe that there is potential for the section 457 visa to have a negative impact in two particular ways. As indicated by Mr Hartley, we are concerned that there is potential for abuse by unscrupulous or perhaps inexperienced employers to use the system to drive down salaries and conditions for Australian based professionals. We believe that professionals should be remunerated according to current market rates rather than to fairly irrelevant minimum rates that are often being used in this regard.

I would like to give a brief instance of one of our members—we were dealing with him only yesterday—who is a systems engineer. Since 2005 this gentleman has been working for a large computer company of some 250 employees. He holds a responsible position within that company. He is responsible for $15 million worth of projects and more than five staff. When he first commenced with the company, he found that his salary was under the threshold level that was set down in the departmental guidelines. He was being paid around $40,000 a year. The award rate for such a position would be $48,000 a year, and our research suggests that the median market rate would be closer to $85,000 a year. The predicament that this gentleman finds himself in is that his ability to pursue his concerns with his employer are limited because, if his employment were to be terminated by that employer, he would have only 28 days in which to find another employer who would be prepared to sponsor him for the purpose of a section 457 visa; otherwise, he faces the prospect of deportation. We believe that someone like this individual is potentially placed in a double jeopardy situation. If the committee wishes, I would be happy to elaborate on aspects of this case.

Mrs IRWIN—I would like to do that now. I am glad that you brought this up, Geoff, because we were going to ask you a number of questions about this issue. How would these salary rates be monitored to ensure that 457 visa holders were being adequately paid?

Mr Fary—I guess that is one of our concerns. There is not a great deal of monitoring of this. Often these folk come here without a lot of knowledge of their rights or of organisations such as ours that they can access to assist them. I understand that the department has a compliance monitoring function, but I think the extent of the resources available to it to do that is an issue. The concern in this instance is that, were the company to decide to terminate this person's employment, whilst that employee may have access to application for unfair dismissal relief, it would be unlikely that it would even get to the point of a conciliation hearing, let alone a determination of an unfair dismissal application, within 28 days.

This case is taking place in Canberra. Whilst there is a heavy demand for IT professionals because of the nature of the IT industry in Canberra, most of these professionals are required to have either Australian citizenship or permanent residency. This individual has neither of those things. He is here on a section 457 visa. If he becomes dissatisfied with his employer and he wants to leave and seek employment elsewhere in the Canberra area, his ability to do so is quite limited. That is one of our concerns and why we think there needs to be a greater focus on compliance. Also, folk who are coming here need to be made aware of the services that can be provided to them through organisations such as ours and, indeed, Engineers Australia.

Mrs IRWIN—Are you aware of other cases throughout Australia?

Mr Fary—Yes we are, but I am not in a position to quote them to you chapter and verse this morning. But yes, that is certainly not an isolated incident.

CHAIR—Can you then provide us with a response some time later?

Mr Fary—Yes, I am happy to do that. We can send that information to you.

CHAIR—Have you finished your report?

Mr Fary—I had better scamper through it in view of the time. I think I have touched on the issue of the role of professional unions such as ours and the importance of organisations such as ours being brought to the attention of section 457 entrants and also having the ability to access the workplace. Mr Hartley has commented on the regulatory regime, so in the interest of time I will not reiterate that. What I will say in conclusion is that the importance of the 457 visa issue to professionals in Australia is evidenced and underlined by the fact that we have brought a shared submission to you. That is quite unusual.

CHAIR—There may be a demarcation dispute between two professional unions!

Mr Fary—We try to avoid demarcation disputes as much as we possibly can. I am not sure that Engineers Australia would revel in the title of being a professional union.

CHAIR—You were the one who raised the term, so I was using it.

Mr Fary—Let me emphasise that APESMA is the professional union. We are both committed to helping ensure that the appropriate checks and balances are in place to protect the rights of both skilled migrants and Australian workers while supporting Australian industry. Like Mr Hartley, APESMA thanks you for the opportunity to be here and to contribute to this process. I would be happy to answer any further questions.

Senator PARRY—Is APESMA affiliated with the ACTU?

Mr Fary—Yes, it is indeed.

Senator PARRY—You talk about market rates being paid and that you do not think that people should come in at a set rate and be paid market rates if the market rate is deemed to be above $41,850, or whatever the rate is. What if the market rate is lower? Do you think that people should be paid lower?

Mr Fary—We said in our submission that we think that we should be paid the higher of either the market rate or the designated rate. I would have to say that I would be astonished if there were ever a situation where the market rate was in fact less than the set rate, and I think I quoted you some examples before where the market rate is in fact almost twice that of the rate in the departmental schedule.

Senator PARRY—Yes, the chair was just indicating to me that it is illegal to pay below the MSL. The MSL must be met. Has evidence of that been produced to the relevant department?

Mr Fary—Yes, indeed it is illegal and in the case that I mentioned the person was in fact being paid below that rate for a number of years.

Senator PARRY—Has that been reported and dealt with?

Mr Fary—The initial shortcoming has been dealt with. There is an issue as to whether the position is correctly classified according to the departmental levels. The person concerned is being paid under schedule B which is clearly headed, 'Non-information and communications technology operations' and that provides for a salary of $41,850. In fact he was being paid less than $41,850, but it is our contention that as a manager of an ICT company he in fact should be paid under schedule C, which is clearly headed 'Information and communications technology operations, managers and administrators', and the correct rate for that is in fact $57,300. The award rate would be at least $48,000, depending upon which level the position was benchmarked against in the award, and as I indicated to you the median market rate is in the order of $85,000.

The difficulty that this person has is being able to confidently approach his employer with these concerns, because he runs the risk that the employer might say, 'We'll be shot of you,' and his avenues of redress—unless he can very quickly get alternative sponsored employment—are very limited.

Senator PARRY—Isn't it the case that there is a shortage in that industry? I understand there is a shortage in the middle to senior ICT area. One would think that, if someone is being paid at the MSL—but you are indicating that the MSL in this case might be below what the actual job description is; whether that is correct or not is a side issue, and I appreciate the 28 days scenario—surely there must be an avenue, if there is such a shortage, to be paid by a fair employer in that sense?

Mr Fary—There would be a number of fair employers who would be delighted to take on a person with the sorts of skills and experience we are talking about. The complicating factor in this instance is that it is here in Canberra. The ICT industry in Canberra, by the nature of the work that it does, largely requires people—for security clearance reasons—who are either Australian citizens or permanent residents. This person is neither of those. He would be faced with the prospect of having to leave the city that he has lived in for the last four or five years and finding a sponsoring employer—

Senator PARRY—He has been here for in excess of four years?

Mr Fary—He has been here since 2005.

Senator PARRY—Two years. Has the matter been investigated by a compliance officer?

Mr Fary—We have drawn the matter to the attention of compliance officers.

Senator PARRY—How long ago?

Mr Fary—I would have to check with my ACT office. I think in the last three or four months. We have been dealing with the matter for some six months now.

Senator PARRY—Are you comfortable providing this information to us either in writing in confidence, with names, dates and places?

Mr Fary—Before I could respond definitely to that, I would need to check with the member concerned. I think the answer to that is yes, but I am reluctant to committing myself to providing you with that person's personal details without his consent.

Senator PARRY—Subject to consent, if we could have that information in writing. It is fine for us to hear evidence but it is better for us to see practical examples—what has happened, how the investigation has been conducted and those issues.

Mr Fary—I am almost certain that the person concerned would be delighted to make himself available to speak with the department and indeed with members of the committee, if you so wish, but the caveat I would put on that is that I do need to check that with him first.

Senator PARRY—I certainly understand that.

Mrs IRWIN—Following on from that, you raised concerns in your submission about deductions under 457. I think that is on page 11 of your submission. I will quote a small section of it, where you state:

> The DIC should also look to regulate and monitor deductions from the salaries of skilled migrants including accommodation, airfares and recruitment costs to ensure that reported salary levels are the actual salaries paid rather than salaries prior to the deduction of costs.

The question I would put to you is: how might any abuses in this area be better monitored by DIAC?

Mr Fary—Thank you for the question. I think there is an issue of the adequacy of the resources that the department has available to it for the plethora of that sort of work that it needs to do. The short answer would be: provide them with some additional resources.

CHAIR—That is consistent with what we have had before.

Senator POLLEY—In relation to the ability for those workers out here on the visas to bring forward their concerns, we have had evidence that there are a lack of reporting mechanisms in place for these people. Earlier you mentioned the 28-day period, but if you have a problem with your employer that is not a very long period of time to find a new sponsor. One of the concerns I have is that the departments do not seem to have the resources to do enough on-site visits. I am concerned that if members of your professional body and professional people coming out have a problem with their conditions not being as they should be, then some of the semi-skilled workers face an even greater problem. Do you have any suggestions on how we can overcome the lack of opportunity for people to come forward confidently so that they are heard and looked after?

Mr Fary—I think one of the solutions would be to alert folk when they arrive here to the existence of our sorts of organisations. The reality in the marketplace is that the vast majority of these things are dealt with by simple initial dialogue between organisations such as mine and the employer. It is a rare thing that it is necessary to involve the regulatory bodies in resolving these matters. The sooner organisations such as ours with expertise can deal with it and people are made aware of what we can do, then the more quickly it can be resolved and with the minimum of fuss.

Mr Hartley—We have raised the issue in our submission of skills assessment for engineers entering under 457 visas. This is a process that we do for the department for applicants for permanent residency—we do an engineering skills assessment for them. Doing a skills assessment for all entrants is one way of making those entrants aware of, for example, our organisation and APESMA and the services that we provide. Our services are in the area of professional support; APESMA's is in industrial. That is one way of making those people aware of the services and the professional support that they have.

Senator PARRY—To follow up on the issue of skills assessment, do you see that your organisation could provide the skills assessment, like a peer assessment program?

Mr Hartley—Yes. It is a service that we currently provide to the federal government—

Senator PARRY—Is that a fee for service?

Mr Hartley—It is a fee for service. I hasten to add that we do not make any money out of it because we are a non-profit organisation and it is a resource issue.

Senator PARRY—It is cost recovery.

Mr Hartley—It is a cost recovery service.

Senator PARRY—Do you have sufficient resources and numbers of qualified people to undertake those assessments across the whole broad range of skills we are talking about?

Mr Hartley—Yes, we do. We use the same assessors as we use for our chartered professional engineer program and, if need be, there are other people available to expand our resource base to do this.

Senator PARRY—You could cover every state and territory, and within a reasonable timeframe?

Mr Hartley—Yes.

Ms Hurford—Recently when the committee was looking at the permanent migration stream, Engineers Australia's qualifications assessment process was held up as one of the better ones used and other assessment authorities should look to our processes, our turnaround times and the mentoring that we gave to individuals to meet the requirements. We have been doing this for quite a while now and it seems to be working very well. One issue that I would like to raise, as we are talking about skills assessment, is that one of the recommendations we made in our

submission was to look at English language requirements. We would not give someone a positive skills assessment, nor would we allow them to be a chartered professional engineer or facilitate their registration on the national professional engineers register unless they had level 6, which is competent under the International English Language Testing System. I know there have been some recent changes in the 457 rules in looking at level 4.5, which we would not deem to be high enough for an engineer.

Senator PARRY—You would be satisfied with that, as in it is not too high?

Ms Hurford—No, it is not high enough. Our concern is that the wording so far from what I have been able to glean from press releases and those sorts of things is that it is level 4.5 or a higher level if required by licensing and registration. That is the problem that we raised where engineers, unlike other professionals, are not required to be licensed in the wide range of areas. They are not required to be licensed before they are able to offer services to the public. We feel that there is a disconnect in that and we would feel that an engineer that did not have level 6 was not competent to offer services to the public.

Senator PARRY—Could I take you back to your previous comment about the turnaround time for the assessment. Are we talking seven days, 14 days from the request?

Ms Hurford—I do not know.

Senator PARRY—But it would not be months?

Mr Hartley—It is certainly not months. If you like, we can provide the committee with some further information on that.

Senator PARRY—Any breakdown you have on that, on notice, would be good.

Mr Hartley—The process is facilitated if the applicant is from what we call a Washington Accord nation. The Washington Accord is the international agreement on mobility of basic engineering qualifications. If the applicant is from a university whose course is accredited under the Washington Accord then the recognition for that course is automatic. It is then an issue of assessing their competence and their experience so that streamlines the process.

Mrs IRWIN—In your opening statement I think you stated that we have a shortage of engineers and scientists. Why do you feel that we are losing our best and brightest graduates overseas? You may have noticed a number of journalists have been writing various articles, over several months, especially referring to our scientists and that we have the brain drain.

Mr Hartley—There are complex issues here. Something like 10 per cent of our practising engineering membership in Engineers Australia are overseas at any one time. Young graduates today see overseas experience as a vital part of their career development and they like to move and work overseas for a period of time. There are other issues associated with skills shortages overseas and the sorts of conditions that people can get—it is almost a mirror image of what we are talking about with the skills shortage here. Currently, several thousand Australian engineers are working in the United Arab Emirates for exactly that reason. Rather than it being a case of a number of people who go overseas and never come back—and there are certainly those—there is

a constant rotating population of engineers who go overseas, which is a relatively high proportion of the total number of engineers who graduate in Australia.

Ms Hurford—I would just like to add that the skills shortage is not driven by the fact that engineers are fleeing overseas; it is driven by the fact that we have had a very static graduation level of engineers over the last 10 to 15 years. That graduation level has not been meeting industry needs for a long time. There are many issues which are not under your consideration of why that is occurring. It is more the fact that, increasingly, Australian engineering firms are international bodies. They have multiple offices all around the world—if they are in one country, they are in 25 countries—and they are moving staff. We did some survey work last year of our membership. It is an international engineering workforce. People train in one country but work in many others. They come home, go away again and regularly come home.

Mr Fary—I will briefly add to what my colleagues have said in relation to that and endorse their remarks. I also indicate that our organisation polls our membership to within an inch of their life. We recently polled students graduating into the disciplines which we represent. Out of those students who graduated in 2006, astonishingly, 60 per cent of them indicated that they intended to work overseas within the next two years. So, in addition to what my colleagues have said, a remarkable number of young people are seeking to move overseas. Certainly, some of them intend to go overseas only for a few years but, human nature being what it is, a few years extends to a few decades. One of the things—and I do not seek to enjoin my colleagues in what I am about to say, but I would be remiss if I did not say it—our membership are saying to us is: 'Frankly, the salaries in Australia are not bad. However, part of the culture in Australia that is increasingly developing is the incredibly long hours and the unpaid overtime. We find there is a greater work-family life balance in some of the more regulated economies of Europe.' And that is one of the contributing factors—not the sole one, by any means—to why people find that more attractive than returning to the Antipodes.

Mrs IRWIN—I have heard that myself from a number of friends who are engineers and one dear friend who is a scientist, who have actually gone overseas for that reason.

ACTING CHAIR (Senator Polley)—Thank you very much for appearing before the committee today. I would be grateful if you could send the secretary any additional information or material that you have undertaken to provide. Also, the chair may well have a couple of questions that he will put on notice that the secretary will forward to you.

Proceedings suspended from 10.35 am to 10.47 am

HENNINGS, Mr Cawley, Workplace Relations Officer, National Farmers Federation

WAWN, Mrs Denita, Workplace Relations Manager and Industrial Advocate, National Farmers Federation

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 it has been authorised for publication. The committee has also received your supplementary submission. There being no objection, the document submitted by the National Farmers Federation is accepted as a supplementary submission to the inquiry and is authorised for publication. I invite you to make a brief opening statement before we proceed to questions.

Mrs Wawn—From the National Farmers Federation's perspective, despite the drought the industry is still experiencing labour shortages—skilled, semiskilled and low-skilled workers—across the spectrum. Obviously our focus is on the needs of the industry, particularly in drought recovery when there will be a significant increase in demand for labour. Our efforts to resolve some of these shortages are focused on both domestic and migration solutions. That is reflected in the NFF's Labour Shortage Action Plan, which was published in 2005. We are working very hard with a number of departments and with the industry sector around the country to find domestic solutions; nevertheless, we do see migration as providing additional support to the industry in resolving some of our labour shortage issues. Obviously the 457 visa has been one component of the migration solution that the NFF has been concentrating on. Another is the working holiday-maker visa, which is important in terms of seasonal work. However the focus of the 457 visa is on skilled and semiskilled workers. The regional concessions of the 457 visa enable people in levels 5, 6 and 7 of ASCO to be part of the 457 visa, which is certainly being used to provide managers, overseers, mobile plant operators, shearers and so forth.

We have particularly welcomed the department's decision to introduce industry liaison officers with industry associations such as ours. We have been particularly pleased with the progress and success of those placements over the last 18 months. We have a significant capacity in the industry now to understand the ability to utilise 457s far more effectively and have a better understanding of what their compliance requirements are and the process upon which the application is required. We do, however, have a concern about the 457 visa currently, in that there is a provision that there must be a minimum salary level of $37,000 for the regional areas. This amount is not only above award wages but it is also above market rates for our sector. Obviously there are some people who do earn significantly more than $37,000 in our industry. However, we have found that there has been a component of farmers who have utilised this visa in the past who have not necessarily paid $37,000, but nevertheless the payments that they have made have been commensurate with market rates. The other concern that is also reflected in the issue of the salary level is that there is no capacity to take into account non-monetary benefits, which historically have always been a very significant component of farm employment, particularly in the facility of the use of farm vehicles, housing and also the provision of food. So

we believe that that should be taken into account and also that there should be a reconsideration of the minimum salary level. Those are basically our concluding remarks.

ACTING CHAIR (Senator Polley)—I guess I get the opportunity of going first. Thank you very much for your submission and for appearing before us today. I would just like to take up the issue in relation to the salary levels and the skills shortage in your particular area of interest. If you are struggling to meet the requirements of the 457 visa and you have concerns about the level of payment, don't you think that that in itself contributes to the labour shortage in your industry—that is, getting Australian workers to work in your area?

Mrs Wawn—Not necessarily, no. Certainly the survey material that we have undertaken has shown that salaries are not necessarily the biggest concern to people in the sector and that there are more issues of conditions at the workplace and so forth—occupational health and safety issues—that we have to be cognisant of, and that is part of the other areas that we are looking at as to why we are not attracting labour. But ultimately there is a restricted capacity of the industry to pay certain salary levels. There is only a certain capacity for the industry to pay salary levels. A good example is in the horticultural industry in Victoria, which I was speaking to. There are numerous examples where the price they are getting for their product now is the same as what they were getting 20 or 30 years ago, so it is very, very hard for them to pay significantly higher wages. Even if we put our wages up by $10,000, we are never going to compete with the mining industry on salary levels. So we have to look at not just salary levels but also working conditions, flexibility for our workers and the like. Certainly the NFF believes that it is critically important that people take into account people's experience and capacity, look at their wages and reflect that experience in today's market, but ultimately there is only so much that a farmer can afford to pay, given the income that they are currently receiving themselves.

CHAIR—Sorry, I had to leave the room for an important phone call. I am also concerned about that part of your submission, that you are indicating that you are unhappy with the regional wage and any advancement on that, because the evidence to this committee previously has been that there is a big, strong sentiment that the market rate should be applied—not the minimum rate; the market rate. I understand—I come from a regional background myself—that, if the farmers or the horticulturalists cannot afford that, that might cause them grief, but that is a fact of life. If you cannot afford your labour, you have to factor that into whether your business is economic and whether it is viable. Ultimately, this is where the criticism comes of this subclass of visa, that people use it as an opportunity to pay less. We would not encourage that whatsoever, from my point of view. You may care to respond to that.

Mrs Wawn—The concern we have about the minimum salary level relates to the regional concessions. The visa enables regional concessions with ASCO levels 5 through to 7, which are semiskilled positions. They are not trade; they are lower than a trade level. The statistics that we have been provided by industry analysis are that the average for those people within those ASCO levels is around $30,000-odd to $35,000, and that sometimes includes non-monetary benefits. So we are talking, for example—I will give you a good example—about someone who is a mobile plant equipment operator, so they are driving a harvester. They can be brought in under a 457 under the regional concession provisions, under ASCO levels 5 through to 7, so we are mainly talking about people at level 7 here. We are finding from statistics and surveys undertaken by the industry that $37,000 is higher than the market rate, particularly when you do not take into account non-monetary benefits.

So we are not talking about the higher end, the managers, the overseers and so forth; we are focusing purely on the fact that the 457 visa provides regional concessions for those lower level positions and yet the minimum salary level does not take into account the market rates for those lower level positions. That may well mean that, if there is concern by the government that this 457 visa is a skilled visa and therefore you need to look at another category for those semiskilled who have historically come under the regional concession area, that may well be an option, because at the moment we are in a situation in which we have been given a regional concession enabling lower experienced people at those 5 through to 7 positions, but the salary level is not commensurate with those positions. That is the difficulty we find ourselves in. We are certainly not talking about the higher levels of ASCO 3 or 4 in terms of those managerial or overseeing positions.

Senator POLLEY—But in the long term—if I can try and tease this out from you—you are still going to continue to have an issue with being able to get people to work in the industry if you are not paying them enough money for them to live in the community. I do not think that we should be looking at these visas for the extended long term when we should in fact be ensuring that we have Australians employed in all areas, and we also need to look at training. In terms of the regional certifying bodies, do you have any comments in relation to that?

Mrs Wawn—Certainly there have been some problems in the past with regional certifying bodies.

CHAIR—Can you give us an example?

Mrs Wawn—A good example is that we have had a situation in which a certificate level III has been deemed appropriate for trade equivalent. We disagree with that. It really should be at level IV, but they have allowed it in any event. It is really not consistent with the 457 visa requirements. We have advised the department of our concerns in respect of that. So that is an example there. But, coming back to the deputy chair's question, also in terms of salary and training, there is no doubt that our focus is on domestic solutions as opposed to migration solutions, because ultimately we need to focus on those domestic options. We are also focusing particularly on the working holiday-maker visas to resolve our shortages of seasonal workers. Nevertheless, we have the problem of being able to attract Australians to regional and, particularly, remote Australia.

Certainly from my experience of spending a lot of time in the NT and northern Western Australia and northern Queensland last year, there are some companies in those regions which are offering quite large salaries but people do not want to work in those parts of Australia. Therefore, we are not necessarily talking now about the salary issues but rather that the concept of working in remote and regional Australia is proving somewhat complex for us. We are currently in discussions with the Minerals Council of Australia to work in partnership on how we attract more people into regional and remote Australia to ensure that we have sustainable and viable regional communities. Nevertheless, the concern we have is that there does not seem to be consistency between those regional concession provisions of the visa and the salary levels that are reflected in those regional concessions.

CHAIR—Can you name some of the industries you are talking about specifically?

Mrs Wawn—With the salary levels? A good example is a station hand or a harvester, someone who drives a tractor all day. Currently they can come under the regional concessions in this visa. Someone who milks cows can come under the 457—

CHAIR—This is my concern. If you are talking about station hands and people milking cows, I think that is almost outside the scope of this visa.

Mrs Wawn—Not currently because of the regional concession provisions.

CHAIR—That is something we might have to look at because this is where some of the hostility—that is probably too harsh a word—comes from.

Mrs Wawn—I think you are being unfair to the industry. When you look at the industry now with respect to the technological advances required of milking for example, they are significant operations working 24 hours a day with 3,000 head of cattle and the new machinery is quite complex. It is the same with someone driving a combine harvester. We are talking about a machine that costs nearly $1 million. We are talking about people who are quite senior in terms of using machinery. It is not as it used to be in the 1950s with the type of equipment they have to operate. You might ask, 'If they're operating million-dollar machinery why are they getting paid less than $37,000?' I am not saying that is always the case, but these are people who are skilled. They might have a certificate II or III but they are not necessarily at that higher level which is ASCO levels 1 to 4 with 4 being trade equivalent. I do not disagree with you—there is this regional concession provision that has been there for some time. You are right in that there has been concern about those provisions, so maybe there needs to be a review of those regional concession areas with focus on those industries that have particular problems.

CHAIR—I think you are right. I am not trying to cut you off. I understand where you are going and I would like to further examine what you are saying and defend myself but, in fairness, I will hand over to Senator Parry.

Senator PARRY—I was particularly interested in point 3.4 in your submission which you highlighted in your opening statement. I think you have moved into the area of fringe benefits tax with some of the issues of accommodation, meals, provision of vehicle et cetera. Have you had any advice from anyone in taxation or finance concerning whether that does form part of the salary component? My understanding is that it does.

Mrs Wawn—There is some that does and some that does not. For example if you use a farm vehicle that is of a certain standard, if it is a utility, it does not fall within FBT provisions.

Senator PARRY—Housing and meals would be major components, wouldn't they?

Mrs Wawn—Meals is an FBT but housing on the site on a farm is not FBT. If it is physically on the farm, and obviously in most instances it is, then there is no FBT attracted to that. It is the accommodation and the vehicle which are the most expensive components of the non-monetary benefits. Obviously, that does not attract FBT for our purposes.

Senator PARRY—It probably would not be a large enough sum in that sense to even reach the threshold of $37,665.

Mrs Wawn—In our submission at 3.3 we quote from a report that says anywhere between $15,000 and $20,000 worth of salary in the package comprises non-monetary benefits. For example, a senior milk hand would probably get a salary of $30,000 to $35,000 and then another $15,000 to $20,000 packaging in terms of the non-monetary benefits.

Senator PARRY—Can you point to that part in your submission? I did not see those figures in here; I may have overlooked them.

Mrs Wawn—Just above 3.4 we say that 20 per cent of total salary packaging is non-cash benefits and then just above that we say:

> Operational positions attract a salary package of $29,943 to $38,336, inclusive of overtime, and these positions are the equivalent of ASCO Levels 5-7.

Senator PARRY—Has there been any analysis or comparison with overseas industries as to whether farming positions, such as ones we are talking about today, are paid? Are we below or above? How do we compare to other countries in the standard rate of pay?

Mrs Wawn—I am not aware of any studies that have been undertaken.

Senator PARRY—What about within the industry? Is the industry making any attempt to increase the level of pay to people working on the land?

Mrs Wawn—There is no doubt that market rates have gone up significantly. In the five years that I have been at the NFF, there has been a significant increase in the salaries of people working in the industry, and that is in market rates. A significant focus within the organisation is in educating our members in HR management skills and the conditions upon which we can maximise ourselves as an employer of choice. That is something we are heavily focusing on because we acknowledged that in our labour shortage action plan as something that is hindering us as an industry. Nevertheless, the industry also has to be cognisant of the necessity to pay significantly higher wages.

Senator PARRY—Farm gate price increases—that is the bottom line. For all of us we have to pay more for our goods. If it is widespread across the country, then that may be the end result. We need primary produce.

Mrs Wawn—We do. In my experience, having spent a lot of time on the road last year, it was very evident that salaries had gone up quite significantly within the industry. That is obviously reflective of the shortages that we are currently facing and a change within the structure of farming as well. We are seeing a decrease in the number of farms, an increase in the size of the farms and usually therefore an increase in the number of employees. There is a greater focus on HR management capabilities for farmers.

Senator PARRY—Are there pockets of Australia where the shortage of labour is far worse?

Mrs Wawn—Yes, very much so.

Senator PARRY—Can you identify those?

Mrs Wawn—Northern Western Australia.

Senator PARRY—More remote areas?

Mrs Wawn—More remote. Northern Western Australia, the Northern Territory, North Queensland—

Senator PARRY—Would that be because of the mining boom and the attraction to the mining industry?

Mrs Wawn—Predominantly, yes. That is why we have decided to work together with the Minerals Council of Australia rather than purely see them as a competitor.

Senator PARRY—I heard a submission from them yesterday saying that the boom is going to continue for 15 years, so I think we have got a lot of work to do.

Mrs Wawn—We are certainly finding this an experience. We were given a really good example the other day of the benefits of working together with the mining industry. A father and son team cannot keep their farm going to pay for both of their families so they job-share at the local mine. The miner does not mind which person turns up, the father or the son, as long as one does. These are the sorts of experiences we are seeing with the mining sector. We want to run some pilots with them to see if can facilitate people at least staying in the region and going back to agriculture once they have finished their mining experience.

Senator PARRY—Do you have any idea of the volume of shortage in Australia of skilled farm workers?

Mrs Wawn—We estimate that it is around 50,000, but that was prior to this particular drought. That was our figure in 2005. Our statistics are showing an increase; we have had a substantial decrease in employees. We believe once we have a drought recovery this could be anywhere between 50,000 and 70,000. For example, we believe we have a huge shortage of shearers. At the moment the shearers we have in this country are suffice for the current flock numbers, which are the lowest on record, but we are particularly concerned that once we get a substantial increase in wool production we will not have the shearers to meet the demand.

Mrs IRWIN—What countries are these people coming from, as you say, to milk cows?

Mrs Wawn—They are coming from all sorts of places. We are finding, particularly in the dairy industry, that there has been a lot of attraction for the working holiday-makers to convert from their backpacker visas to 457 visas. For example, I have heard of Koreans and some Swedes and Norwegians wanting to stay in the country. We are finding very much that it is the people from the countries that have a lot of people with the working holiday-maker visas—such as the Commonwealth countries and some of the European countries—who are very keen to stay in the country. We are also finding some interest from South America, for example, with people from the cattle industry. They are quite keen to come over and work on the cattle properties. This is reflective of the remote provisions. In terms of remote areas, where they have got experience they can bring that over to the cattle industry in the Northern Territory and Western Australia, for example. So it is across the field in countries.

Mrs IRWIN—In your submission at 1.4 you state:

Since the appointment of an Immigration Advisor on secondment from the Department of Immigration and Multicultural Affairs ("DIMA"), NFF has educated its membership extensively on the 457 Visa ...

I have three questions: one, did you request an adviser from the department; two, are you aware of any other organisations that have a departmental adviser seconded to them; and, three, can you explain their role and how they have assisted with visa applications and approvals?

Mrs Wawn—The industry liaison officer program commenced around about two years ago. The department opened up applications from any industry associations wishing to have an adviser seconded to them. I think we were one of 13 industry associations that were successful in getting an officer when it first commenced, which was in about August 2005 or something like that. We have just been advised that we have been successful in getting someone for a second round. I think there were about 17 or 19 industry associations that were successful in this current round. They opened it up for applications. Most of the major industry associations seem to have an industry liaison officer with them from the department. They have been highly successful in providing advice to the industry in terms of the actual process involved and also in marketing the 457 visas as an opportunity to resolve labour shortages where there are not any domestic solutions.

Mrs IRWIN—So they have assisted with applications and approval of those applications?

Mrs Wawn—No, not approval. Obviously, there would be a conflict of interest if they were approving them as well. They are simply providing information about the 457s and assisting, if necessary, with the complexities of the documentation or with the requirements of the 457 visa. It then goes to the processing parts of the department for the actual approval process; it is not undertaken by the industry liaison officer.

Mrs IRWIN—Have you any idea how many 457 visas have been lodged?

Mrs Wawn—No, for our industry I am not aware.

CHAIR—Would you take that on notice?

Mrs Wawn—I would certainly be able to look at that.

Mrs IRWIN—If you would take that on notice, that would be great. Also, could we have the breakdown of approvals?

Mrs Wawn—Sure.

Senator POLLEY—In your submission you expressed concern about the level of requirements for English language skills being increased. That concerns me in light of your industry and OH&S issues. In terms of not supporting an increase in English language skills, do you have any comments to make those people who have concerns about their employees and in relation to the mechanisms for taking up their complaints?

Mrs Wawn—First of all, since we wrote this submission we have considered the recent changes announced by the government in relation to English-language skills. There was an announcement that the minimum requirement was going be increased. We supported that announcement, so that slightly detracts from what we said in our submission. Nevertheless, a good example that was provided to us by a number of our members in farming—particularly in horticulture, where English might not necessarily be people's first language—was that they might be able to communicate just as well with those working on their property because they also speak the same first language. So that was the main reason we submitted that. We do not disagree with the concept that there needs to be communication, and issues such as safety are critically important as part of that communication, but it was recognised that the industry has a significantly large number of migrants. The farmers themselves do not necessarily have English as their first language and they may well be able to communicate with those employees if they have the same language. But nevertheless I think we have moved on from that submission, given our support of the recent changes to the minimum requirements in terms of English.

Senator POLLEY—And what about the reporting mechanisms for those that perhaps have concerns about their working conditions and their conditions under 457 visas?

Mrs Wawn—We think it is critical that there is significant policing. As a consequence we have supported the increase in penalties and the increase in the requirement of overseeing the use of the 457 visa. Obviously there have been some problems, and we believe it is critical that there is a significant increase in investigation and policing powers. NFF is one of the few employer organisations that supported the employer-sanctions legislation as we believe it is critical that employers do the right thing when it comes to employing people.

CHAIR—You did not mention working holiday visas, which I would have thought were very appropriate for many members of your industry, given the seasonal nature of the work. However, you have not really given us much evidence as to how strongly you have been able to build a case that you cannot get Australian workers for these lower skilled areas. I refer particularly to the remote areas—you were talking about the north of Western Australia, where there are high levels of unemployment amongst the Indigenous population. I know, for example, Argyle mines has a strong relationship with the Indigenous people around Kununurra. Could you confirm to us that you have done all you can to get Australian workers initially, and what is your willingness to employ Indigenous people in these regions?

Mrs Wawn—As I said from our introduction, we are working quite significantly on domestic solutions, more so than on migration solutions. For example, the Northern Territory Cattlemen's Association is doing quite a significant amount of work with the Indigenous community in terms of pastoral work in that area. I am not aware of anything being done in northern Western Australia as yet, but I understand that there is some analysis by Western Australian member organisations of what is being undertaken in the Northern Territory. From a seasonal point of view we have had the national harvest trail information service, which we have found has been significantly beneficial with more information going out to people about seasonal opportunities, and we are obviously talking to the government about maximising that work, when it comes to people from the domestic market who may well be unemployed accepting that work.

A good example is in northern New South Wales. Certain areas, where there is seasonal work, have relatively high levels of unemployment. More needs to be undertaken in those areas to

ensure that Australians accept those positions. We believe that some of the Welfare To Work reforms will assist in an uptake in those seasonal jobs. Nevertheless, the working holiday-maker visa has been very successful, particularly the extension of the working holiday-maker visa to a second year. We got feedback after the first year that if you worked three months in primary production in your first year it significantly resolved labour shortages in more remote areas of Australia, given there is a requirement to work in primary production if they did want a second visa. Nevertheless, that does not detract us from our domestic options and we are currently working on those issues.

CHAIR—There is not much more that can be said. Thank you for attending the hearing today. I would be grateful if you could send the secretariat any additional material that you have undertaken to provide as soon as possible.

Mrs Wawn—Thank you.

[11.21 am]

McDONALD, Professor Peter Francis, Professor of Demography and Director, Australian Demographic and Social Research Institute, Australian National University

KHOO, Dr Siew-Ean, Senior Fellow, Australian Demographic and Social Research Institute, Australian National University

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 it has been authorised for publication. I invite you to make a brief opening statement before we proceed to questions.

Dr Khoo—I would like to mention that since our submission we have prepared another research paper based on our study of 457 visa holders. This paper focuses on 457 visa holders from the Asia-Pacific region, which I presented at a workshop on Asia-Pacific skilled migration to Australia at Macquarie University in April. I have a copy of the paper here for the committee.

CHAIR—I appreciate your providing this material. The committee will consider the material at its next meeting and resolve its formal status, but you can provide it to the secretariat.

Prof. McDonald—My statement deals with the big picture. Dr Khoo will deal more with the detail of our research when you have questions. Australia urgently needs to investigate long-term labour demand across industries and skill levels. Essentially we do not do this. At present we estimate demand largely on the basis of the recent past rather than looking ahead over a couple of decades or so. There are methods to do that and that is what we should be doing, but we do not do that at present. In the absence of good models of future labour demand, if you do a back-of-the-envelope type of assessment I think we can expect labour demand to remain very high for several decades. There are lots of reasons. We know that living standards are going to increase substantially. We know there is the ageing of the population—an aged population that will be better heeled than has been the case in the past, and they will be looking to spend and invest their money.

It is inevitable that we are coming into an era of major new infrastructure investment in energy, water, environment, transport, communications, et cetera. All of these things are going to be demanding of labour right across the board—for service workers particularly. Our estimates suggest that improvements in two of the p's—participation and productivity—will fall a long way short of meeting the expected demand. They are important, particularly in the short term. But the conclusion that we draw is that the third 'p', population, will inevitably have a prominent role. This means we need to sustain the birth rate at around its present level; but, more importantly in the current context, we need to be prepared for increased levels of immigration over a long period. That is going to be with us in the next decades.

Labour markets are now global, and Australia must be able to compete in that global labour market. We have the advantage that Australia is clearly a highly desirable destination but, at the same time, we must be trying to lead the world in systems of immigration. This involves efficiency in recruitment and processing and ensuring that recruitment is consistent with demand. The 457 visa category was developed essentially to achieve those aims. In general, our assessment from our research is that the results have been very good indeed, but there have been problems at the edges, especially as the skill level of the immigrant has moved downwards. The 457 visa was originally designed for meeting urgent needs at higher skill levels. It may not be the most appropriate way of dealing with demand at lower skill levels.

Meeting the urgent shortage of workers at lower skill levels is a new challenge for Australia in many ways; it has emerged in the last few years. There is much that we can do within the country, as we have just been talking about—through participation and productivity—to meet this demand, but my estimation is that immigration will be part of the solution. However, there is no doubt that a low-skill migration scheme has more pitfalls than a high-skill one.

CHAIR—You obviously heard me asking the National Farmers Federal about those lower levels you were referring to, causing me to think seriously about some of those lower levels as to their skill levels. I am only one member of the committee, but there seems to be a grey area now, given these original concessions as to what a skilled worker is. You might want to tell us about your research at that lower end. Should we be looking at a subclass of visa which deals with semi-, low- or possibly no-skilled workers? And how would you qualify people? A supplementary question to you, Dr Khoo: from the Asian region, which you said you have been doing investigations into, is there a great pool of labour there waiting to deal with that end of the market? This system provides unashamedly for a migration outcome at the end; we are not a guest worker country as such. Have you got any suggestions about how we might achieve that? With that long preamble, you might want to deal with them.

Prof. McDonald—They are big questions, and I left it open in my general statement for good reason. The research that we have done was prior to the extension of 457s to the regional areas, which reduced the skill levels. The research that we dealt with was just for higher occupation levels, so we cannot say anything about the lower levels from our own research. I guess there is probably a need for research in that area.

CHAIR—That is right. That might be your next task.

Prof. McDonald—Maybe that is the place to go.

CHAIR—Do you have an opinion on it though?

Prof. McDonald—Canada has embraced some schemes, particularly with the Caribbean. I have spoken to some Canadian researchers about this—it was a kind of revolving guest workers scheme in the way that it was created. But the academics I have spoken to have said there is enough seasonal work and there are enough seasons so that the people who came did not go home. They were able to move from this season to that season, depending upon what crop or what industry it was. So there was a tendency for that to become a longer term type migration, not a guest worker scheme, and I think that is what would happen in Australia too. If we tried to go for a guest worker scheme, it would inevitably move to something longer term.

CHAIR—You see that migration, particularly as you have alluded to in the long run of these current economic conditions, is the solution in the short term because of our demographics, birthrate and all this sort of stuff. Are you proposing that we continue to look at ways of achieving a lower skilled workforce?

Prof. McDonald—It is something we have to face, yes. It is something we have tried to avoid to this point, but the demands are certainly emerging. The way that I see future demand for labour going, there is going to be a lot of high-skill demand as well, but inevitably there is a flow-on effect to others. People who come into Australia with a higher level of permanent immigration, say, require houses and all kinds of services, et cetera, so inevitably there is going to be a demand for lower level workers.

CHAIR—A knock-on effect.

Prof. McDonald—Yes, a knock-on effect.

Dr Khoo—The Asia-Pacific region has been the source of about 30 per cent of all 457 visa holders coming to Australia, so it is a significant source region. In the last couple of years it has become increasingly important. For example, we have seen the Philippines as a source of 457 visa holders, going from about 10th place in 2004 to fourth place in 2006. Ever since the 457 visas have been in operation, four countries from the Asia-Pacific region have been among the top 10 countries of 457 visa holders. Three countries have consistently been in the top 10: India, China and Japan. The fourth country rotated from Indonesia to Korea and from Korea to the Philippines.

In our study we find that the Asia-Pacific 457 visa holders are much more likely to be in the intermediate skills category—that is, associate professionals, trades and also intermediate clerical or sales service persons. They are also much more likely to use a language other than English in their employment, and we find that they are much more likely to work for small employers. Many of these small employers are also likely to be migrants of the same ethnic background.

We have also looked at the extent to which 457 visa holders apply for permanent residence, and our research shows that 457 visa holders from the Asia-Pacific region, and generally those from the intermediate skills categories, are much more likely to apply for permanent residence. Our research also shows that there is a lot of variation among countries of origin in terms of their likelihood of becoming permanent residents, and we find that 457 visa holders who come from less developed countries are much more likely to want to become permanent residents.

It certainly shows that whether a general guest worker visa program works depends very much on where the migrants are coming from. Migrants that come from less developed countries going to much more developed countries are much more likely to want to stay. They see a better future for themselves and their children in the country of destination. They are much more likely to go home if they think that there are employment opportunities for them to go home to or if they dislike the conditions in the country of destination.

Senator POLLEY—Thank you very much for your evidence. For those who come out on 457 visas from underdeveloped countries for economic reasons and then stay, is there not always

a risk that we are creating and adding to what is known as the 'working poor' in this country? Although the conditions may seem to be so much better out here initially, does it not cause some long-term problems?

Prof. McDonald—That is generally unlikely because the labour demand is so high and is now becoming high at lower skill levels. This group of people have generally gone through a filtering system—an employer has selected them for a job—and it is probably unlikely that they will end up in a 'working poor' situation. Obviously there will be the odd case. If we see an inevitable progression—that is, if we try to set up a shorter-term scheme and people stay longer and want to apply for permanent residence, et cetera—English skill is desirable. That would overcome the 'working poor' possibility.

Senator POLLEY—It is considered that there is a lack of support for people who have concerns about their employees meeting the conditions of 457 visas and the reporting mechanisms. Do you have any solutions?

Dr Khoo—As we mentioned in our submission, from our study of 457 visa holders a small proportion said that they had problems with work conditions and some disputes with employers, but generally that did not carry through as a major complaint on their part. It impacted on their job satisfaction, but generally when we asked them what they thought about their overall experience in Australian they were positive, in spite of their problems with the work. Many of them—even those in the intermediate skill levels—come here because salaries are higher, and that is a positive factor for them. Although there are problems—they feel that some employers should be scrutinised much more closely and that there should be closer monitoring—generally there has not been widespread dissatisfaction.

Senator POLLEY—Have you any comments on the length of time employers have to wait to go through the process of bringing workers out on these visas?

Dr Khoo—Not at all. Some employers said that visa processing times could be faster. We received a lot of comments from both employers and 457 visa holders, and most of them were positive. We passed on several good suggestions about the visa application process to the department of immigration. The main complaint that came through in our study, which we were surprised about, was the complexity and length of processing when they tried to apply for permanent residency.

Senator POLLEY—Has it come up through in your research whether there has been any contact from the departments with the workers on these visas, on site visits, rather than just with employers and reliance on written advice?

Dr Khoo—The employers generally said they were satisfied with the monitoring process; they were able to comply. Some of the smaller employers said that they found the paperwork a bit daunting, so we get more negative comments from small employers. Some of these small employers are probably ethnic businesses who might have problems filling out forms in English.

The 457 visa holders only come into contact with the department if they are going to be applying for permanent residence visas. A few of them—we have about 20, I think, writing comments out of the 1,100 people who responded to the survey—complained that there was

some unhappiness with their employers. Some of them have said that they have received some assistance from the department of immigration in trying to locate another employer sponsor. Some of them said that they certainly would appreciate having much more assistance. The comments were both positive and negative.

Senator PARRY—I am going to take this opportunity to ask a question which is not necessarily my view or the view of the committee but rather because I have such eminent people in front of me. Have you ever thought that we should just get rid of our classifications and open it right up—just go through security and health checks? Providing there is a need for a position to be filled in Australia that cannot be met locally, should we simplify the process? Has that been discussed with either of you before or have you contemplated that idea?

Prof. McDonald—My view is that the department does a reasonably good job in this area. Sometimes you have a 457 coming in where the need for this person is incredibly urgent. It is something to do with a power station that is not going to operate unless this person is able to come here in the next week and stay here for nine months. Our impression is that the system seems to work relatively well in getting people here in the time that is required. I do not think I would be breaking down the rules.

Dr Khoo—I would agree with that. We met personally with 10 employers over a wide range of industry sectors and we also had about 135 employers respond to the surveys. The feedback that we got was that the employers were generally satisfied with the eligibility requirements for the visa and the terms of sponsorship.

Prof. McDonald—There are some areas where there were issues, particularly where there was a registration board involved, such as nurses, where the process was slowed up very dramatically by the registration board. But there is good reason for that protection. The registration boards apply much higher English standards than is the case in the 457 entry.

Senator PARRY—There would be no way around that. You need the peer review from each individual speciality to assess the skills or otherwise of incoming migrants. Do you have a view about the ASCO codes? Do you think we still need to have a limited number of occupations and give them the levels that we have? Do you think that is still a relevant process to go through?

Prof. McDonald—That is a difficult question. I think the labour demand is going to be very broad across a range of occupations. You can see that 457 works very well with the top four categories but it starts to have a few problems as we move down. I do not have the answers now. Perhaps we do need to look at a different system or a system that is administered differently for a lower level entry.

Senator PARRY—Without putting words into your mouth, do you think it is too rigid?

Prof. McDonald—No, I do not think so. The 457 visa was set up for these top four categories. As I said in my opening statement, it is clear that there is going to be higher demand for lower skilled people over the next few decades. Let's look at a new system.

Senator PARRY—In particular you said 'service workers'. How do you define service workers? That is a fairly broad description.

Prof. McDonald—I am broadly defining them in fact. Seventy per cent of the workforce is there to service other people. I am talking about that 70 per cent.

Senator PARRY—So this could be from allied health all the way through to hospitality?

Prof. McDonald—Yes.

Dr Khoo—Yes. It is just that these would be the low ASCO codes, from 5 to 7, rather than the top four.

Mrs IRWIN—Given your research and access to data on the 457 visa program, do you have any views on the recommendation that there be greater public disclosure of information about the 457 visa program by DIAC? Examples would be salaries paid, visas approved by occupation et cetera.

Prof. McDonald—I am very much in favour of greater government disclosure in every area, not just this one.

Dr Khoo—We have had no problems in conducting our research in getting the data that we needed from the department of immigration. We have not needed to look at data on salaries because we asked the 457 visa holders themselves what their salaries were. We did not ask the department for that information because we collected it directly from the 457 holders.

Mrs IRWIN—I am looking forward to looking at this study that you have tabled. If the department should decide to conduct further studies into temporary skilled migration to Australia under the 457 visas, what particular aspects should they be looking at?

Prof. McDonald—Certainly at the extension through the regional schemes to lower level occupations—I think that is high priority.

Dr Khoo—We did not cover that in our research because we conducted the surveys in 2003-04, which was before the regional waivers were implemented. It would be useful to look at the use of the 457 visa holders by regional employers bringing in intermediate skilled workers.

Prof. McDonald—The other area is some of the progressions. As we heard, people are moving from working holiday maker visas onto 457s and moving from 457s onto permanent residents. All of that kind of mobility, I think, would be a good area for study as well.

Senator PARRY—The transitions?

Prof. McDonald—Yes, the transitions.

Mrs IRWIN—Out of some of the surveys that you have done, are you finding that some people are using the 457 visa as a stepping stone to apply for permanent residency in Australia?

Dr Khoo—Yes. We did ask them whether they came with the intention of applying for permanent residency. About 60 per cent of the respondents in our survey said they did. Many of them do make an application for permanent residency.

Prof. McDonald—We heard of migration agents with schemes to bring people on working holiday maker visas with the notion that they will move on to 457 et cetera.

CHAIR—In your research did you come across the issue of labour agreements and, if you did, do you have any comments to make about the effectiveness or acceptance of them?

Dr Khoo—Yes. We included labour agreement employers in our survey of employers and we did get a small number of respondents who are labour agreement sponsors. It seems to us, and I think we mentioned it in our submission, that labour agreement employers appear to have more problems with the visa and there was a bit more dissatisfaction with the way they were processing the visas. Aside from that, I think, the numbers are too small for us to make any general comment.

CHAIR—When you were doing your surveys, did the issue of who was paying health insurance come up?

Dr Khoo—Yes. It came up among 457 visa holders. Many of them thought that, since they were paying taxes, they should be eligible for Medicare, rather than having to pay additionally for private insurance. It came up in that context, and that was about the only reference to health insurance.

CHAIR—Thank you very much. We appreciate your very comprehensive submission and your further submission. I would be grateful if you could send the secretariat any additional material that you have undertaken to provide as soon as possible.

[11.50 am]

DAVIS, Dr Brent, Director, Trade and International Affairs, Australian Chamber of Commerce and Industry

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 it has been authorised for publication. I invite you to make a brief opening statement, if you wish, before we proceed to questions.

Dr Davis—I obviously welcome the invitation to be here today. Skilled migration is a critically important issue for our constituency. Members of the committee may not be aware that we have about 350,000 enterprises under our umbrella through state and territory chambers of commerce and industry associations. That is about one-third of all Australian operating businesses. The great majority of them of course are SMEs and they go from the coastal regions right into the inland bush, through about 1,100 country and suburban chambers. The messages that we are getting from them are loud, clear and fairly consistent. There are absolute labour shortages out there. It is only a question of the degree of severity. The labour shortages cover a great majority of categories with a few pockets where there is high employment, but overwhelmingly there are severe and growing labour shortages—skilled shortages and unskilled shortages. We posit that this committee might meet again in a year's time and be talking to witnesses about how we deal with the unskilled labour shortages that are becoming a serious bottleneck.

CHAIR—You might be able to give us some suggestions shortly.

Dr Davis—Both streams are a very serious problem. We are hearing anecdotes of dentists closing up their practices. It is more remunerative to drive trucks in the mines. We are hearing stories of people who have jobs paying $160,000 to $200,000 in the mining and parts of the agriculture industry to do what you would call ASCO level 5 or 6 work, such as driving canecutters and trucks. Employers simply cannot get them. One member said he has only two criteria to get people into his manufacturing business: (1) they can stand up and (2) they can breathe. After that they are in. They are absolutely desperate.

The 457 visa and some of the other programs are a pressure release valve. They are not a substitute for other options. The government is right: it is population and it is participation—but population is fixed for the foreseeable future. Any baby born yesterday will probably not come into the labour force until 2028, if not beyond that. We can get participation up, but male participation is probably about its peak in most categories. Female participation will edge up. The challenge will be participation by older Australians. I think that is recognised across the political spectrum. The release valve is going to be migration. The 457 visa is a short-term option; it is not a substitute for other approaches. We hear often people say, 'It's a substitute for education and training. It is not. It is not one or the other; it is both.

What do we see really happening? We have had good economic policy settings from both sides of politics over the last 16 to 18 years. We have had 16 years of economic growth. The best advice we get from very well-attuned businesspeople in Asia is that China will continue to grow for another six to eight years. So, if China accounted for nearly all of the world's economic growth in 2004-05, that is likely to continue. We continue to look at the strong terms of trade driver for this economy—the minerals boom is likely to continue, bar unforeseeable events. DEWR has said that, just on the basis of population ageing alone, we are going to need nearly 200,000 people in the next few years. We think economic growth will give us the same. There are not that many babies coming through in the stream. Participation will not solve that problem, either. We are expecting wages pressures to start to build from the middle of this year to next year. Economics 101 tells you that wages pressure, if not handled properly, is price pressure, and price pressure, if not handled properly, is interest rate pressure—and that appeals to no-one in commerce and industry, nor, I would suggest, to anyone in the political process.

The 457 visa scheme is a vital part of the pressure release, but it is not the total solution. Is the scheme operating perfectly? No, it is not lilywhite perfect; it does not have a 100 per cent success rate. We acknowledge that there are some problems at the margin—but they are at the margin. We encourage the committee to take the big-picture view and treat the problems and exceptions at the margin as special cases rather than as evidence of a systemic problem—which, to our mind and thinking, there is not.

CHAIR—We still seem to be going to a lot of our traditional markets to source migrants to come to Australia on these visas, but we did hear just a moment ago that about 35 per cent come from the Asia-Pacific region. Are there countries that our immigration system has not tapped into yet?

Dr Davis—No. We are quite pleased that the program is ostensibly non-discriminatory. We think the points system works reasonably well and it is transparent for all to see. In fact, we are pleased to see that a number of other countries are starting to look at our points based model, which is transparent and objective. We made representations about two years ago to what was then called DIMA that they needed to be more proactive in a marketing sense. Traditionally, DIMA have been a border control agency; they hold the gate on who can come into this country. They responded positively. They initiated the process of these skills expos, especially in western Europe. We attended several of them, and they were very successful. They have done them in India and other parts of Asia.

Could we diversify the destinations? It is possible that Latin America could be considered as part of that cycle. It is obviously just a matter of looking at where labour is available. I know that they were very popular in the United States. Some countries are not keen on having us there, because they perceive us as poaching their best workers. We do not see it like that; we just see it as a form of the market operating and putting the information in front of people. At the margin, with the expos, we are aware of the program for the first part of 2008. We believe there is a little bit of capacity in there for another location, possibly Latin America.

CHAIR—The National Farmers Federation spoke about people on ASCO 7 with regional concessions—station hands and people to milk cows. A moment ago, you alluded to the need for non-skilled and semiskilled labour. Do you wish to comment on the fact that this visa subclass

was created for a skilled workforce? In what I have just described, has it gone too far or is that a natural progression or should we be looking at another subclass of visa?

Dr Davis—We have wrestled with that issue. Our view is that the 457 program is a skilled program and it should be for ASCO 1 to 4. We are aware of the debate at the margin, which is about where you draw the line on ASCO 4. That is always going to be a difficult question. We have an open mind about creating a separate visa class for ASCO 5 to 7. We can see some merit in that. It is quite clear-cut. You can preserve the integrity of the 457 program more clearly. Some of the issues we have heard about in the media have been a case of someone who was admitted as a 457 ostensibly to do an ASCO 1 to 4 job and ending up doing a 5 to 7 job. Our preference is to keep it more clear-cut, possibly with a 45X class—whatever that number may be; I am not aware what the available numbers are—and then put ASCO 5, 6 and 7 into that group and manage that as a discrete program.

CHAIR—Do you think that the discrete program you just alluded to should also continue to maintain the fact that there is a migration outcome for those involved?

Dr Davis—I heard the previous speaker talk about the idea that a lot of people do use the 457 or various programs as a move towards permanent residency. I think that is an inevitable progression. For a lot of people the 457 program is what you might call a 'cycle' program, where they come out here for a short period of time to do a prescribed job and then move on as part of career. Some people marry, some people's situation changes, a career progression develops, so we would not like to see permanent residency closed off. It should remain an option where that person can meet the requirements of permanent residency. If you closed off permanent residency, then you ostensibly really are getting the guest worker program that finds disfavour around this building.

Senator PARRY—It is an added incentive, isn't it—part of the attraction to come to Australia, if there is that carrot that you can become a permanent resident?

Dr Davis—Yes. The essential feature—if you really look at 457—comes in almost two elements. Element 1 is the supply side and element 2 is the demand side. The supply side for 457 is reasonably straightforward. Multinational enterprises and what you might call enterprising young people at the front end of their professional skilled trades career seek experience around the world. And, for a lot of people in Asia, Australia is a good place to get Western, English-language, First World experience. Of course, a lot of young people in Australia go in the other direction for the reverse.

The other side is really the demand. We have participated, for a great number of years, in the annual consultations with ministers for immigration, on both sides of the political fence. Our line in the last few years has been that Australia is involved in a global battle for talent. No matter which way you look at it, with strong economic growth we are out there and we have to win to compete. We have a number of very good advantages. We did a very big study about two years ago on why our young people do not come home—not why they leave but why they do not come back again. That battle for talent is very fiercely fought. We were, and probably still are, the destination of third choice for most highly mobile people.

Senator PARRY—What are the first two?

Dr Davis—The United States and Canada. The United States for itself and Canada because you can get into the United States. We are in that real battle, and the skills shortages are a bottleneck to our economic growth, so we have to participate vigorously in that. Our attraction is obviously our lifestyle; our lack of appeal is that our tax system just does not compete internationally to bring these people here and hold them here. But again these decisions are usually a package. What you pick up on the swings of lifestyle, career development and experience you trade off with tax.

Senator PARRY—The tax system is getting better, I hasten to add. Dr Davis, I commend you on the issues paper. I think it is a very clear and concise outline of where we are heading and your viewpoint. I also need to add that I am a former director of the Tasmanian Chamber of Commerce and Industry, so I do have a bent, and I am still an active member of the City of Burnie Chamber of Commerce and Industry.

On page 2 of the November 2006 edition of the ACCI issues paper, it says, 'The research conducted indicates that the visa holders in their original jobs are passing on their skills for Australians.' That is something that has not come up a lot—this cross-pollination of skill sets. Can you expand further on that?

Dr Davis—The classic one of course is that there is a view about that the 457 program is a substitute for training Australians; it is not. It has never been seen that way by employers. The overwhelming message we get from our members is, 'If they are available, we will train them.' We see merit in that. They accept that there is some cycling, but there is a culture of training out amongst Australian employers. The classic example—

CHAIR—Just to get you on the record on that: you have made the point twice now—quite strongly—about it not being a substitute. You would also probably agree that it is not a tool to drive down wages and conditions.

Dr Davis—No, it is not. It is a very simple proposition: why do most employers go for a 457? If you were at, say, the large end of town in a multinational, it would be just part of the corporate cycling of people. Young people come in and if you are a 'KPMG' or a 'Baker & McKenzie'—the law firm—cycling your people around the world is part of the career development strategy. If you were a small- to medium-sized employer, the decision rule that generally follows is: 'I need more skilled labour so I will look around my local labour market. Can I get the person I need? I can by poaching him from her over there, my competitor.' All that does is redistribute the labour from A to B. It does not expand the pool at all, and you get into a poaching game, which probably does not benefit anybody. You then decide, 'Okay, I will go for an offshore option.' We have done some work which points out that it is not the cheap option it is sometimes claimed to be.

We did an exercise looking at two possible scenarios: a 'go it alone' scenario and a 'use an agent' scenario. Depending upon how you value different parts of the chain, the cost of bringing in a 457 can be between about $14,000 and $31,000. That is what you might call a sunk cost—just before 457 arises. The second issue is that we have a minimum salary level and that is a mark cast in stone. The Department of Immigration and Citizenship, usefully, produces about every quarter a visa subclass 457 business long-stay summary report. It is available on their website. It shows the average salaries paid to these people. I think with one exception, which

was in the agriculture area, all of the salaries paid are above average weekly earnings—a figure which, for Australia in the March quarter, was about $71,000. Barring agriculture, they range from about $63,000 to about $94,000. If you take account of the fact that you have a heavy front-end cost of between $14,000 and about $31,000 before they walk in the door and pick up their first tool, plus other obligations—I heard the previous speaker talk about health and education expenses, which are often carried by the employer—plus the well above award or AWA or EBA type measures, they are not cheap.

Senator PARRY—How does that compare with the market rates—just on the rate of pay?

Dr Davis—As a general rule of thumb—although I do not have figures immediately in front of me—I would say that most of them would be probably eight to 10 per cent or maybe 12 per cent over market. That is a very broad generalisation. Obviously, if you were at the top end of the medical chain, your salary would be quite high. If you were doing a more straightforward activity, say, in agriculture or some parts of manufacturing, your salary would be different. Again, it is that front-end loading cost that is quite substantial. So it is not a form of cheap labour. It is not sweatshop labour because they are ASCO 1 to 4. They are skilled people and they are in demand. We have better than full employment in Australia now and it is a situation that will not change; it will only get tighter. They are enjoying a sellers market, these people.

CHAIR—How do you think we feel in Perth with 2.7 per cent.

Dr Davis—I think in the ACT we are not much higher. We are hearing from employers about this and I will give you a case in point. My division is in the process of employing a senior executive. Three years ago, we advertised a comparable job and got nine replies. Yesterday, I had two. It is a very tight labour market and if China goes forward, as it has been, our expectation is that it is going to get that bit tighter and tighter again.

Senator PARRY—Not to mention India, which is on the horizon. Can I just go to the third paragraph, Dr Davis, that I want to get you to expand upon. How did you arrive at the figure of the $850 increase in the standard of living cost?

Dr Davis—That is a figure we have taken from Access Economics. The then DIMA commissioned that work. It looked at the cost to the taxpayer, the benefit to the taxpayer and some other economic benefits. The department have also commissioned the Econtech group to do some of this work. I should report that that is the number derived by others.

Senator POLLEY—Thank you for your submission. I am interested in your comment—and I was hoping that you could expand on it—regarding your concerns about increasing the commitment to training and the assessment and needing to ensure that stays flexible. In terms of the long-term economic future of Australia, wouldn't training of those coming in on a 457 visa be paramount to reducing the long-term skills shortage?

Dr Davis—I think we bring in a lot of different skill sets. We have done a lot of work—for example, looking at the hospitality industry. It is nice to have a master chef, for example, with 20 years experience, but you do not get that after four years doing your certificate; you have to wait longer. If we can bring in those sorts of people, they can impart their skills—similarly in medicine and in engineering. If you can get master tradesmen and tradeswomen who have come

up through different systems, they can impart to Australia the skills they have learnt in those different systems. In fact, that willingness to share skills is probably the great intangible benefit of the 457 program.

Senator POLLEY—I think it would be fair to say that you have given a fairly rosy picture of how you see 457 visas, but in fact evidence has been given to us that the conditions for those out here on those visas have not actually met expectations. Do you have any comment about whether or not there should be a tightening up of the reporting mechanism for workers to ensure that their rights are protected?

Dr Davis—I am not going to stand here and say that it is a lilywhite, perfect system; it is not. Any system of border control ultimately works on risk management, whether it is Customs with manufactured products or DIAC with human beings—which is considerably more complicated. We have put together some research. We understand there are about 10,000 employers making use of people on 457s. We think there is a stock of about 102,000 of them here. The best picture we can get is that we believe DIAC gets about 150 to 180 complaints on its book of what is regarded as misuse or abuse or improper use of a 457. That is 180 complaints out of a stock of about 102,000—a bit under two per cent.

We think a 98 per cent success rate is outstanding and DIAC should be commended for that. If every government had a 98 per cent success rate in everything it did, I think government would be roaring along. Of those 180-odd complaints, the best information we get is that about 70 per cent of them are investigated and do not have merit. They may be morally or ethically debatable, they may obviously be a very sad story, but there is not a breach of the law, the regulations or obligations. The 30 per cent left over—roughly about 50 to 60 cases—should be penalised within the frame of the law. We are not going to stand up and defend those who breach the law or their obligations. The law can take its course and the penalties should be imposed as appropriate. I have no problem with that at all.

Senator POLLEY—For those workers who are out here who have concerns but have little English and are not really au fait with their rights and conditions, should there be an extension of the period of time in which they can get a new sponsor? Should they be given some protection if they have concerns and they leave their employer; should the department actually give them some protection until they can find a sponsor?

Dr Davis—The IELTS, International English Language Testing System, is a good one. Government policy now is to lift IELTS to the 4.5 level, which means, ostensibly, functional vocational English. Other than those out on the far margin, the great majority of them entering the program should be able to speak English, so being socially isolated or isolated in the workplace should not happen. Should they be well-informed of their rights, entitlements and obligations? Absolutely. DIAC or the sponsoring employer should have a requirement to give them a show bag, or whatever term you want to use, of information in English, or possibly in their home language, that they can understand. That information should say, 'If you have a problem or if your employer's obligations, as set out in this literature, aren't what's happening to you, here is a 1800 number to ring.' That should be to DIAC and DIAC should then make appropriate enquiries. We have no problem with that at all.

Senator POLLEY—You have referred to labour agreements in your submission. Can you give us some examples of how the process needs to be improved?

Dr Davis—Labour agreements are an important part of the process in two respects. One member described them as the bulk order approach. Rather than bringing them in one by one, you can go to DIAC and say, 'I need a large number of them.' It is also a case where you have a square peg that does not fit the round hole. Our view of labour agreements is that they work reasonably well. We have been working on a training program for some of our member associations and large employers on how to liaise with DIAC on labour agreements. Our preferred approach that they should take is that they put out in the public domain almost a template which says, 'Here are the core provisions. We do not have a lot of room to move under the law and the regulations on this. Here is the public policy of why we do this.' Then they may have a second part which says, 'These are a bit more negotiable.' It is a bit like corporations law—the fixed part and the variable or replaceable part. That would be very useful to a lot of employers.

I think also it would be informative for employers, when they are knocked back or rejected, to have some explanation, so some transparency would be helpful. What is the way of the future? I do not see a big change in the mix between what you might call unit intakes of one or two and labour agreements. Where we understand there have been labour agreements, it has just been like any commercial discussion where the two parties could not come together. In commerce and industry that happens—not every business process ends up in a contract.

CHAIR—When it has taken so long and the parties cannot get together, in some respects this causes a foot on the hose in getting people here. What should happen? We cannot sit back and say, 'That is happening; we cannot intervene.' As you say, it takes two or three years, and eventually the business is chasing them.

Dr Davis—We would hope that a labour agreement does not take two or three years to negotiate. Our expectation is maybe two or three months.

CHAIR—Some of them have.

Dr Davis—I think it is rather unfortunate that it has taken that long. We are not in favour of mandating a cap where the thing has to be resolved. Ostensibly, what is a labour agreement? It is a contract between the Commonwealth on one side and an employer, or group of employers or their association, on the other. At the end of the day, DIAC is responsible for the integrity of the system and the parties have to negotiate in good faith until they reach an outcome. If they cannot then the process either comes to an end or one party sees a need to move.

CHAIR—You are aware that a lot of the problems with labour agreements come through the state governments not wanting to enter into these agreements willingly or to take a cooperative approach?

Dr Davis—This is a second layer. We have heard allegations that some state governments are quite keen on labour agreements and, as long as they stand up to a rigorous and objective testing system, they are fine. We have had other cases where the state governments simply say, for whatever political reasons, 'No, we will not be party to these.' I think some careful consideration

needs to be given to the role of the state governments because, while they can have a say on who enters their jurisdiction, all of DIAC's programs, bar I think one or two, do allow mobility. You do not have to stay in the jurisdiction that admitted you; you can move across a border reasonably readily. We are generally comfortable with the labour agreements. We understand DIAC is doing some thinking about how they go forward. Transparency of what is fixed, with little room for negotiation and what is negotiable would be most useful.

Senator POLLEY—Can I just follow up on that. We have had evidence before us in relation to a labour agreement in Queensland with the meat industry. In fact, the issue there has been more about the meat industry not signing up to those labour agreements while at the same time obviously having concerns about being able to recruit Australians into that industry. We have heard evidence as to a number of reasons why people do not want to work in meat abattoirs any longer. All I can say is that there must be a lot of people working in the mining industry, because, in every shortage there is around the country, everyone is blaming the mining industry—yet I still know people who are having trouble getting jobs there. Do you have any comments about why—because I think it would be fair to say that you see some flexibility in these agreements—in somewhere like the meat industry they are not coming and jumping on the bandwagon?

Dr Davis—It may not suit the enterprise. An agreement struck, say, before the enterprise came into existence or became aware of the possibility may not commercially appeal to them. A labour agreement of course is not exclusive. If I am, say, the owner of a meatworks, I do not have to go through that labour agreement if I do not want to. It does not preclude me from going back to the conventional 457 stream. It is a commercial decision. For those who were party to the first meatworks labour agreement, it may have suited their purposes at the time. New players in the market may not find it that appealing. That is the market.

Senator POLLEY—One final question: have any of your members used DIAC's outreach officers? Have they been of assistance, or do you have any comments about their value to the 457 visas?

Dr Davis—I thought that was a dorothy dix question! Yes, we are a great supporter of the program. We host an industry outpost officer in my division. I understand that there are 15 of them or thereabouts at the moment. Throughout the state and territory chambers I think we have six or seven of them. I think our industry association members account for another two. We think it is a tremendous initiative. It has been very valuable to my organisation in getting a better understanding of how DIAC work. We want to work with them to make the process work better. Having someone who can give us some insights has been very valuable. My IO has done some terrific work in the area of 457 and labour agreements.

Out with my members, they have been very important in building bridges with rank-and-file employers. They have, if nothing else, put in front of a lot of them: 'There is an immigration option available to you if you are having labour shortages. It is not the zero-sum game of just A poaching from B, B poaching from C, then C poaching from A, and round and around it goes.' It has been a terrific initiative. It has worked very well. We think DIAC has placed them well. One or two have gone back for a variety of reasons. It is a flexible program. It has an 18-month cycle, so it can be nuanced if need be. We are quite happy with it, and we would like to see it continue. Indeed, we hope some other government agencies have similar breadth of vision.

Senator PARRY—I have a supplementary question. You answered a question from Senator Polley about the level of complaints, which is at paragraph 6 on page 2. You mentioned 102,000. Was that visa holders?

Dr Davis—That is the stock of 457s in Australia.

Senator PARRY—And that is from its date of commencement, not a year? I just want to get the parameters of those figures. I have written down here now 30 per cent of 1.6 per cent, and I want to know: 1.6 per cent of what?

Dr Davis—Our figures in our submission were as at October last year.

Senator PARRY—From the implementation of the 457 program?

Dr Davis—Yes. The 102,000, as I understand it, is the stock in Australia as at the end of the March quarter this year.

Senator PARRY—So the 102,000 is the total number of visa applicants that have been successful in arriving in Australia?

Dr Davis—That are still in Australia.

Senator PARRY—Sorry?

Dr Davis—There were roughly 102,000 457s in Australia at the end of March. That is the total number of them. So: ins, subtract outs; those that are still here.

Senator PARRY—So this is the net figure?

Dr Davis—Correct, yes.

Senator PARRY—So then how do you arrive at 98.4 per cent of those 102,000 still here—

Dr Davis—Different set of figures.

Senator PARRY—that you think are doing the right thing?

Dr Davis—The figures in here were done as at October last year. The 102,000 is a newer figure, so you are talking about two different periods, for a start. That might have caused the confusion.

Senator PARRY—So it might be 99,000 or 98,000 last year?

Dr Davis—Roughly. We still believe that the wrongdoer rate is probably about the same. It has probably gone down because of steps taken since this time.

Senator PARRY—But still, the emphasis of all this is that 1.6 per cent of the total number, or the net group in Australia, have had a complaint—

Dr Davis—Yes.

Senator PARRY—and 30 per cent of that 1.6 per cent really have gone through to being genuine, bona fide complaints.

Dr Davis—Correct, which means about 0.5 per cent. If you are looking at 102,000, that multiplies out to about 550-odd people roughly who have a legitimate complaint. We accept that as part of a program.

Senator PARRY—Exactly. It is a very, very low figure. That is a figure we do not see very often.

Dr Davis—It is a risk management approach. Government policy from both sides of the fence for many years in our two main border control agencies—DIAC for human beings; the Australian Customs Service for manufactures—has been risk management. We think that that half of one per cent problem rate is tolerable. The cost of remedying it, as anyone would know, would be disproportionate. To get to that last centimetre in eliminating all problems tends to be disproportionately expensive. That is not to say that DIAC cannot step up its investigation and enforcement processes; it can and should where it finds a pattern of misbehaviour. We do not object to random testing either where there is a reason for some checking. But the idea of continually checking out 102,000 people every single year would be inefficient and an enormous drain on the taxpayer for a benefit that we would not be persuaded exists.

Senator PARRY—So you do not agree that there should be 100 per cent checking, which some people have called for?

Dr Davis—I think the taxpayer would probably take exception to funding a sufficient number of civil servants to go out and check 102,000 people every single year. I think the Treasury would probably take exception too to funding it.

Senator POLLEY—Can I just follow on there. My concern is, and some of the evidence is, that there is not enough hands-on assessment and contact with visa holders themselves. So you would not see any harm in increasing the actual visitation onto sites and in more communications with the workers themselves, rather than just relying on employers and their paperwork?

Dr Davis—I think, as I responded to you earlier, if you have informed the 457 holders—or any migrant coming to Australia—of their rights, if they feel that they are not getting their proper entitlements or rights they should have a hotline number to DIAC and DIAC can make inquiries. There are several ways of finding out the wrongdoer: complaint by the visa holder, of any visa, or a trade union may pick it up and pass on information, preferably directly to DIAC rather than to the Melbourne *Age* in the first instance; secondly, colleagues and friends may become informed; thirdly, DIAC may, through its own techniques and methods, find a culture or a pattern.

There are some industries or firms or regions where risk profiling shows that there is above-average incidence and we should make some inquiries. We are aware, for example, in the restaurant industry that it has drawn attention to itself for various reasons. Some of it is labour practices. They have been investigated. Some have been upheld. That would suggest that an investigator may just say, 'Well, let's just have a look around a bit further.' We regard that as a reasonable form of public administration—random visits. We are always a bit curious about how you choose or implement a random visit program, but, where it picks up signals through a reasonable risk profile link, we see that as legitimate for DIAC to make inquiries, yes.

CHAIR—We are trying to finish on time, so I will be brief, and I am sure you will be. We did talk to you about labour agreements and regional certifying bodies, but can you just clarify: are you in support of regional concessions?

Dr Davis—We have thought long and hard about this one. We understand the argument for them and why they are put. The difficulty for a regional concession scheme is that some people take the next step and say it almost becomes a form of obligation: you have to remain in that region where you have been sponsored. It is not part of the Australian culture to obligate people like that. As one member from regional Australia said, 'If we have to give them a concession, we're actually sending them a message that these places aren't desirable to live in.' So in fact the idea of regional concessions is a negative message. We think that they just need to be informed. As I understand it, most of DIAC's geography is in fact that just about all of Australia is regional anyway, bar the Sydney basin, south-east Queensland, Melbourne and I think metropolitan Perth—I think Canberra is regarded as regional. So the regional concession is rather curious.

CHAIR—Perth does not get a regional concession, unfortunately. We would like to use Adelaide's excuse to leverage up more people. You suggested that a minimum salary specified absolute dollar amount approach under the 457 visa program be replaced with one based on an appropriate industrial instrument to bring the program more into line with Australian workplace reform. Could you take the committee through exactly how this might work and how the salary levels would be monitored for compliance? You might want to respond to us in writing.

Dr Davis—It is a very simple proposition. We have a concern with the principle of the minimum salary level. It is a draconian form of wage regulation. Bang! One price fits all Australia wide, end of story. We see that as incompatible with the direction of government policy at the moment, which is the Australian workplace agreements approach. We just think that there is a contradiction of government policy. If AWAs can exist for Australians, they should be the appropriate methodology for foreign residents in Australia.

CHAIR—They are very popular in my electorate. I have nearly 30,000 people on AWAs.

Dr Davis—I can remember in an earlier life, Mr Randall, standing up in the Industrial Relations Commission talking about enterprise bargaining. That was 1987 and we were not the flavour of the month back then, so we may not be now.

CHAIR—That is a very good point. It has been refreshing talking to you. Thank you for attending today's hearing. I would be grateful if you could send the secretariat any additional material that you have undertaken to provide as soon as possible.

Proceedings suspended from 12.31 pm to 1.41 pm

HAIKERWAL, Dr Mukesh, Immediate Past President, Australian Medical Association

HOUGH, Mr Warwick, Director, Workplace Policy, Australian Medical Association

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

Dr Haikerwal—We are grateful for the opportunity to speak to the committee. Australia has a great healthcare system, and the healthcare system is heavily reliant on overseas trained doctors. Over the last 10 years the percentage of doctors in Australia who have trained overseas has risen from about 20 per cent to about 25 per cent of the medical workforce. In rural and regional Australia it is up to 50 per cent in some areas. If we are to maintain the quality of health care in these areas we need to ensure that temporary business visas are not used as a vehicle to recruit doctors of lesser quality.

The recruitment of overseas doctors is a key part of Australia's response to medical workforce shortages. The AMA is keen to ensure that every effort is made to recruit locally trained doctors, that Australia does not actively recruit doctors from less developed countries, that recruitment processes are transparent and conducted in a timely fashion, that the skills of overseas trained doctors are properly assessed and that overseas trained doctors are provided with appropriate orientation and access to ongoing professional support so that they might do their work better. Unfortunately, standards of assessment vary from state to state and the manner in which they vary can be quite diverse.

A 2007 report from the Department of Health and Ageing entitled *The registration and training status of overseas trained doctors in Australia* shows that Australia is now drawing doctors from a much more diverse range of countries, with increased numbers of doctors coming from non-English-speaking backgrounds. The same study reported that arrivals on temporary visas had grown rapidly, as follows. The visa class 422, medical practitioner, has grown from 1,419 in 1999-2000 to 3,074 in 2004-05. This visa is obviously being phased out for 457 visas, so we can expect 457s to grow in response. The class 442, occupational trainee arrivals, is another cause for concern for us, as we saw 1,237 of these permitted in 2001 and that has doubled to over 2,437 in 2005. The concern is that this is being used as an avenue to recruit people as trainees who are not really trainees, so that they can get their visa and continue to work. As few as 28 per cent of overseas trained doctors receive any formal type of orientation in the Australian healthcare environment, and many doctors from overseas are placed in challenging work environments without suitable orientation. This makes it very difficult for them not only to integrate into the community but also to understand the healthcare system and professional challenges of working in Australia compared to where they have trained.

The Commonwealth has formed a committee to look at the development of improved nationally consistent standards of assessment and support for doctors trained overseas. However, it has been reported in the media—and confirmed—that the New South Wales government is yet to support initiatives being considered by the committee. Unless all states sign up to the process being considered, that process will fall over and we will be left with the existing highly flawed arrangements—many of the consequences of which, of course, have been widely reported in the press in recent times. As a last resort we believe that the Commonwealth should consider imposing the following requirements on 457 and 422 visas: (1) that formal assessment of the OTD qualification and skills needs to be provided to the relevant specialist college; (2) evidence of the appropriate arrangements to provide supervision and/or training as determined by the college assessment should be provided; (3) a requirement for the sponsor to provide the OTD with formal orientation to the Australian healthcare system; and (4) the appointment of a doctor with recognised Australian qualifications as a mentor for that overseas trained doctor. They are my opening remarks, Chair. Thank you very much for the opportunity.

CHAIR—Thank you very much. On the face of it—let us be blunt—you are suggesting that they are using the 457 visa program to basically rort the process?

Dr Haikerwal—'Rort the process'? Right the process, I would say.

CHAIR—Well, to circumvent proper scrutiny.

Dr Haikerwal—Currently?

CHAIR—Yes.

Dr Haikerwal—Our concern is that some of these other categories have been used by people who are not, for instance, trainees; they are actually fully qualified in their own country and are doing full-service commitment.

CHAIR—So they come here as a so-called trainee, yet they are a doctor in the country of origin?

Dr Haikerwal—Yes.

CHAIR—They use that visa condition to get here and then begin practising as a doctor?

Dr Haikerwal—Indeed.

CHAIR—In regional areas, more likely?

Dr Haikerwal—In regional areas; in areas of need, which, of course, can now extend to CBD hospitals as well in areas where they cannot recruit people—ostensibly because they have advertised and have not recruited, but in reality it is because the terms of the advertising are not attractive to local graduates.

CHAIR—You say that there is a national committee that is setting the parameters on this—

Dr Haikerwal—Yes.

CHAIR—and that, as a working party, it is quite successful, except for New South Wales. Is that correct?

Dr Haikerwal—That is correct. All other states have signed off on this agreement. I might pass to Mr Hough shortly. All the other committees have signed off across the country, apart from New South Wales.

CHAIR—I wonder if this has got anything to do with the fact that the New South Wales health department is the largest user of 457 visas for other medical professionals?

Dr Haikerwal—I suspect that the argument is the same for other professional groups as well.

Mr Hough—In terms of the committee that has been formed, there are a whole range of things that are being looked at by all stakeholders in terms of improved assessment for overseas trained doctors. If they are put in place there will be a lot more rigour and a lot more confidence in the systems of assessment. I think the 457 visa arrangements, as indeed the other temporary business visa arrangements, are heavily reliant on the states to get it right as far as assessing people as being of a suitable standard. There are quite significant holes in the assessment process at the moment.

The point about this implementation committee is that we have seen committees get to this stage before, where there is broad stakeholder support for new methods to assess overseas trained doctors that are fair on the doctor and also give the public more confidence in their skills. The problem is that at some point or other the workforce considerations have then overridden, I guess, some common sense on quality and standards. Once one jurisdiction drops out of the ballpark then everyone else drops out as well, because they fear that if they make it too tough for overseas trained doctors to enter their state they will simply go to another state. I suspect that is much of the problem which is driving New South Wales's agenda at the moment.

CHAIR—Do you think it should be incumbent upon the federal government to use a bit of a stick to suggest that New South Wales do not receive any more medical trainees until they do sign on to this committee?

Dr Haikerwal—It is certainly our contention publicly that the 457 visa should be used with conditions on it. Those conditions should include the fact that the assessment processes are the same as set out in the rest of the country—a consistent assessment process of people before they are allowed to enter.

CHAIR—You would think that New South Wales would have learned from the Queensland experience?

Dr Haikerwal—Absolutely. We had hoped that Queensland would have learned from the Queensland experience too, but sadly that has not been the case either.

Senator POLLEY—Thank you very much for your submission. Do you have anything further to add in relation to the salary that is offered under this visa other than the remarks you made in the opening statement? It is obviously of real concern.

Dr Haikerwal—The AMA support all of our doctors working in Australia, wherever their qualifications emanate from. We would balk at the idea that somebody would be recruited from overseas and be subjected in their place of work to lesser terms and conditions of service and also then be subjected to a gagging order, in many ways. If there is a problem with the way services are delivered, they cannot kick up on pain of being deported, because their visa is cancelled if they make a fuss. We will support all doctors working in those areas. That is a concern: that they are being recruited into places under terms and conditions that have not been acceptable to other people who graduate in Australia and that they may well be subjected to that sort of behaviour, which is unacceptable.

Senator POLLEY—I have asked just about every witness that has come before about these visas. There has been evidence given to us, and obviously we have read in the media about events where people have had concerns about their conditions of employment under these visas. Do you think that there are ample facilities available for people to make complaints to the department and to be given the sort of protection that they need? Have you got any remedies or suggestions you can make about how we can ensure that people will come forward if they have issues and that they will be given some protection?

Dr Haikerwal—I think in general terms people are reluctant to come forward because they want to be in Australia and they want to work in Australia. They have got their visa and they want to keep working. It would be better if there were better ways of approaching it, and that is something that we offer through the AMA. It is certainly important that people are able to report and continue to work in a different environment if that is necessary. Obviously the visa stipulations are quite strict currently, and they have—

Mr Hough—It is fair to say, and I think it is important to highlight, that we obviously need overseas trained doctors here and we need appropriate visa arrangements. What we observe anecdotally is that the health departments in all states use them quite ruthlessly and that overseas trained doctors who have a problem with their employment or have a complaint to bring forward are often discouraged from doing so by threat of loss of sponsorship. That drives an unhealthy environment for the overseas trained doctors and also causes frustration for their Australian trained colleagues.

CHAIR—If there is such a shortage of doctors, I would suspect that a sponsored doctor under this program would have no trouble finding a job within 28 days, so being threatened about your employment might be a bonus. I do not mean it like that—I am saying they could move on to somebody better.

Mr Hough—They may well be able to move. What you have to remember is that a lot of these doctors are employed in rural and regional Australia where there is only one hospital in the town or in the immediate vicinity. If they get in a position where they cannot handle the situation they face and they wish to move, that may involve uprooting their whole family and moving them interstate. They then have to also reapply to the medical board to get their conditional registration changed so that they can work in the new place, because their registration is linked

to their employment. There are some quite significant hurdles that you need to be conscious of in this regard.

Senator POLLEY—Could you provide—in confidence if necessary—some examples of those situations? In my home state of Tasmania we have a real shortage of doctors in all areas, and, yes, it is sometimes more difficult to attract doctors into remote areas because of those things. I take your point: it is not easy to uproot and move a family. People also feel intimidated by making complaints unless they know that they have got some protection. If you could provide us with some evidence in confidence that would be good.

CHAIR—You can give it publicly, given the fact that this is a parliamentary committee and attracts privilege, or, if you must, you can give it in confidence—absolutely.

Mr Hough—I will certainly undertake to provide that to the committee.

CHAIR—Thanks.

Senator POLLEY—In your submission, you raised a number of concerns regarding the lack of national standards for the OTD assessment. As you know, COAG has recently announced a new national registration system for implementation by July 2008. Will that address your concerns or does something else need further action which you would like to elaborate on?

Dr Haikerwal—The principles of the national registration and national accreditation framework will allow a nationally consistent set of standards to apply to all doctors who work in Australia. That will be ideal, because it will mean that everybody working in the system will come up to a certain standard and also that any member of the public will know that whomever they consult with will have reached that standard. Unfortunately, as we have discussed, the concern is around the nationally consistent standard not being consistently taken up and applied. We still have to get New South Wales across that line; it has been the one state that has held out for quite some time. The committee should have reported by the end of December 2006 and finalised that part of the work dealing with nationally consistent assessment tools and pathways. Unfortunately, we are still waiting on a complete sign-off. But the actual structure is a lot more defined and, when in place, it will be properly consistent across the country, which is very important.

Senator POLLEY—Can you give us an indication of how many doctors who have come into the country on the 457 visas have applied for permanent residency?

Mr Hough—I do not have that statistic at the moment. A reasonably significant number would come here first as a temporary resident doctor and then they would work towards permanent residency. The primary reason for that is that, to get permanent residency, you have to be regarded as equivalent to the Australian trained qualification, which is often quite difficult for overseas trained doctors to do. So, basically, they come here as a temporary resident and then work their way towards that standard, for example, through the AMC process, an assessment over time by the relevant specialist college and extra training.

CHAIR—COAG itself is dragging its feet in this process, isn't it? The COAG reporting dates have gone out, which you have alluded to, and that has obviously put the solution to your

concerns on hold. The way this committee is going, it will hopefully be reporting before COAG and, if it does, it might give this issue some prominence. Are you reasonably confident that, once the COAG arrangements are in place, this can be dealt with?

Dr Haikerwal—The framework is something which we have agreed with. A nationally consistent process should be applied across the country and implemented at state level. There is no autonomy within the states to change those rules, so the authority comes from that national framework. The problem is that that framework, the details of what that assessment process will be and the standard have not been signed off by certainly one state.

Mr Hough—The broader COAG national registration agenda highlights the need for strong professional control over medical registration. We have seen throughout the process with overseas trained doctors that, if jurisdictions have too much input into registration issues, the workforce becomes an overriding concern and issues of quality and standard intake take a back seat, somewhat.

Dr Haikerwal—The consistent point of view that we have put is that the doctor would need to be assessed for basic competencies of the first degree; they would need help in being oriented into the system; and, for them to work independently, the relevant specialist college would tick them off for task. That is consistent with what every other doctor would have to do to work in the system.

CHAIR—It seems to be a concern, but obviously the supply pressures are pushing this unfortunate and unintended consequence. Off the top of your head, how many GPs are we short in Australia at the moment?

Dr Haikerwal—We have come some way away from the original figures of 4½ thousand that we were looking at a few years ago because of more immigration, more output from medical schools, more training positions for general practitioners, but we would certainly be a thousand short still—not 4,000, but more like 2,000.

CHAIR—So there is still unmet demand. You are concerned that the controls through the practitioner 422 visa that is being phased out have been less than satisfactory.

Dr Haikerwal—The Commonwealth takes the recommendation of a state government that wants to employ a person or that the state medical board has said is okay for employment based on a request that has been put in, either directly or as an area-of-need request. The Commonwealth simply takes that recommendation on board. What we are suggesting is that, because the assessments are so inconsistent, there may be some capacity for the Commonwealth to insist that certain standards are met before those visas are processed and provided to make sure that that standard is adhered to. It is a nationally consistent standard that we are hoping for.

CHAIR—You seem to have a solution to your problem; you just need it to hurry up and happen.

Dr Haikerwal—We have been hurrying it for some time—

CHAIR—No, not from your point of view; you need the whole process to be speeded up. Which counties do the trainee doctors, the trainee practitioners, generally come from?

Dr Haikerwal—Traditionally it was from north-west Europe—from UK and Ireland—and Canada, but of late the market has changed. There are many more coming from the Indian subcontinent, Indochina and the Far East—the Philippines and other countries like that. The traditional migration, which allowed a reasonably smooth transition—still needing orientation into the system, by the way—is now much more difficult. That is why we talk about the recruiters having a responsibility to the people that they have recruited to make sure that they are oriented into the system so they understand how the system works, understand the culture they are working in and understand the language as well as the way medicine is practiced, which is obviously very different from where many of the people have done their original training.

CHAIR—I recall a story in the *West Australian* newspaper about a doctor from India who arrived in a remote location and stayed a day or so. That was the consequence there. Finally, have your members used the outreach officers from the department of immigration, from DIAC, to help source the doctors? If you did, I am sure they would make sure that their accreditation was in place before they left. Do you use the immigration outreach officer program much at all?

Dr Haikerwal—No, not really. There are some recruitment agencies that are a lot better at that work and probably do have some recourse to that area. But, in general, many of the recruitment agencies pay no account or no respect to that sort of activity.

CHAIR—But generally you do see the 457 visa program as a measure, if used properly, to satisfy the short-term skill need?

Dr Haikerwal—Yes. Used properly, it can work well. In reality it should work well if you have got the right recommendations from the state government. Unfortunately, experience has shown us that those recommendations have been wanting in many respects.

CHAIR—We thank you very much for appearing in the very short period of time we have had today. Your evidence comes from a slightly different perspective than much of the evidence today, because it is so specific, so we really appreciate that. We would be grateful if you could send the secretariat any additional material that you have undertaken to provide us with as soon as possible.

Dr Haikerwal—Thank you very much.

[2.05 pm]

VELAYUTHAM, Dr Selvaraj, Australian Research Council Postdoctoral Fellow, Centre for Research on Social Inclusion, Macquarie University

WISE, Dr Amanda Yvonne, Senior Research Fellow, Centre for Research on Social Inclusion, Macquarie University

CHAIR—Welcome. 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 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. Is it the wish of the committee that: (a) the body of the document be accepted as a submission to the inquiry and authorised for publication and (b) the attachment to the document be accepted as an exhibit to the inquiry and authorised for publication? There being no objection, it is so ordered. I invite you to make a brief opening statement, if you wish, before we proceed to questions.

Dr Velayutham—Thank you for the invitation to appear in front of this inquiry. Basically the submission is based on a larger Australian Research Council funded project, a three-year study looking at the experiences of Indian temporary skilled migrants to Australia. It started last year, 2006, and finishes next year. What we presented in the submission is mostly ongoing research and preliminary findings.

We chose to study Indian migrants in particular for two reasons: firstly, we have research expertise on Indian migration and transnationalism broadly and, secondly, because of the increase in the number of Indian migrants coming to Australia, in both permanent and temporary visa categories in the last few years. In fact, Indians are the second largest migrant group. We are trained sociologists and we adopt a qualitative research methodology. This method is not based on interviews exclusively; it employs a kind of ethnographic approach which involves participant observation and spending time with participants at the everyday level, doing things such as shopping and social outings.

We feel that this methodology has its strengths. Firstly, it offers an in-depth and holistic understanding of the experiences of temporary skilled migrants. Secondly, it is also more effective in terms of unravelling the social and cultural forces that are at play in the migration experience. And, thirdly, and most importantly, it is also more effective in gaining data from marginalised individuals or groups in particular who are normally excluded from more quantitative studies like surveys—mainly because they are frightened to speak up or do not have the literacy or language expertise to fulfil the survey requirements.

Dr Wise—I will not repeat what we said in our submission but I want to highlight a few points that have come out of this study quite strongly so far. When we set out to undertake this study we were not interested in things around work conditions and so forth. Our interests were more around cultural and family connections. So we did not enter into this with any particular interest or bias around labour relations; it is not our area. But we found that the reports and

exploitation were so common that it was compelling and we ended up being redirected in our attentions with this study.

The key points that we want to highlight are mostly to do with workers in the hospitality sector and blue-collar workers. We think it is important for the committee to differentiate 457s in terms of industry, occupation and ethnicity so that they are not seen as a single group. Probably one of the biggest things that has come out of our research is the role of migration recruitment agents—those overseas in particular—who are targeting blue-collar and hospitality sector workers. This is a quite different situation to that faced by, for example, IT workers.

There are a number of factors that converge to make those two categories of workers especially vulnerable. In the Indian context, a lot of these workers come from rural backgrounds. They are from villages and small towns. They are often not terribly literate in English; their level of English is not terribly good. They often incur large debts in order to come to Australia and take up positions here, and that makes them particularly vulnerable. The threats of the loss of sponsorship and of being deported are then quite profound because they will be sent back to a situation where they in debt and are not able to pay back those debts. They also find it quite difficult to seek alternative employment. When they are in a situation where they are being abused or underpaid it is very difficult for them to find an alternative sponsor. Something that has come up quite strongly is the issue of co-ethnic exploitation. It is quite a sensitive area but it is really quite a strong pattern. An example is the Indian restaurant owner consistently exploiting co-ethnics.

There is an overwhelming lack of knowledge among these workers about their rights and conditions under Australian law. The materials that they are provided with are quite complex and bureaucratic in their language, so the material is there but the workers do not actually understand it. They tend to take at face value what employers tell them are their rights, and that is very often not right.

Those on 457s are such a huge group in Australian migration today—I believe they are actually overtaking permanent migration—that there are not the same levels of settlement and support services as are available to permanent migrants, so those on 457s fall between the cracks a lot of the time. There are no targeted services for them in getting help when they are in a situation of difficulty.

They are the main issues. The big things that are coming up, especially in the hospitality sector, are serious levels of underpayment—being paid for a 38-hour week but working 18 hours a day, seven days a week is really very common—and a discrepancy between the contracts offered. They are offered a contract in India or Singapore and when they arrive here the conditions are quite different. That is pretty consistent across the board.

It is probably outside the scope of this inquiry, but we have found a link between overseas students working in restaurants and the conditions of those on 457s. In the last two years, overseas students—for example, Indian students—have been working in restaurants for cash payments, which are often as little as $20 to $50 for an eight-hour shift. The 457s who are here are being told, ‘These guys are working for cash money, so you have to work for less as well.’ There is also another group: the Indian permanent migrants who would normally work in these kinds of restaurants. They are finding that their wages are being driven down, and they are

finding it more and more difficult to actually get employment in an area traditionally available to them when they are often not able to get work in mainstream occupations. We will hand it over to questions at this point.

CHAIR—Can I say at the outset that the abuses you have just outlined are all illegal. Under the provision of the 457 visa, there are serious penalties, particularly some announced recently, associated with any such treatment. The fact is the sponsor of the 457 visa, if they do not find alternative employment, are required to pay for their repatriation costs from the country from which they originally came. I heard you say that they owed people money from their country of origin—in India, in this case—so it would be prohibitive for them to go back. Firstly, it is not a cheap exercise to bring them here and, secondly, to send them home if they do not serve the full term of their visa is expensive. I put that as a caveat. We have heard evidence previously from the hospitality industry where this occurs.

First of all, such abuses should be reported. You are saying they do not have that information and they do not necessarily know where to go, and they feel intimidated about the impact on their continued employment. I would be surprised if there were not some people in this employment jurisdiction who knew about their rights. I put that on the table to start off with. The other thing I would say is that your sample of 40 seems reasonably small in the whole context. In that 40, you are looking at hospitality, health and IT workers, and that covers a fair amount of ground. Senator Parry may wish to go to some of the other evidence, but the widespread abuse that you say occurs certainly does not line up with the evidence that we have heard today—and you may have heard some of it earlier—or the entire collection of evidence in this inquiry. You may wish to respond that before I go to Senator Polley and then Senator Parry.

Dr Wise—There are two points there. With regard to the first point, I think you are quite right. I think the recent changes and tightening up of the rules that have been put in place quite recently are important. I think the issues are to do with (a) monitoring and (b) why it is that certain groups of employees are frightened to report. Some of these workers, for example, carry enormous debt. It is not a realistic proposition for them to be putting themselves in a situation where they might be sent back. That is the first thing. They would rather be paid half what they are due here—

CHAIR—I still say that it is illegal to underpay them.

Dr Wise—That is right; it is illegal.

CHAIR—Not only that; after 38 hours they are required to be paid overtime per hour.

Dr Wise—That is right. The issue is more to do with how you create a system in which (a) these employees are monitored, (b) the workers feel comfortable to report and (c) these workers are better informed of what their rights are and where they should go to seek redress. We have made a number of recommendations in our submission which might underpin the integrity of the system. So, you are quite right, these are infringements of the law, but how do we create a system where the law can be enforced, if you like?

On the second point to do with the sample, as we mentioned, it is not just based on interviews; it is an ethnographic study. We actually spend a great deal of time with each of our interviewees.

We do not just go and interview once-off over several months; there is one group of workers we have met several times, and we have spent days with each of them. Each of them tell us about the situation with their co-workers. For every one we talk to, we hear stories of several others. We are also spending a great deal of time visiting different restaurants. We have actually talked to some ex-457s who now own their own restaurants who talk to us about the industry generally.

We also are in touch with other researchers who support our findings. In addition, many of the other submissions support what we have found here. Even if there are only 500 cases of abuse, that is 500 too many; even if there are 10 cases, that is 10 too many. We need to make sure that, in these sorts of systems, the most vulnerable are protected—and I am sure that the members of the committee would agree with that.

Senator POLLEY—You have raised concerns about people being exploited. We have received evidence about people who have come out and work in the hospitality industry, in particular chefs, and their hours. However, in one of our initial hearings, we were confronted with the fact that people did not feel comfortable in coming forward to give evidence, even before this committee, as there was no protection for them. I am most interested to find that you have spoken to former 457 visa holders who now run such restaurants. One hopes that the evidence you gained from them was that they are good employers who ensure that people know of their rights and work reasonable hours. Was that your finding?

Dr Wise—It has been, yes. That is true; they are a little more aware. But I find that generally many of the restaurant owners are genuinely unaware of what the correct pay scales are. One restaurant owner, a former 457, thought he was doing the right thing and told us in glowing terms about how well he treated his workers, but I think he was paying them $10 an hour, which was under the award. So I think it is very much about providing the information and educating some of these employers and also the employees.

Senator POLLEY—In relation to the requirement to have a certain level of English skill, many witnesses in their submissions and in evidence before us have said that the criteria are too high. I am of the view, as you have outlined in your submission, that it is essential that workers coming out on these visas have good comprehension of the English language so that they do understand the community, the industries that they are going to work in and the resources that are available to them. Do you have anything further to add to the evidence that we have received in relation to the English-skill criteria being too high?

Dr Velayutham—Not necessarily. 457 holders who come from rural and regional parts of India tend to be less fluent in English, whereas migrants who come from the IT sectors are more professionally skilled and already have good expertise in the English language. We feel that English is probably not an essential requirement for the kinds of jobs they are in, particularly in the restaurant sector; most of the time they are in the back, in the kitchen. Our main concern would be that materials that are available on the conditions of 457 and other working conditions should be made available in simple plain English or even in their respective languages for them to have a better understanding of what they are in for.

Senator POLLEY—You have referred to case studies where there have been incidents of people being underpaid, physically exploited or intimidated. Have these breaches been reported to the department?

Dr Velayutham—There are several. I think some have become pending court cases. In one particular instance, the employer had asked the employee to go on a trip to India. While that employee was in India, the employer reported to the department that he no longer needed that worker and the 457 was terminated. That poor person now is stuck in India and unable to come back.

Dr Wise—It is difficult for him to seek redress while in India. This particular individual was quite skilled. He owned a well-known sweet shop in a particular town in India and he was doing quite well. He was sought out by this particular restaurant, because his sweets were quite renowned. He sold his business in order to come out. When he got here, the situation changed for various reasons. He is now back in India, he has lost his shop and he was not paid for quite some time. As he is in India, it is quite difficult for him to seek redress. However, we found that there is really very little knowledge about how you seek redress. None of them really knew about the Office of Workplace Services, for example. There was also quite a lot of fear around joining unions, for example. Some of the employers basically would say to employees that, if they joined a union, they would lose their job and, therefore, their sponsorship and they would be deported. They were a little frightened by that. But generally there is a lack of knowledge about where to go to report that they feel they are being badly treated or underpaid. That is the big thing that has come out.

Senator POLLEY—I have put this proposition to most witnesses: would it help to overcome some of the issues of exploitation if there were more contact by the department in terms of on-site visits and contact with the visa holders rather than just relying on employers and the formality of documentation?

Dr Velayutham—Absolutely, yes. In many cases, there was no inspection or monitoring of the working conditions. In a number of cases, hospitality workers were placed in very poor accommodation; they were living in a storeroom above the restaurant. They did not have any chance to voice their concern about that situation, so I think that is important.

Senator PARRY—Dr Wise and Dr Velayutham, you are funded by the Australian Research Council for three years.

Dr Wise—That is right.

Senator PARRY—Is the dollar value of the funding public, or do you want to keep that confidential?

Dr Velayutham—It is $265,000 for three years.

Senator PARRY—Why was the target Indian 457 visa holders?

Dr Velayutham—As I outlined in our introduction, that is mainly where our own research expertise lies; that is in our area of study.

Dr Wise—They are the third biggest group.

Dr Velayutham—More significantly, statistically, Indians are becoming the third largest group coming to Australia.

Dr Wise—They are the largest non-English-speaking group. After New Zealand and Britain, India is the next largest group.

Senator PARRY—I am trying to get a chicken-and-egg thing here. Were you aware of particular problems with Indian 457 visa holders, or did you become aware of such problems after you commenced?

Dr Velayutham—Yes, the problems came up afterwards.

Dr Wise—We had been doing research in Singapore with our foreign workers there. We were interested inasmuch as this is a new phenomenon in Australia and we wanted to find out about it. But we did not know anything about these sorts of problems before we started.

Dr Velayutham—Essentially, we were just interested in looking at the kinds of transnational connections between migrants and their home—how they maintain that link.

Senator PARRY—So you started with a clean slate, with no bias.

Dr Velayutham—Yes.

Dr Wise—Yes. We do not have a background in labour studies or anything like that. We are migration-multiculturalism specialists.

Dr Velayutham—Yes.

Senator PARRY—Were the 40 individual samples from a mixture of 40 individual firms or from five or six in some particular restaurants or firms?

Dr Velayutham—Thus far it is 40. As I mentioned, we are just midway through the project, so we hope to expand that figure. But, broadly speaking, they come from a range of sectors, from hospitality to IT.

Dr Wise—There are no more than about three or four from each firm. There is one where there are five from each firm. But, with hospitality, they are mostly from different restaurants. With IT—

Dr Velayutham—Different companies.

Dr Wise—there are three or four different firms so far.

Senator PARRY—With the cases of—and I use your words—'alleged abuse', can you provide us with the names of those that have been reported? Are you comfortable with providing the names of those particular cases?

Dr Wise—Probably in confidence.

Senator PARRY—On notice would be fine.

Dr Velayutham—In confidence.

Dr Wise—We are a bit bound by university ethics. They have signed confidentiality agreements under the university rules. But, if we seek the permission of the ethics committee and the permission of the individuals involved, we could provide that in confidence.

CHAIR—We would be happy to take that in confidence.

Senator PARRY—We have to be careful to give the right weight to the evidence. We cannot just accept allegations anonymously. It is important for us to give them weight.

Dr Wise—Yes. We have all of these interviews recorded, so we can provide that evidence, subject to the ethics rules.

Senator PARRY—Finally, what action was taken with employers who were 'genuinely unaware'—again using your words? In addition, by and large, was it the majority of employers who were genuinely unaware of their obligations?

Dr Wise—It is hard to say whether they were genuinely unaware. We decided that the two restaurant owners we spoke to were genuinely unaware because they talked quite positively about how well they treated the workers and they seemed to be under the impression that they were paying correctly. No action has been taken. It was in the last couple of weeks that we talked to those two restaurant owners.

Senator PARRY—Are those two restaurant owners in the group that you would regard as reportable, or are they in addition to that?

Dr Wise—I suppose they would be reportable.

CHAIR—I want to bring to your attention the submission made to this inquiry by the Australian Chamber of Commerce and Industry. They state that, from the research they received, 99.4 per cent of employers are doing the right thing. That was, in fact, when that was aggregated. They stated that 98.4 per cent of employers involved in the temporary skilled migration program are doing the right thing and that just 1.6 per cent might be doing the wrong thing. Their evidence was that, when the complaints made against the 1.6 per cent of people whom it was claimed were doing the wrong thing were investigated, only 30 per cent were upheld. I put that to you in the context of your evidence today, which tends to indicate that that is widespread. How do you respond to that?

Dr Wise—I am thinking about Professor McDonald's survey, which was presented earlier. They are quite well known in this area, and we respect their work, but the survey methodology they used was quite problematic. They sent the surveys to the employers to give to the employees. An employer who is doing the wrong thing is not necessarily going to give a survey like that to a worker who does not have a lot of English. So you sometimes have to look at those

statistics a little critically. They would actually tell you the same thing; they are quite aware of the limitations of that method. It catches really well the experiences of the more empowered groups, but the groups that are really marginalised are not the ones who are filling in surveys and returning them. They are usually quite frightened to fill in bits of paper like that, which is why we use the method that we use. We get to know a worker and we build up their trust and ask them to introduce us to a friend and so forth. That bypasses the link with the employer.

CHAIR—That is interesting. As you have challenged the research methods, we will ask the researchers to justify them. Thank you for attending today's hearing. I would be grateful if you could send to the secretariat as soon as possible any additional information that you have undertaken to provide.

Proceedings suspended from 2.33 pm to 2.45 pm

BYRNE, Dr Anne, Branch Manager, Skills Analysis and Quality Systems Branch, Strategic Analysis and Evaluation Group, Department of Education, Science and Training

CLARKE, Mr Greg, Director, Quality Systems and Skilled Migration Section, Skills Analysis and Quality Systems Branch, Strategic Analysis and Evaluation Group, Department of Education, Science and Training

FOSTER, Mr Chris, Principal Adviser, Economics, Labour Market Strategies Group, Department of Employment and Workplace Relations

MANTHORPE, Mr Michael, Group Manager, Labour Market Strategies Group, Department of Employment and Workplace Relations

PRESS, Ms Jane, Director, Migration Policy and Analysis Section, Labour Market Strategies Group, Department of Employment and Workplace Relations

DANIELS, Ms Yole, Assistant Secretary, Migration and Temporary Entry Division, Department of Immigration and Citizenship

PARSONS, Mr Anthony, First Assistant Secretary, Migration and Temporary Entry Division, Department of Immigration and Citizenship

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 parliament. The committee has received your joint submission, and it has been authorised for publication. I invite you to make brief opening statements before we proceed to questions.

Mr Parsons—The Commonwealth welcomes the opportunity to provide input into this inquiry into temporary business entry arrangements. The long-stay subclass 457 visa plays a critical role in assisting Australian business to meet skills needs while at the same time protecting Australian employment and training opportunities as well as overseas workers from exploitation. As you are aware, the Commonwealth provided a submission to the committee on 7 February this year. Representing the Commonwealth here today are three agencies: the Department of Immigration and Citizenship, the Department of Employment and Workplace Relations and the Department of Education, Science and Training.

I would like to briefly update the committee on the review of the subclass 457 program by COAG and the Ministerial Council on Immigration and Multicultural Affairs, because there has been some movement on both fronts since the last meeting. On 24 April this year, Minister Andrews invited approximately 130 key stakeholders, including peak industry bodies, representatives of migration agents and lawyers and representatives of recruitment and labour hire firms and unions to provide written submissions on a discussion paper which covered a range of aspects of the subclass 457 visa. I have a copy of that discussion paper for the committee which I would like to table.

CHAIR—Thank you for providing this material. The committee will consider the material at its next meeting and resolve its formal status.

Mr Parsons—Of the 130 copies of the discussion paper that was sent out, the department received 45 submissions in reply. You may or may not be aware that on 7 and 8 June next week, a meeting of the Commonwealth-State Working Party on Skilled Migration is scheduled to discuss the subclass 457 visa program and indeed will focus on the content of the submissions it received.

The minister recently announced, on 26 April, a number of measures to further strengthen the integrity of the subclass 457 visa and to ensure that employers' legitimate needs for speedy access to skilled overseas labour can be met. Employers with a strong and demonstrated record of complying with the 457 program will have their applications fast-tracked. A civil penalties regime will also be introduced for those employers, perhaps at the other end of the spectrum, who breach their more serious obligations. The Department of Immigration and Citizenship and the Workplace Ombudsman will be given stronger powers to enforce employer compliance. You will also be aware that an English language requirement will be introduced to ensure that overseas workers understand their rights and obligations, that they can respond to and be aware of occupational health and safety risks and that they can more effectively share their skills with Australian co-workers. The requirement to share skills is one of the fundamental tenets of the program.

In terms of budget measures, the committee will also be aware that government provided a further $85.3 million over four years to identify and implement measures to improve the effectiveness, fairness and integrity of the subclass 457 visa program. My department will receive $66.1 million in support of these initiatives, with the remainder going to the Office of Workplace Services, the Department of Employment and Workplace Relations, the Department of Education, Science and Training and the Australian Taxation Office.

In conclusion, I would like to address two specific issues which have arisen in previous hearings of the committee and provide the committee with some updated data. I have some updated data to table today for attachment C, which is the business visitor data, and attachment D, which is the subclass 457 state and territory summary report of the Commonwealth's submission to the committee. The data in the updated attachments reflects the period July 2006 to March 2007.

I understand the committee is interested in the number of 457 visa holders who move to permanent residence in Australia. I have for the committee today some data relating to the permanent visa grants where the last substantive visa for a primary visa holder was a subclass 457, listed by the nominated occupation of the primary applicant. The data that I will provide covers the top 50 occupations.

I also note that the issue of investigation of the Canberra restaurants has arisen in previous sessions; in fact, Senator Lundy raised the matter in the Senate on 8 February 2006. It is important to note that, at this time, the matter had already been drawn to my department's attention, and monitoring had commenced just over a month before that, on 6 January 2006, having been referred to the department on 7 February 2007.

I would also like to clarify a point that was made in a previous session in respect of claims that cleaners are being approved on 457 visas. Having done a fairly extensive check of our records, I can say that they indicate that no cleaners have been approved on subclass 457 visas since 2002. Of course, the maximum duration for the program is four years. Therefore, I would expect that there are no cleaners engaged on 457 visas currently. Thank you.

CHAIR—Thank you. There is so much to cover and we have only an hour. I apologise in advance; I have to make sure we are very much on time so that I can get back to Perth tonight. Would you take that on board. On that point, we may well ask for some of our questions to be answered in writing through the secretariat if that would be possible.

Mr Parsons—Certainly.

CHAIR—I will begin, then hand over to my colleagues and come back later. I am interested in this fast-tracked visa—the new set of arrangements—because much of the evidence to the committee has been that the times are blowing out substantially. Then again, we heard somebody say today that they had one turned around in seven days. But the evidence has been, particularly on certain countries and occupations, that they can take up to six to eight months to deliver, which you can see would be a real problem for the sponsoring person because they want the worker right now. As I have already told you, I am from Western Australia and I am getting evidence from people saying that, for example, they cannot start up certain projects without a whole lot of workers. It has been alleged that this has happened because of lack of resources in the posts overseas or that there has been a deliberate go-slow because the department got nervous about some criticisms. You may wish to address any of those points.

Mr Parsons—To clear the air on the processing time for any visa application, there are a number of components and you touched on some. Primarily, the time taken to approve a visa application depends on the quality, completeness and integrity of the information that is provided. If I recall my answer to a recent Senate estimates question, the average processing time for ASCOs 1 to 3, the higher skill range, is currently running at 27 days. No doubt there will be outliers. An elongation in visa approval time can be caused by incomplete information being provided so that either the department has to go back to the applicant for a missing piece of evidence or the department, in processing the information, has doubts about the validity of what has been provided and has to refer, as you note, back to our overseas posts to substantiate the information that is provided.

In the case of lower ASCO classifications, I think it is probably fair to say that there is increased evidence of fraudulent documentation or fraudulent statement of skills or qualifications. In many instances, a referral back to overseas posts does take some time, particularly for the non-English-speaking countries and for countries where there is a high incidence of fraud. In talking to the people concerned in our Adelaide skills processing centre, they inform me that there are specialist occupations in some countries which specialise in forging university and trade certificates. With the experience and equipment that the department has, it is aware of some of those, but that drives some of the referral back to overseas posts for validation.

CHAIR—On that basis, given the minister's announcement, how can you say that you can fast track more? From what I understand, he is suggesting that this will be for companies that

have a good track record. Yet, as you have outlined, there are mechanical issues in delivering a visa from certain countries. That was part of the question. On the other part of the question, it was brought to the committee's attention—and you may be aware of this—that certain companies, maybe like Job Network providers, get a star rating so that they can almost get automatic approvals if their human resources departments have been able to put in place the right people or, in the case of the immigration outreach officer, have it done expeditiously.

Mr Parsons—There are two fundamental aspects to our thinking on how we would introduce expedited approval for certain sponsors. The first is that it would be a very select group of sponsors who would have a proven track record of compliance with all matters to do with immigration before we would entertain expediting the processing of their documents. The second part of it—and I will use an application for someone that is going into the medical field to illustrate my point—is that in the current process the sponsor would say, 'I wish to bring over a person to fill a medical position,' and we would assess the application on the merits of the information provided—do they have the qualifications et cetera? When they had crossed that hurdle then there is an extra hurdle where we would say to the applicant, 'You need to now furnish a medical examination to certify that you are disease free to take up those occupations.' That medical examination and any other documentation that we propose would be brought forward. If you are a company with a long history of having clean immigration experience, that would suggest to us that you have your own quality screening and short-listing processes. Therefore, if we ask you to bring to the front some of those potentially at risk components of the application, you should have every confidence that, because of your track record and proven screening, you will not be wasting money on medical certificates that are unnecessary because we will knock back credentials earlier in the process.

CHAIR—I understand that in the budget it was outlined that there would be an extra 5,000 places under this program. Is that correct?

Mr Parsons—Five thousand places are under the permanent skilled migration program, not the 457 temporary.

CHAIR—There you go. There has been some confusion on that, because the state minister in Western Australia said what a shocking thing it was that we are only going to provide an extra 5,000 and, trying to think on my feet, I said that I was sure that that would just be an attainable figure, and if there were a need for more we would be able to finance that as well.

Mr Parsons—The 5,000 is just for permanent skilled migration. The 457 visa is not capped.

Senator POLLEY—In relation to the evidence heard before the committee, issues have been raised about those coming out on the 457 visas being adequately informed about their rights and their obligations to their employer, but likewise that employees perhaps are not always aware of their obligations. Could you please outline to me what the process is, what the department does for new visa holders coming into the country and what information you give to employees.

Mr Parsons—Before I answer what the current situation is, could I draw your attention to the English language component of 457, which will apply from 1 July this year—so within one month's time we will be raising the English language requirement, as I think you are aware. We are doing that for the three reasons I mentioned in the opening statement. One of those is, of

course, to make sure that the applicant is fully aware of their rights and obligations when they do come in.

CHAIR—I want to clarify something, because this has come up a number of times. When you say 'the English language requirement', is that oral, written and comprehension—the whole lot—or what?

Mr Parsons—For those people who come from a non-English-speaking country, we are asking them to meet a standard of 4.5 on the IELTS testing scale. I can perhaps defer to my colleagues from the Department of Education, Science and Training but my understanding is that that covers all three.

Mr Clarke—It covers four strands.

Senator POLLEY—Can you outline those for us?

Mr Clarke—We are not experts in this area, I have to say.

Dr Byrne—It would be reading, writing, listening and speaking. Those are the four strands of literacy that are assessed under IELTS.

CHAIR—That clarifies it, because that has been an outstanding question, even in my mind, I will confess. It certainly has been raised previously.

Mr Parsons—The purpose of raising that English requirement, as I said, is to ensure that the applicant is conversant with the instructions that we issue and also that the sponsor or the employer is aware that the applicant has an understanding. The information that we currently provide to the applicant is a reference on the visa application form which points them to a fairly comprehensive set of information which describes their rights and entitlements. And indeed, on the department's internet site, my understanding is that there is an information pack for sponsors which describes in some detail what their obligations are in bringing on a 457 applicant. From July onwards we are looking to do a more intensive information campaign by way of translating brochures, producing a C-fold brochure which reinforces the information that is already on the application form and on the internet site, and translating that brochure into common foreign languages so that we can remove any opportunity for there to be misinformation for either party.

Senator POLLEY—Would it be possible to have samples of those provided to the committee? With all due respect, I think it would be fair to say that a lot of government forms are very bureaucratic. Even we, who are educated and who are Australian, at times have difficulty filling out those forms. They should be easy to comprehend, particularly for those people who are coming in from other countries where English is not their main language.

Mr Parsons—Certainly.

Mr Manthorpe—If I could add something to that for completeness, the discussion paper which Mr Parsons tabled at the beginning of the hearing also contains some possible areas for further reform in that area of ensuring the 457 visa holders are aware of their rights, particularly in relation to pay and conditions matters. In particular it suggests that employee awareness of

their rights and obligations could be improved by, among other things, requiring approved sponsors to provide terms of employment to employees in both English and their first language prior to visa grant. That is not yet a position of government policy; this is the discussion paper that is being worked up in consultation with industry and COAG and so on. But I just thought I should mention that as well.

Senator POLLEY—Evidence before us today has also indicated that, for some visa holders from the semi-skilled area, even bureaucratic language from their native land is also sometimes beyond their comprehension, so we should at least make sure that all information is easy to comprehend.

Mr Parsons—Absolutely.

Senator POLLEY—We have also heard concerns about the new requirement that English language skills levels be increased. Have you got any comments in relation to that?

Mr Parsons—I think it is fair to say that there was debate over whether we should have made the 4.5 requirement higher. Some people have argued it should be lower. We believe that 4.5 is probably as low as you would want to go to ensure that the visa applicant has a sufficient grasp of the English language to understand their obligations.

CHAIR—Is there any flexibility in that or any discretion?

Mr Parsons—If there was then we would certainly look at that through a labour agreement. Labour agreements are there basically to give us that degree of flexibility. But the base remains at 4.5 at this point in time.

Senator POLLEY—In relation to those people out here on 457 visas who have grievances with their employers and believe that they have been exploited, what is the mechanism now for them to make their complaints known to the department? What safeguards are currently there?

Ms Daniels—The visa holder has a range of ways to bring their complaint to the attention of the department. They include contacting us directly, contacting a business centre, ringing us through our standard 131 number or ringing us through our 'dob in' line. They might also come across one of our industry outreach officers and bring it to our attention in that context. It may also come to our attention through third parties such as another stakeholder or a union or through the media. They are the current ways that a complaint might get to us, either through the person themselves or separately. If I am not answering your question directly, please let me know. From that point, our practice is to immediately start a monitoring or investigation process of the allegation that comes to our attention. We would refer to other agencies as soon as we identified that those agencies might have an interest in a particular matter, for example the Office of Workplace Services for general underpayments or IR matters or the Australian Taxation Office if it was a tax related matter. Depending on the criticality of the allegation, we would respond in various ways. For example, if the allegation was such that there were serious issues relating to abuse, violence or even slavery of some sort, then our monitoring officers would be out there doing a site visit almost immediately, hopefully with the Office of Workplace Services, if that was appropriate. If it was appropriate—and sometimes it is not because it might put the visa

holder at risk—we might want to talk to the visa holder. If the allegation is less severe we might take a more slowly paced response to the allegation that has come to our attention.

Senator POLLEY—How many complaints have you received over the last four years, on an annual basis?

Ms Daniels—I do not have the details of years beyond this financial year. I might check with my colleagues to answer that part of the question. For the current financial year to the end of April we have had about 500 investigations, so we have had 500 cases or allegations that we have looked at. Of those, about half are finalised or inactive. I can give you a breakdown of what that 50 per cent comprises in terms of outcomes.

Senator POLLEY—That would be most helpful. You said you have 500 investigations running, but my question was: how many complaints have you actually received?

Ms Daniels—Those investigations will constitute the cases or the situations that have warranted closer scrutiny by us and other agencies during this financial year. A number of those will come from cases raised by the visa holders themselves, by external parties or from our own monitoring. The breakdown is: about 50 per cent of those are from our own monitoring, close to 50 per cent come from the cases that have been brought to our attention from the individual visa holders themselves and about three or four per cent are from external third parties such as the media, unions or other bodies.

Senator POLLEY—Could you take on notice the figures that you do not have with you today, for the last four years?

Ms Daniels—My colleague has said that for the past four years we do not have reliable data, so I think that would mean that we probably could give you reliable data—as I have given you—but not much before then. For example, I am aware that in the previous year there were three sanctions issued to sponsors, and before that I think that our data is very scant in that respect.

Mr Parsons—Let's agree to take it on notice.

CHAIR—While we are on these issues—if you do not mind, Senator Polley—we might ask questions on them so that we do not have to come back to you individually later on. For example, you heard me refer earlier to the evidence from a survey by the chamber of commerce which talked about only 1.6 per cent of all visa holders, and out of those only 30 per cent were found to have any basis.

Ms Daniels—Of that cohort that I just mentioned to you for this current financial year, the 268 cases—I said 250 but it is actually 268—that have been finalised or inactive, 88 of those have been unsubstantiated in terms of the allegation. We have sanctioned 68 sponsors, we have formally warned another 50 or so, and about 60 have been referred to other agencies and we are waiting to hear back from those other agencies. In terms of the percentage of sponsors—and I have not got the percentages in front of me—I think it is fair to say that of 12,000 currently sponsoring sponsors under the 457 program, 500 have been brought to our attention and scrutinised more thoroughly, so the percentage is indeed quite low.

CHAIR—When you get back to us could you give us those actual percentages?

Ms Daniels—Sure.

Senator POLLEY—Would you be able to break down, by industry, where the complaints have come from?

Ms Daniels—Yes, we can do that.

CHAIR—While we are on this, talking about complaints mechanisms, it has been brought to our attention several times that people holding visas are fearful of coming forward because they may lose their position and cannot find a sponsor. We wrote to Abul Rizvi about whistleblower type concerns, and he has responded, but the fact is that there does not seem to be a lot of protection for somebody who blows the whistle on an employer, because they have only got 28 days. People are saying that if they have only got 28 days they would not have time. It has been suggested that maybe they should be case managed so that they have greater flexibility on that 28-day period to find another employer so they do not feel so vulnerable.

Ms Daniels—I think it is fair to say that the general parameters are that they have 28 days to find a new employer, but on a case-by-case basis we would expect that each individual is effectively case managed in the sense that if they need more time or they are actively looking for a new employer then we certainly would expect that they would have the opportunity to take a little bit longer than the 28 days.

CHAIR—Who gives them that permission for that flexibility?

Ms Daniels—Who gives permission?

CHAIR—For example, if they make a complaint and then they lose their job, to whom do they go to get the consideration or the flexibility on that 28-day arrangement?

Ms Daniels—The business centres in our state offices are very accustomed to dealing with these sorts of situations. If there were major concerns in a particular case then it would be referred back to us in national office.

Senator PARRY—Who has the authority? Is it ministerial or is it in the agency?

Ms Daniels—To extend the stay beyond the 28 days?

Senator PARRY—Yes. The minister?

Ms Daniels—That would be certainly possible within the business centre locally.

Senator PARRY—Locally?

CHAIR—At the state level.

Ms Daniels—Yes.

Senator PARRY—So basically a state manager or a senior employee would make that decision.

Ms Daniels—Yes, within the business centre.

Senator PARRY—What is the legal situation then? Where is the 28 days? Is that just policy?

Ms Daniels—That is a policy parameter, yes.

Senator PARRY—Is there a legal impediment to someone staying in the country if they are not employed?

Ms Daniels—In the circumstances that we are describing, no. As I said, if the particular case, in the assessment of the officer with whom the visa holder is working—

Senator PARRY—So this could go on in perpetuity?

Ms Daniels—I would expect that the assessing officer would be looking at the case fairly closely and assisting the visa holder to understand what their obligations are and come to a decision in one way or the other—to find a sponsor or, at the point of time when it is necessary, to depart Australia.

Mr Parsons—I would imagine that our decision maker would want to be convinced that the visa holder was (1) making a genuine attempt to secure another sponsor and (2) having difficulty in doing that.

Senator PARRY—Because it is open to rorting if—

Mr Parsons—That is right, yes.

Senator POLLEY—Can I just add another string to the bow in relation to the investigations that have been done over the last 12 months and the other information that you have been asked for: could you break it down to the type of violation.

Ms Daniels—Yes, we can give you those details. Would you like me to give them to you now?

Senator POLLEY—If you could, thanks.

Ms Daniels—I have given you a figure of 68 sponsors sanctioned in this current financial year. The sorts of reasons for which we have sanctioned a sponsor—and this is not a one-to-one relationship, of course, because there might be multiple breaches in some cases—are things like breach of the minimum salary level, failure to notify us of changes in circumstances, issues relating to payment of superannuation, industrial relations laws, noncompliance with one of our monitoring requests, failure to pay tax, failure to comply with other aspects of a sponsorship,

failure to notify cessation of employment, and not working in a nominated position. I think they are the major ones.

Senator POLLEY—Has underpayment been—

Ms Daniels—A breach of the minimum salary level is effectively underpayment, and that is the largest of the particular groupings.

CHAIR—While we are on that, can I just have it clarified that, if somebody works a 38-hour week—am I right in this; again, bring me up to speed—and then, let us say in Perth, they earn $41,800 or whatever, they are entitled after that 38 hours to be paid an hourly rate and it would be wrong if they were not, wouldn't it?

Mr Parsons—Correct.

CHAIR—That is right. So, when I say it is wrong, am I putting it too strongly to say that it is illegal that they then do not pay them an hourly rate after 38 hours?

Ms Daniels—From our perspective, we would expect that, for any time worked after the 38 hours, they would be paid the minimum salary level at a minimum for those additional hours.

CHAIR—And is that the case from DEWR's point of view?

Mr Manthorpe—I believe so. I will check that and correct the record if that is not the case, but that is my understanding of it too.

Senator POLLEY—I was wondering if you would be able to outline to me the monitoring process that you have, because obviously we have had evidence in relation to the lack of monitoring and the lack of on-site visits. Can you just outline to me how you go about monitoring those people who are out here on the visas and whether or not you do in fact have site visits where you actually talk to the visa holders.

Mr Parsons—I will make a start and then my colleague will probably add to it. The monitoring program is driven by a number of things. The first is that we have a profile based on experience by industry, so that there are certain industries which have proved to be more problematic in their adherence to the requirements. Sponsors from those industries score additional points in our risk assessment for receiving closer monitoring than others. The department also sends a questionnaire to sponsors six months after the commencement of a 457 applicant and thereafter every 12 months. That information—the answers or the non-reply to that questionnaire—is fed into the mix as well. The third element that currently feeds into the direction of our targeted monitoring is information that comes to the department through the customer service line or from any of those third parties that Ms Daniels referred to. That then informs our state office people as to where best to target their monitoring at present. Some detail in terms of the quid pro quo to the expedited treatment, which I did not go into earlier, is that we are expanding our monitoring and the feeders of the equation which directs our monitoring targets by including a survey, a small list of questions, which we will proactively send to the applicants themselves. Based on the responses that we get to those sorts of questions, they too will inform the more detailed monitoring that our state offices undertake.

Senator PARRY—Do you send those to the applicants via the employer's address?

Mr Parsons—We do not currently do that. The current survey is done by the employer. I am forecasting that, as we move to the new regime that Minister Andrews has announced, we will supplement that with mailing to the last known address—which sometimes is the employer—of the visa applicant.

Senator POLLEY—How many site visits were undertaken this year, and is it the practice of the department on those site visits to talk to visa holders?

Mr Parsons—I have some figures for you for the number of visits conducted to the end of April this year. Fourteen hundred site visits were undertaken. The site visits certainly do not always involve a separate interview or consultation with the visa applicant. In many cases they do not.

Senator POLLEY—How many of those 1,400 site visits included talking to the visa holders, and can you break that down to industries?

Ms Daniels—I do not think we have the capacity within our systems—although my colleague might correct me—to give you the precise data that you are requesting. I think it is fair to say that we certainly interview visa holders wherever possible and we are certainly doing it far more than we have done in the past. As I mentioned before, the caveat would apply that if we had a situation where interviewing a particular visa holder might bring to the employer's attention the visa holder's complaint to us then we would need to be very sensitive that we did not cause a situation where that visa holder was placed at risk. Senator, thank you for bearing with me but we are unable to break down that information further.

Mr Parsons—I wonder whether in the absence of that data you would be happy if perhaps we were to go to our state offices and ask them to review their notes from site visits for, say, the last week or for a random sample and indicate from that which site visits involved an interview.

Senator POLLEY—I would have thought that with the media scrutiny of the 457 visa, particularly in some of the areas you touched on earlier like hospitality and the meat industry, the department would have been able to collate some information, bearing in mind that you have had people in the hearings, to give us an indication of monitoring and site visits and whether or not there has been any practice of talking to the visa holders. I am happy for you to take it on notice, but I would be grateful for whatever information you could provide.

Mr Parsons—If you are comfortable with that approach, where I can go back to our state offices for a period of time and ask them to review the case notes and give me an indication on that basis, then that is probably the best I can do by way of hard data.

CHAIR—It looks like we will be holding one more day of hearings in Canberra. Is there any chance that you could personally come back with some of that information?

Mr Parsons—If I can provide the information, I certainly have no objection to coming back and trying to help the committee.

Senator PARRY—I want to go back to the comments that Ms Daniels made about the dob-in line and third parties. To use your terminology, if someone—a visa applicant or visa holder or an anonymous person—rang in on the dob-in line about serious issues, would you then front the workplace?

Ms Daniels—As I said, it would depend on the case. For example, if a dob-in is anonymous to the extent that we cannot identify a place of employment or a particular visa holder, obviously there are limitations to what we can do.

Senator PARRY—What if you could clearly identify the place of employment and the visa holder?

Ms Daniels—Again, depending on the circumstances and the severity of the allegation, one of our standards for that type of high-risk allegation is to conduct an investigation or a site visit within hours.

Senator PARRY—Would you turn up without warning?

Ms Daniels—It can be without warning.

Senator PARRY—Is it generally without warning?

Ms Daniels—I would hesitate to say one way or the other without checking because I may not know the detail. It is probably a mixture of both.

Senator PARRY—I assume that those investigations would be limited, but have they been successful in rectifying behaviour or bringing about some form of remedial action?

Ms Daniels—To the extent that I think it is fair to say that quite a number of employers have rectified and made good rapidly once an issue has been brought to their attention. So they have been successful to that extent. However, if it is a major issue of underpayment and there is a referral to another agency and that agency chooses to litigate, then obviously it takes time, and it depends on the outcome of that process. In the DIAC environment, we have a number of administrative sanctions that we can apply, depending on the nature of the breach. For example, once we are satisfied that one of the sponsor undertakings has been breached, we can impose a bar on their further use of the program. That does not necessarily affect the existing employees, but we can—

Senator PARRY—I was wondering about the 68 sanctioned. So ‘ sanctioned’ is some form of administrative sanction. What does ‘the 50 formally warned’ mean?

Ms Daniels—The 50 formally warned would mean that—

Senator PARRY—Would a note on the dossier be a warning?

Ms Daniels—It would be correspondence with the sponsor, noting that there has been perhaps a minor breach, a technical breach, and that would be on record. We would then monitor more

regularly than we otherwise might monitor to make sure that there is no recurrence or continuation of that matter.

Senator PARRY—Is it a system of three strikes with a sanction? Do you give three warnings or is it irrespective of what the warning is?

Ms Daniels—I am not familiar with the 'three strikes and you're out'. It would be ongoing monitoring and an imposition of a sanction if we consider it appropriate.

Senator PARRY—From the 68 sanctioned or the 50 formally warned, have there been further breaches that have warranted prosecution or anything of that nature?

Ms Daniels—Within that cohort?

Senator PARRY—Yes, within that cohort to start with.

Ms Daniels—I do not think I can answer that question. I do not have the information.

Senator PARRY—I am happy for you to take that on notice. I know that you are going to provide some information on notice to a question that the chair asked. The Australian Chamber of Commerce and Industry gave some evidence which was quite integral to the government's position. Since the inception of the 457 visa there have been 102,000 visa holders. Can you verify that that is an approximately correct figure? That was until the end of October 2006. Do you want to take that on notice as well?

Ms Daniels—I think we have the data. Are you asking a question about how many 457 holders—

Senator PARRY—Total number, because where I am heading with this is to work out the total number of complaints by percentage, which I know you are going to provide to us, but we want to establish what it is a percentage of.

CHAIR—You might have some more current data than October 2006.

Ms Daniels—Yes.

Senator PARRY—You can provide this on notice, based around the following parameters given this morning by ACCI: 10,000 businesses equating to 102,000 visa holders since the inception of the 457 visa program. Of that 102,000, 1.6 per cent of employers were reported as alleged to have done the wrong thing in one way or another—some form of breach. Of that, as the chair indicated, 30 per cent of that 1.6 per cent was found to be correctly in breach, so there was a proven allegation. I assume action was taken from that, whether it was a formal warning or whatever. So we want that verified or, if that is incorrect, what the correct statistics are in relation to those figures and what they represent. We are happy for that to be taken on notice if you do not have them readily available now.

Mr Parsons—I do have a figure here with me which would suggest that the figure of 102,000 visa holders since the inception of the 457 visa program was created would be wrong. There are in fact, at this point in time, roughly 105,000 primary and secondary 457 visa holders onshore.

Senator PARRY—Without having the benefit of the transcript yet, that may be correct. I think we established it was a net figure. We were then trying to equate how the 1.6 per cent could be related back to the 105,000 in Australia today. How can we get that direct figure? You indicated earlier, Ms Daniels, that you were not sure, that about four years ago the data collection was not accurate enough to give you a greater picture. We just want to know what the complaint level is, and by extension—and if I speak to those figures as they stand, albeit they may be corrected—if it was 1.6 per cent, and then only 30 per cent of 1.6 per cent were proven to be incorrect, the view of ACCI this morning was that a lot of resource, energy and effort goes into monitoring and policing to get that final aspect where we have 98-plus per cent doing the right thing. In this case it would be about 99½ per cent if those figures are correct.

Do you have a comment on that and what is your target? Obviously in any society we will never get to a zero level of noncompliance. It would be impossible. But where do you feel the department is heading? By those figures, if they are correct, it sounds as though the department is doing a fantastic job. We will still interrogate you but it sounds like you have been doing a great job so far with the detection rate. Is it because we are not detecting? Is it because people are not reporting because of the issues of being afraid to report? Do you have any comments about those figures and the comments I have just made?

Mr Parsons—I certainly have comments to make in response to that. I think that it is generally accepted that in both the public and private sectors monitoring is informed by a risk analysis. It is accepted nowadays that you do not necessarily have to monitor 100 per cent of anything. You can work smarter than that by targeting your resources where you think you will find exceptions. I quite liked your suggestion that the figures you just quoted vindicate the department's risk matrix and say that we are targeting quite correctly.

Senator PARRY—I thought you might.

Mr Parsons—But, as I indicated before, that does not mean that we rest on our laurels. In many ways I think it is incumbent upon us and all bureaucracies to continue to evolve and refine any risk based approach. Just to be cognisant of shifts in demographics, behaviour and economic drivers that might prevail at any time is largely why I talked about how we will add to our mix. That survey would be a mail-out to the visa applicants themselves. That just gives us another dimension to further vindicate, presumably, the accuracy of our risk matrix at present. The department does not run a traffic cop arrangement where we expect our inspectors or our monitors to reach a quota of findings.

Senator PARRY—That is assuming traffic police do that, of course.

Mr Parsons—That is.

Senator POLLEY—How many monitors or inspectors do you have?

Mr Parsons—We currently have 62 monitors working on the 457 program, with plans to grow that by a further 30 as a result of the funding coming from government in the package that was announced by the minister.

CHAIR—We may need to get everybody back. I am sorry about this. We probably should have given you three hours. I have a couple of quick things. One is in relation to health cover. A question was asked about health cover for 457 visa holders. Who is responsible for making sure they have it? If they do not take it out, who is liable? Can you give some detail on that?

Ms Daniels—In the current undertakings, and my colleagues can add to this if they would like, we expect that there be no debt to the Commonwealth in respect of issues to do with a 457 visa holder's health matter. At the moment, I think it is really up to sponsor and the visa holder to negotiate. Currently, if there is a debt to the Commonwealth in respect of a debt being unpaid then we would expect the responsibility to rest with the sponsor. It could well be that the cost is covered by the sponsor or the visa holder, but we do not expect there to be a debt to the Commonwealth. I repeat: if there is a debt to the Commonwealth or the state—my colleague agrees—then that responsibility currently falls to the sponsor.

CHAIR—In the light of your comments, do you think there should be a clear direction as to who is responsible for taking out health cover on behalf of the visa holder? I will give you an example. I will declare an interest here. I have a 457 visa holder who works in my wife's bakery. The migration agent paid for the first three months and then said it was up to this baker to pay his own, and that is what is happening. That seems a little different to what you are talking about.

Mr Manthorpe—If I could read from the discussion paper—it goes directly to this point. The discussion paper that Mr Parsons tabled earlier states that, 'In addition, the following costs be met by the employer in respect of primary and secondary visa holders: (1) public health costs and public health insurance for the family.' There is a quite specific proposition about that contained in the discussion paper.

CHAIR—That is the proposition?

Mr Manthorpe—That is in the discussion paper: 'public health costs and health insurance for the family'.

CHAIR—It is good to have found that out. So that will happen?

Mr Parsons—It depends how we go next week, to a large extent.

CHAIR—But hat is what you hope will happen?

Mr Parsons—That is the proposition, yes.

CHAIR—On another parochial one: Western Australia would like the same treatment as South Australia in terms of regional concessions. Could you ever see that happening, because of the great need?

Mr Parsons—Again, there are currently I think four different definitions of regional Australia, depending on which visa program you are in. Work is underway in the department to look at the multiple definitions of regional Australia. Western Australia of course is enjoying an unprecedented economic activity.

CHAIR—We still cannot get enough workers.

Mr Parsons—That is right. I would not want to pre-empt the outcome of the review on the status of regional areas.

CHAIR—But it is being looked at. That is good. Market rates have been brought up, and hopefully that will not take us much more than five minutes to respond to. There has been a lot of discussion in this committee about paying market rates rather than the rate assigned to the visa. Could you respond to that.

Mr Manthorpe—That is probably a question for us. We are aware of the debate around whether there should be market rates or not, and I think it raises a bunch of issues. Firstly, it goes to complexity: what is the market rate? No-one has reliable market rate data down to the level of the precise occupation, let alone the precise area where the precise occupation might be. So if you were going to move in the direction of market rates, you could only do it at an industry level or at a broad ASCO category level, which would raise issues and at the same time create a plethora of rates. One of the things that we are all trying to balance in the discussion about further refining and reforming this visa subclass is not to create a more complex red-tape-burdened system but one that is fair and sensible. So the position that we would adopt at this point in time, subject to all the caveats about further government consideration and so on, is that the MSL—which is essentially derived from average weekly ordinary time earnings with a concession in regional areas plus a specific MSL for the IT industry—is about the right formulation. But we are aware that the debate on that issue can continue.

Senator PARRY—We have an issue with the descriptor of 'temporary business visa'. It should be 'temporary employment visa'. I think that is something most of the committee would probably agree with. Do you have a comment? It does not really describe what it is, because they are not coming to set up a temporary business. I do not know how it started, but does the department have any views on that?

Mr Parsons—DIAC probably has no official view, but my expectation is that it inherited that title from the intent that it be a stopgap measure for business.

Senator PARRY—Yes, but it does not quite say that. It is only a minor issue, but it came up and we thought it had merit. It will probably come up in our report, I would imagine.

Senator POLLEY—Going back to the hospitality industry and, in particular, restaurants: in relation to chefs, there has been a lot of evidence given to us about underpayment and exploitation in that area, not only in Canberra but also in Sydney and Melbourne. Is that systematic of that industry? What are the figures from the reports that you have had, and what action has been taken?

CHAIR—I suspect that it would be part of your profile.

Mr Parsons—Indeed. That industry is high on our risk profile for monitoring.

Senator POLLEY—Do you do spot checks, or do you ring them up and say, 'We're coming around on Monday afternoon to monitor'?

Mr Parsons—I must admit that I not actually privy to the precise details. My understanding is that the department does, as a courtesy, announce its intent to come and monitor.

Senator POLLEY—That is a bit like what happens in some childcare centres and aged-care facilities: people can get themselves prepared if you give them advance notice. If it is a systematic problem in this industry, wouldn't it be better to have spot checks?

Mr Parsons—I suspect that it would be. I think that part of the changes in the package that Mr Andrews has announced are to increase the department's legal right to come in unannounced.

Mr Manthorpe—The other point is that that is also one of the industries that the Workplace Ombudsman—what was the Office of Workplace Service—now targets for compliance with the workplace relations law. You would appreciate that, in the Canberra situation, prosecutions were brought to bear against the workplace relations law as much as the immigration law.

Senator POLLEY—In that industry, when you make your assessments do you rely on the questionnaires you send to employers and employees to complete?

Mr Parsons—No. In fact, that is only part of the equation, because that industry has a history of noncompliance. Whether we get questionnaires back or not, some 24 per cent of the visits we make are to that industry—just because it is that industry.

CHAIR—We really appreciate you giving us your time today. I am sorry we are so short of time. Thank you for attending today's hearing. I would be grateful if you could send to the secretariat as soon as possible any additional material you have undertaken to provide. As there were some members of the committee who were unable to be present today, the secretariat may also send you some additional questions in writing which they would appreciate you answering. As I have already said, when we hold one more day of hearings, we would appreciate it if you could make yourself available—and you have said that you may well do that.

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

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

Committee adjourned at 3.45 pm