

RECEIVED
02 FEB 2007

BY: MIG

Submission No. 20
Date Received

Liquor, Hospitality
& Miscellaneous
Union

National Office
Level 9
187 Thomas Street
Haymarket NSW 2000

Jeff Lawrence **Brian Daley**
National Secretary National President

Locked Bag 9
Haymarket NSW 1240
Telephone: (02) 8204 3000
Facsimile: (02) 9281 4480
E-mail: lhmu@lhmu.org.au
Web address: www.lhmu.org.au

Tim Ferrari
Louise Tarrant
Assistant National Secretaries

ABN: 5272 8088 684



2 February 2007

The Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
CANBERRA ACT 2600

By Email: jscm@aph.gov.au

Dear Madam/Sir

Please find the submission of the Liquor, Hospitality and Miscellaneous Union to the inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas.

Please contact National Legal Officer Joseph Kennedy on 02 8204 3019 should you want to discuss any aspect of this submission further. All correspondence should be addressed to Locked Bag 9, Haymarket NSW 1240.

Yours faithfully,

A handwritten signature in dark ink that reads "Tim Ferrari". The signature is written in a cursive, slightly slanted style.

TIM FERRARI
ASSISTANT NATIONAL SECRETARY

**THE LIQUOR, HOSPITALITY AND MISCELLANEOUS
UNION'S SUBMISSION TO THE PARLIAMENTARY JOINT
STANDING COMMITTEE ON MIGRATION'S INQUIRY INTO
TEMPORARY BUSINESS VISAS**

1. Introduction

- 1.1. The LHMU makes this submission to the Parliamentary Joint Standing Committee on Migration's inquiry into the eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas.
- 1.2. The LHMU welcomes the opportunity to make this submission and thanks the Committee for the invitation to do so.
- 1.3. Within this submission, the LHMU seeks to represent the concerns of all of our 140,000 members. In particular, we advocate on behalf of members who are either directly or indirectly involved in the Temporary Business (Long Stay) - Standard Business Sponsorship (Subclass 457) visa program. As LHMU members, those workers could be from any of the diverse range of industries and occupations we cover, including:
 - Cleaning
 - Security
 - Care work (attending to the young, frail, aged, ill and disabled)
 - Hospitality
 - Manufacturing
- 1.4. The LHMU strongly believes that the current coalition government has let its constituency down when it comes to skilling and training the Australian workforce. It is gravely concerning that the major issue for the Australian economy is not current skill shortages, but rather, emerging skill shortages. The decline in the completion rate for apprentices over a sustained period, combined with the lack of any public or private investment in upgrading the qualifications of new and existing workers and the significant ageing of the Australian population continue to worsen the situation. Any form of temporary skilled migration essentially forms what is a highly questionable 'quick-fix' for a skill shortage problem that needs long-term, well-researched and resourced solutions.

- 1.5. A reliance on 457 visas to address a lack of skilled workers reflects the reluctance on the part of employers and the federal government to address skills shortages through the basic economics of supply and demand. The unfettered and unmonitored introduction of temporary labour essentially allows employers to avoid providing wages and conditions sufficient to attract local skilled workers. It provides an undoubtedly attractive avenue to avoid paying what a democratically regulated domestic market would have otherwise dictated.
- 1.6. That said, the LHMU does envisage a role for temporary business visas for skilled employees. However, these need to be tightly regulated, overseen by an effective and enforceable monitoring system, subject to extensive labour market testing and essentially seen as a last resort when all other avenues have been exhausted. In addition, there needs to be far greater transparency and public disclosure of information and statistics surrounding the visas. The LHMU does not believe that any of these factors have been implemented in the current 457 program to date.

2. Adequacy of current eligibility requirements for employers

- 2.1. The LHMU believes that the lack of precise and enforced eligibility requirements for employers participating in the 457 visa program has been a major contributor to the systems failure to date.
- 2.2. The LHMU and its members have witnessed countless examples of the current eligibility requirements not being complied with. Although this is more of a monitoring issue, we believe any inquiry into the requirements themselves to be largely redundant if existing mechanisms are not being enforced. This aside, we are able to offer some insight into the sufficiency of the current requirements.
- 2.3. Because the 457 visa system is viewed by the LHMU as a short term fix to a problem requiring more forward-thinking training and skilling solutions, we strongly believe that the current system does not sufficiently require employers to prove a satisfactory record of training Australians. Although broadly contained in the regulations, the LHMU knows of no evidence of this requirement being enforced. We have been informed by DIMIA that the extent of any enforcement was a simple phone call and question by an officer of the department. This is plainly insufficient.
- 2.4. Further, the LHMU would like to see the introduction of additional requirements for employers, provided they are monitored and enforced. These include:
 - Requiring employers to prove that all avenues for obtaining local labour have been exhausted. This would require complete labour

market testing to be undertaken and provided as evidence to the department.

- Employers must also satisfactorily establish what training plan they have adopted to overcome ongoing shortages in the particular areas of concern. This may include cooperation with local training providers and other programs within the community.
- The establishment of a central skilled workforce database, which employees can register with and employers can contact to find suitable employees locally.
- Where any employer makes workers redundant, they should be made to register such activity and be consequently banned from partaking in the 457 Visa program for a period of 12 months.

3. Adequacy of current eligibility requirements for employees

- 3.1. The LHMU has not been informed to date of any issues in the 457 visa program surrounding the suitability of workers or the appropriateness of their skilling.
- 3.2. That said, we do have evidence of employees being imported as skilled tradespeople and then being forced to do more elementary tasks, purely because employers have been getting away with paying wages below both the award and minimum salary rate. The Canberra restaurant industry is but one example.
- 3.3. As long as employers are allowed to use the 457 program as a source of cheap labour to be used in any capacity, the skills of the workers are only relevant to assessing the gravity of underpayments and exploitation.
- 3.4. The LHMU does hold the view that the proper development of a system where overseas qualifications can be recognised and made equivalent to Australian standards should be a fundamental aspect of the program. However, this should occur after the more grave concerns about the program have been addressed.

4. Case study – ACT Restaurants

- 4.1. We believe the following case study clearly illustrates the various problems with current monitoring, reporting and enforcement in the 457 visa system. We know of a plethora of similar cases and believe them to be an indisputable indictment on the current system and its operation.

- 4.2. The subject employer successfully applied for registration as a 457 sponsor and advertised in the Philippines for employees in the hospitality industry. A number of individuals successfully applied, but only upon paying a substantial application fee which appears to have no basis.
- 4.3. The employees signed contracts of employment, stating that their employment would be covered by the applicable award.
- 4.4. The employee's period of employment lasted for shortly over two months. During that time the employees worked in excess of 50 hours per week. They were never paid any overtime or weekend penalty rates as they were entitled to under the Award. Their salary was below the minimum in the award, and substantially below the legislated minimum rate. The employer also deducted money from wages each week to cover 'expenses'.
- 4.5. In addition, the employees have made claims of racial discrimination, kidnapping, refusal of medical treatment in addition to being underpaid and having unauthorised deductions from their pay. The fact that such complaints have come from many other sources only adds to both their gravity and legitimacy. Employees reported they received no breaks, no overtime, were excluded from group activities and consistently treated as inferior. They also suffered racial abuse.
- 4.6. This abuse has been the subject of a series of complaints made to the ACT Human Rights Office. These include allegations of racial vilification and threats made to send workers back to 'where they came from'. One of the workers stated:

"The terms of my visa allow for my deportation in 28 days if my employer does not continue to sponsor me.... I am frightened and feel intimidated in raising these matters directly with my employer....I wish to remain in Australia and only ask to be paid properly and treated with dignity and respect. I want to be treated like a human being and not forced to eat scraps from the rubbish bin, or insulted, pushed and jostled in the kitchen for no apparent reason"
- 4.7. The LHMU has facilitated many claims of a similar nature involving 457 visa holders to the ACT Human Rights Office. The reaction by DIMIA thus far has been insufficient
- 4.8. The fact that the recovery of entitlements and imposition of penalties for underpayment remains at the discretion of the OWS is completely inadequate. In the LHMU's experience, only through continued pressure being applied by the respective embassy and the LHMU has the OWS decided to pursue a matter.

- 4.9. The most common outcome of a complaint to DIMIA seems to be that the employer is simply de-registered from the program, and the worker, without other employment, is deported.

5. Effectiveness of Monitoring, Reporting & Enforcement

- 5.1. In July 2001, DIMA first implemented a policy of monitoring at least 10 per cent of all employers approved as 457 sponsors. In November 2001, DIMA upgraded this to monitor all employers currently approved as 457 sponsors at least once while their sponsorship status was valid. All sponsors were required to complete a monitoring form within 12 months of the sponsorship being approved, including providing evidence of the salary being paid and sponsorship undertakings being met.
- 5.2. As is clearly demonstrated by the above example, the employer did not pay the minimum required wage. The integrity of any information provided to DIMIA was never checked. The procedure followed by DIMIA seems to be to ring and accept whatever they were told, or ring to advise that they were going to make a site visit. This allows employers to create and change rosters, give the workers days off, and falsify time and wage records.
- 5.3. This type of ad-hoc and spurious reporting, monitoring and enforcement system is grossly insufficient when one considers the potential costs. The fact that gross violations of award conditions are merely one of many factors is obviously concerning. Severe physical and mental abuse, acute racism, and blatant violation of any guidelines clearly means the system is not working in any way.
- 5.4. The LHMU firmly believes that a recommendation for the introduction of a rigorous regulatory regime to ensure the 457 programme is not abused should be a primary outcome of this inquiry. There is an urgent need to develop a centralized system capable of imposing sanctions on employers who are guilty of abuse, whilst also facilitating complaints from employees. This system should be built around enforcing the principles of equal pay for equal work, employer OHS responsibility, freedom of association and fairness of dismissals.
- 5.5. In addition, the Department should establish a complaints hotline for workers and make all visa holders aware of its existence on commencement of employment. It should be designed around a notion of accessibility, and would consequently include proper translation facilities. The LHMU firmly believes it to be vital for the Department to urgently address the issue of visa holders being reluctant to report violations and abuse for fear of deportation.

- 5.6. As has been stated, the LHMU does not see the merit in having regulations and requirements for sponsors if they are not properly monitored and enforced.

6. Wage Rates

- 6.1. The LHMU notes that the current legislated minimum 457 salary applicable is \$41,850 as the standard national 457 minimum and \$37,665 for those in 'regional areas', or 90 per cent of the 457 national minimums. The requirement to pay these salaries in regional areas is established by Schedule 2 cl.457.22(4)(g) of the Migration Regulations 1994.
- 6.2. As mentioned, the LHMU is aware of countless examples of these salaries not being paid.
- 6.3. In addition, the LHMU does not agree with the application of a general, ambiguously set and standardised minimum salary as a fundamental principle. The regional exemption discount is also indefensible. We see no justification for 457 visa holders, having had their skills assessed and deemed appropriate for their employment, to be paid at a rate less than Australian employees.
- 6.4. As such, the LHMU would like to see individual minimum rates being set for each eligible occupation in the 457 system. These rates should be established in line with market rates, and be subject to a regular assessment which is both transparent and systematic. Without such reform, employers will use the 457 program to continue to go about undercutting market rates, meaning these visas are not only putting downward pressure on Australian wages, but are also effectively a government subsidy to some employers, giving them an unfair competitive advantage.

7. Availability of statistics

- 7.1. The failure of DIMIA to regularly collect and make available statistics on all aspects of the 457 visa program is completely unsatisfactory.
- 7.2. The LHMU believes that the department should be required to publish information about the individual jobs for which 457 visa nominations have been approved, including aggregated data by industry sector and/or detailed occupation groupings.

- 7.3. DIMA should also collect and publish regular data on actual salaries paid to 457 visa-holders. If that data cannot be collected by DIMA, then a properly authorised body could do so through data matching of DIMA 457 data against tax records of 457 visa-holders held by the ATO.
- 7.4. In addition, DIMIA should be publishing statistics on the numbers of employers it has deregistered from the program and maintain a list, accessible by the public.
- 7.5. From those limited statistics that have been available, the LHMU can discern two major trends. One, the number of visas is on the rise; and two, the pattern of abuse by employers continues at alarming levels.
- 7.6. For example, the LHMU has obtained statistics that show that between November 2003 and February 2006, 30 per cent of all 457 visas granted onshore were approved by DIMA at or below the gazetted 457 minimum salary - 18,300 out of 61,500 visas. Obviously employers are not even paying DIMA-approved rates. Not only does this categorically illustrate that monitoring and reporting is ineffective, it also highlights that the system is plainly not being enforced.

8. Conclusion

- 8.1. The various stakeholders involved in the Australian economy have known about the developing skills shortage for quite some time. That said, in the entire Australian workforce, the total training hours actually decreased from 148.6 million hours in 1997 to 139 million hours in 2005. This is difficult to comprehend.
- 8.2. The LHMU firmly holds the position that a temporary business visa program is simply unable to solve any skills shortage problem, and is by definition, short-sighted.
- 8.3. We believe this inquiry should be viewing the 457 visa program as a minor, short-term management aspect of what is a growing problem for the Australian economy. They are not a part of the solution.
- 8.4. That said, the LHMU believes that all the Australians have a responsibility to ensure that where this program is being put to use, it is done so in a transparent, systematic and effective manner, based on the fundamental principle of a 'fair go' for all.
- 8.5. As we have illustrated, the current 457 visa program is failing. It is providing rogue employers with the opportunity to exploit vulnerable foreign workers, and applies no sanctions when they are caught doing so.

The amounts and gravity of the breaches of which the LHMU is aware raise questions about the government's commitment to providing any regulation of migration and the Australian labour market.

- 8.6. Until uniform monitoring begins to occur, guidelines and regulations are enforced, and the system is actually made transparent, these abuses will continue. The LHMU hopes this inquiry will make recommendations to add to the call for urgent reform, so that the program can at least assume a role as a temporary yet equitable fix to a skills shortage caused by a decade of government inaction on training.

DATED: 2 February 2007