

DISSENTING REPORT BY COALITION SENATORS

Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements

Introduction

1.1 Coalition Senators believe that Australian workers should, as a priority, be adequately resourced to enable them to be up-skilled and empowered, to gain meaningful employment.

1.2 Australian businesses overwhelmingly prefer to hire Australian workers in preference to overseas workers on the basis that it is more economical and less complicated to fill skill requirements from the local workforce.

1.3 There is a shared consensus across business and the community that Australia's skilled and semi-skilled migration program should only be employed to supplement our domestic workforce where necessary.

1.4 The Coalition does not consider that an effectively managed temporary labour migration program will threaten Australian jobs. Rather, it is an important tool to secure the future of businesses and grow employment opportunities to enable business to employ more Australians.

1.5 The Australian skilled and semi-skilled migration program should be sufficiently robust to ensure that the employment opportunities of Australians must always be protected, whilst recognising that an appropriate and sustainable human capital strategy for Australia must be readily available to safeguard business from labour and skills shortages.

1.6 The 457 visa is the dominant component of Australia's temporary skilled migration program. It is designed to provide a prompt response to fluctuations in demand for skilled and semi-skilled workers where such demand cannot be met by the Australian workforce.

1.7 An effective policy for temporary skilled migration is vital to the efficient operation of the labour market and has the capacity to deliver significant economic benefits at a national and regional level.

1.8 Foreign workers on 457 visas account for approximately one per cent of Australia's labour force.¹ and account for approximately two per cent of our skilled workforce.

1 Department of Immigration and Citizenship, Subclass 457 State/Territory Report: 2012-13 to 30 April 2013, p. 1.

1.9 At these low levels it is both unrealistic and naive to suggest that the 457 skilled migration program is flooding the national labour market with foreign workers.

1.10 There is significant evidence to show that 457 visa holders make a positive economic contribution to the economy through the payment of taxes and the spending of wages, whilst in Australia.² It is also relevant to acknowledge that 457 visa holders are required to pay for health care insurance and are not entitled to access government welfare programs.

1.11 Australia faces an increasing labour shortage and responding to this labour challenge in a positive manner is a key productivity issue for Australia that cannot be ignored.

1.12 The ongoing demand for labour and skills and the challenges that they present cannot be underestimated by Government and failure to effectively respond to identified labour shortages will negatively impact on the national economy.

1.13 The failure of the Labor Government to develop appropriate human capital strategies is all the more alarming against the background of numerous projects across the nation which could be jeopardised by labour shortages.

1.14 Included in this pipeline are projects to the value of (approximately):

- Western Australia: \$293.9 billion worth of projects;
- Queensland: \$199.1 billion worth of projects;
- New South Wales: \$84.6 billion worth of projects;
- Victoria and Tasmania: \$57.6 billion worth of projects;
- South Australia: \$50.1 billion worth of projects; and
- Northern Territory: \$43.5 billion worth of projects.³

1.15 Currently across Australia there are approximately 259 approved projects with a value of \$446.4 billion, while a pipeline of 163 less advanced projects will potentially deliver a further \$282.4 billion of investment.⁴

1.16 The National Resources Sector Employment Taskforce has predicted there could be a shortage of skilled tradespeople in the resources sector of approximately 36 000 by 2015.⁵

2 Australian Mines and Metals Association, *Submission 22*, p. 10.

3 Pit Crew Consulting, *Labour Market Report*, January 2013.

4 Pit Crew Consulting, *Labour Market Report*, January 2013.

5 Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education website, 'Resourcing the future: National Resources Sector Employment Taskforce report', July 2010, <http://www.innovation.gov.au/Skills/National/Documents/FinalReport.pdf> (accessed 17 June 2013).

1.17 Effectively addressing labour shortages through skilled and semi-skilled migration programs is not a new phenomenon in Australia.

1.18 The Howard Government's record of strong economic management was supported by sound policies designed to provide flexibility for Australia's migration intake and to serve the national interest. These policies included options to assist business to address skills shortages.

1.19 The Howard Government oversaw an increase in the proportion of skilled migration in Australia's permanent migration program, from around 30 per cent when it assumed office in 1996 to almost 70 per cent when it left office in 2007.

1.20 The introduction by the Howard Government of the 457 temporary skilled visa program ensured greater responsiveness and flexibility in responding to fluctuating labour demands.

1.21 In contrast to the Howard Government policies which successfully addressed labour shortages through skilled and semi-skilled migration programs, the current Labor Government has burdened the 457 visa program with unnecessary red tape and has effectively locked many regional areas out of the program. As a result of the mismanagement of the 457 visa program, business has been frustrated and inconvenienced in its attempts to address labour shortages.

1.22 To accommodate Australia's growing requirements for skilled labour, it is critical for the Government to recognise the need to implement sound policies that can assist in immediately addressing the labour shortages that business and industry are experiencing, in particular by making the present 457 visa program more efficient and user friendly. Up-skilling of Australian workers, along with supplementation through an effectively managed 457 visa program, will assist in ensuring the creation of long-term jobs into the future.

1.23 Australia has been a successful and prosperous nation in large part due to its skilled and productive workforce. It is critical that appropriate policies be implemented if Australia is to have a workforce that is capable of ensuring the nation's strong growth and continued economic success.

1.24 It is clear from an objective analysis of the evidence given to the inquiry by employers and employer related groups that the current Labor Government has failed to implement appropriate policies to address current and future labour shortages in Australia.

1.25 The Labor Government's lack of appropriate workforce policies has created a situation where the Australian labour market is unlikely to produce the stable and reliable source of labour required to meet both the future short- and long-term demands of business and industry.

1.26 The former Rudd Government and the current Gillard Government, in responding to union objections to the current 457 visa program, have diminished the effectiveness, reliability and integrity of Australia's skilled and semi-skilled migration program.

Terms of Reference relating to Enterprise Migration Agreements and Regional Migration Agreements

1.27 The terms of reference of the inquiry also refer to Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs).

Enterprise Migration Agreements

1.28 The National Resources Sector Employment Taskforce (taskforce) reported the resources sector could be 36 000 tradespeople short by 2015.⁶ It advocated the establishment of EMAs for mega resource projects.

1.29 The taskforce's recommendation was accepted by the current Government and was strongly supported by the Coalition.

1.30 The former Minister for Immigration and Citizenship, Minister Bowen, announced the introduction of EMAs on 10 May 2011.⁷

1.31 Subsequent to Minister Bowen's announcement, the Government developed the EMA program to assist Australia overcome both temporary and acute labour shortages for positions which are unable to be filled by Australian workers in the high-performing sectors which currently underpin the national economy.

1.32 EMAs are project-wide temporary overseas migration arrangements for large-scale resource projects that are intended to address the skilled labour needs of the resource sector.⁸ EMA's are designed to provide a strategic practical solution to a complex skilled labour shortage issue for large-scale resource projects in Australia.

1.33 Coalition Senators strongly support the introduction of EMAs and believe that these agreements can play a crucial role in assisting Australia manage temporary and acute labour shortages affecting major resource projects that contribute significantly to the national economy.

1.34 EMAs provide a flexible approach to short-term human capital needs, ensuring a balance in the supply of labour between Australian and foreign workers, based on the capacity of the existing workforce.

6 Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education website, 'Resourcing the future: National Resources Sector Employment Taskforce report', July 2010, <http://www.innovation.gov.au/Skills/National/Documents/FinalReport.pdf> (accessed 17 June 2013).

7 Minister for Immigration and Citizenship, 'Budget 2011-12: New Temporary Migration Agreements to Further Address Skills Demand', media release, 10 May 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb165283.htm> (accessed 17 June 2013).

8 Department of Immigration and Citizenship website, 'Fact Sheet 48a – Enterprise Migration Agreements', <http://www.immi.gov.au/media/fact-sheets/48a-enterprise.htm> (accessed 18 June 2013).

Regional Migration Agreements

1.35 The Government announced the introduction of RMAs in May 2011 as part of the 2011-12 Budget proposals. RMAs are designed to assist resource projects in regional and remote areas that are impacted by labour shortages.

1.36 In introducing RMAs, the Government envisaged that they would enable local employers to sponsor workers from outside Australia where they have a genuine need for labour assistance, while ensuring Australian workers remain the first choice. The agreements were intended to have a strong focus on fostering training initiatives for Australians.⁹

1.37 RMAs provide an important way to support regional skill shortages where those shortages extend beyond an individual enterprise and also impact on other service organisations in a community. This situation can often be found in large-scale resourcing projects where a rapid growth in a resources company quickly outstrips local service industry capacity. Where this occurs in locations remote from a ready source of workers, labour supply and skill shortages in the services area can quickly emerge.

Government's failure to progress EMAs and RMAs

1.38 The Labor Government's failure to effectively progress EMAs and RMAs is an indictment on the Government and an indication of their lack of genuine commitment to address the skill needs of the resources sector.

1.39 Since the Government announced its intention to establish EMAs and RMAs a number of Australian unions, with strong links to the Government, have mounted an aggressive media campaign opposing these agreements.

1.40 Despite the Government's earlier claims to support EMAs and RMAs to address the skilled labour needs of the resource sector, the Government appears to have succumbed to the negative union campaign, as to date, only one EMA has been given in-principle support, although it is not yet operational, and no RMAs have been formalised.

1.41 EMAs and RMAs are of no benefit if it involves long, drawn out processes.

1.42 Sadly, this has been experienced by the only RMA announced to date between the Commonwealth and the Northern Territory (NT). The RMA was announced many months ago but turning this into an actual agreement has been a slow and frustrating experience for the NT government.

1.43 Despite Coalition support for EMAs and RMAs, the evidence given to the inquiry indicates that business and, in particular, the mining industry are both frustrated and disappointed that, despite 22 months having elapsed since the

9 Department of Immigration & Citizenship website, 'Fact sheet 48c: Regional Migration Agreements', <http://www.immi.gov.au/media/fact-sheets/48c-rma.htm> (accessed 17th June 2013).

Government introduced EMAs, it has failed to negotiate a final agreement with any organisation.

1.44 Coalition Senator's concerns regarding the Government's failure to effectively progress EMAs and RMAs were shared by a number of submitters to the inquiry.

1.45 The Business Council of Australia (BCA) stated in its submission:

The Committee should enquire as to why the guidelines for the EMA submissions, released in 2011, are no longer available on the Department of Immigration website. Removing program guidelines from a government website without explanation does not send a positive signal to investors already wary of chopping and changing government policy as it relates to major project investment in Australia.¹⁰

1.46 The submission of the Australian Chamber of Commerce and Industry (ACCI) observed:

Evidence in relation to the operation of Enterprise Migration Agreements and Regional Migration Agreements cannot be presented due to the unnecessary and largely political delay in their implementation.¹¹

1.47 The Chamber of Commerce and Industry WA submission noted:

While CCI supports the EMA instrument, the complexity to establish an agreement has proven to be difficult.¹²

1.48 Similarly, the WA Government in its submission advised that it was:

...frustrated with the continual delays in the release of the guidelines for this program since its announcement...The State Government has been approached by potential applicants for an RMA but the lack of guidelines is limiting the extent to which the State can provide the necessary support.¹³

Compelling evidence given in support of the EMAs and RMAs

1.49 Coalition Senators also note the compelling evidence given in support of EMAs and RMAs.

1.50 In the Master Builders Australia (MBA) submission, Mr Wilhelm Harnisch, CEO, stated:

The terms of reference for the Inquiry also refer to Enterprise Migration Agreements and Regional Migration Agreements. We understand that there is only one signed EMA and no RMAs so it [is] difficult to comment on their operation. However, Master Builders supports this framework as an

10 Business Council of Australia, *Submission 18*, p. 9.

11 Australian Chamber of Commerce and Industry, *Submission 21*, p. 8.

12 Chamber of Commerce and Industry of Western Australia, *Submission 34*, p. 6.

13 Western Australian Government, *Submission 45*, p. 6.

appropriate one for allowing a degree of extra flexibility for e.g. very large resource projects.¹⁴

1.51 Mr Simon Bennison, CEO, Association of Mining and Exploration Companies (AMEC), stated:

AMEC considers that EMAs are a valid process and provide another avenue in which to access high numbers of skilled labour.¹⁵

1.52 BCA stated:

...it will be important to continue to offer an efficient EMA program that will allow 457 visas and EMA's to remain a flexible and fast means of addressing skills shortages on eligible projects given the important of timeliness or appraisals to arranging project finance and the timeliness of work schedules to project success.¹⁶

1.53 ACCI observed:

These schemes reflected good policy and they should be progressed as soon as possible to assist large projects and regional areas crying out for labour.¹⁷

1.54 The submission of the Chamber of Commerce and Industry WA (CCIWA) also addressed the issue of EMAs, noting:

... [CCIWA] is supportive of this instrument and commends the Federal Government for working with industry to design the EMA. Industry was concerned that it would be unable to adequate resource major projects if there was not a supply of skilled labour available.¹⁸

Coalition Senators' conclusions on EMAs and RMAs

1.55 Coalition Senators support EMAs and RMAs.

1.56 They note the supportive comments of the Shadow Minister for Immigration and Citizenship, Mr Scott Morrison, MP, who is on the record as stating that 'if backed up and competently implemented, EMAs and RMAs represent good policy'.

1.57 EMAs and RMAs should be available to play a crucial role in assisting employers manage temporary and acute labour shortages affecting major resource projects that contribute significantly to Australia's economy. These agreements provide a flexible approach to short-term human capital needs, ensuring a balance in the supply of labour between Australian and foreign workers, based on the capacity of the existing workforce.

1.58 The most effective way to ensure an ongoing availability of jobs for Australians in the resources sector is to create a business climate which encourages

14 Master Builders Australia, *Submission 9*, p. 3.

15 Association of Mining and Exploration Companies, *Submission 17*, p. 1.

16 Business Council of Australia, *Submission 18*, p. 9.

17 Australian Chamber of Commerce and Industry, *Submission 21*, p. 8.

18 Chamber of Commerce and Industry of Western Australia, *Submission 34*, p. 6.

investment in developing Australian resource assets by offshore multinationals and Australian companies.

1.59 Actions which discourage investors doing business in Australia will potentially have a profound effect on our economy and employment opportunities.

1.60 Coalition Senators therefore recommend that the Government instruct the Department of Immigration and Citizenship (the department) to process in a timely fashion the EMAs and RMA that are currently lodged with the department.

Recommendation 1

1.61 Coalition Senators recommend that the Government instruct the Department of Immigration and Citizenship to process in a timely fashion the EMAs and RMA currently lodged with that department.

Deliberate campaign to undermine 457 visa program

1.62 Over recent months, the Government and elements within the union movement have run a media campaign claiming abuse in the 457 visa program and have resorted to making statements aimed at demonising both 457 visa holders and their employers.

1.63 The Minister for Immigration and Citizenship (the Minister), the Hon Brendan O'Connor, MP, claimed on 28 April 2013 that there have been in excess of 10 000 cases of abuse in the 457 program. As a result of these alleged rorts the Minister committed the Government to introduce legislation to crack down on the use of 457 visas.

1.64 Coalition Senators note that the Minister's claim of 10 000 cases of abuse in the 457 program equated to approximately 9 per cent of the total number of principal visa holders in Australia at 30 April 2013 (108 810).¹⁹

1.65 In scrutinising the obvious exaggeration and un-believability of the Minister's claim of 10 000 cases of abuse in the 457 program, the Coalition repeatedly called on the Minister to produce evidence to substantiate his claims.

1.66 It is unsurprising that the Minister has failed to produce any evidence. In attempting to justify his exaggerated comments alleging abuse of the 457 visa program, in March 2013 in the House of Representatives the Minister referred to a department document which focussed on strengthening the integrity of the 457 visa program, provided to his Ministerial Advisory Council on Skilled Migration early this year.

1.67 The Coalition Shadow Minister, Mr Scott Morrison, MP, subsequently obtained a copy of this document under Freedom of Information and challenged the Minister on the veracity of his original allegations.

19 Department of Immigration and Citizenship, 'Subclass 457 State/Territory summary report 2012-13 to 30 April 2013', p. 2.

1.68 Contrary to the Minister's false claims, the document did not suggest any widespread rorting or concerns with the program.²⁰

1.69 Following the Shadow Minister's challenge to produce factual evidence that there have been in excess of 10 000 cases of abuse in the 457 program, the Minister subsequently admitted that he had made this number up and that his allegations were not based on any authoritative statistics or other probative evidence.²¹

1.70 Coalition Senators note that the concerted negative campaign by Minister O'Connor and a number of unions alleging abuse in the use of 457 visas was strongly criticised by industry groups, labour market experts and the Migration Council of Australia (MCA).

1.71 In May 2013, the MCA released a landmark report on the 457 visa program, including analysis based on a survey of 3800 visa holders and 1600 businesses. It found that only two per cent of foreign workers were being underpaid.²²

1.72 As stated by Ms Carla Wilshire, CEO, MCA:

...the findings show that the 457 visa program is critical in keeping Australia competitive in an era when industry is global and 98 per cent of innovation happens outside of Australia'.²³

1.73 In its submission, the Australian Industry Group (Ai Group) stated:

The current debate over the program has unfairly focused on the relatively few employers who do not meet their obligations. In our view, those employers should face whatever sanctions are available. However, no evidence has been presented which points to widespread or systemic abuse and we strongly object to the tone of the public debate which has had the effect of vilifying both employers and those who themselves hold 457 visas.²⁴

1.74 The BCA submission observed:

The unsubstantiated claims by the government of excessive growth and widespread rorting in the temporary skilled migrant 457 visa scheme are harming our international reputation and risk undermining a program that is vital for the economy. The facts are that there are 105,000 primary 457 visa holders performing critical roles in Australia, which is less than one per cent of the workforce, and that number fell in March as visa grants

20 Department of Immigration and Citizenship, Ministerial Advisory Council on Skilled Migration, Discussion Paper, 'Strengthening the Integrity of the Subclass 457 Program', December 2012.

21 ABC Radio, AM, Interview with Alexandra Kirk, 3 May 2013.

22 Migration Council of Australia, 'More than temporary: Australia's 457 visa program', additional information received 14 May 2013.

23 Migration Council of Australia website, '457 visa program is more than temporary', media release, 14 May 2013.

24 Australian Industry Group, *Submission 16*, p. 1.

declined...If there is evidence of systemic rorting then it should be produced, otherwise the government should simply deal with any employers who are found to be abusing the system.²⁵

1.75 The BCA also stated:

The government's changes to the 457 visa scheme announced in February were said to be in response to excessive use and so-called rorting, but with little justification presented. Individual visa holders or employers not complying with the legislation should be dealt with directly. Ad hoc changes to the rules only add cost, undermine business confidence and slow business activity.

1.76 The ACCI submission stated:

Given the importance of skilled migration, ACCI has become increasingly alarmed at recent policy announcements and public commentary around important elements of migration. Worthy programs such as 457 visas, EMAs and RMAs have, in recent months, become subjected to a series of unsubstantiated claims of widespread rorting and have been used to invoke parochial and even racist sentiment with claims of foreign workers 'stealing' jobs from unemployed Australians. ACCI feels that a careful, considered approach, based on clear and substantiated evidence, is needed to ensure that we maintain the value and integrity of the schemes and don't further harm our reputation overseas as a good destination to do business, work or learn.²⁶

1.77 The Australian Mines and Metals Association submission stated:

...the recent demonisation of 457 visa workers is extremely damaging. AMMA is particularly concerned at the politically charged context in which the government announced further changes to the system for 457 visas, and the lack of essential consultation with industry as a critical interest in the effective operation of both short term and ongoing skilled labour migration.

a. The depiction of skilled migrants as foreigners that need to be 'put at the back of the queue', and that Australians are being 'discriminated against', is base rhetoric that borders dog-whistling and invites allegations of industrial xenophobia.

b. These emotive claims also ignore the reality that current rules require labour to first be sourced from the local workforce.²⁷

1.78 The Ernst & Young submission noted:

Recent sensational media reports about the subclass 457 visa program are unhelpful to a rational public dialogue and discussion about the appropriateness of Australia's skilled migration program. The program is important to the needs of business to fill temporary vacancies with skilled

25 Business Council of Australia, *Submission 18*, p. 2.

26 Australian Chamber of Commerce and Industry, *Submission 21*, p. 4.

27 Australian Mines and Metals Association, *Submission 22*, pp 1-2.

foreign workers. Records published by the Department of Immigration and Citizenship indicate that there are rare and isolated instances of concern in the program. It is essential that the current sanctions regime deal with inappropriate use of the program.²⁸

1.79 The Migration Institute of Australia, in its oral evidence at the Inquiry, confirmed that the actual statistics did not support the Minister's false claims:

Senator CASH: Ms Chan, you would be aware that the Minister, Mr O'Connor, claimed that there were at least 10,000 rorts occurring in the 457 visa system, which was then proven to be a 'guesstimate'. Mr Sheldon of the TWU this morning threw a rounder figure of 100,000 breaches of human rights in relation to the 457 visa program. Given that you do represent almost half of the migration industry, what is your experience in relation to the allegations of rorting within the 457 visa program? And if there are rorts, are they dealt with by way of a legislative basis?

Ms Chan: We would only have the information that is provided through DIAC, and the statistics do not support either a 10,000 rort or a 100,000 rort.²⁹

1.80 Perhaps the most damning evidence in relation to the Minister's false claims of widespread rorting was provided by his own department at the public hearing of the inquiry.

1.81 The department confirmed under questioning from Senator Cash that it did not provide the Minister with any advice that would form the basis of his false claims:

Dr Southern: We certainly did not provide advice around a number of 10,000.³⁰

Claims of rorting by the CFMEU and the TWU

1.82 Evidence given by the Construction, Forestry, Mining and Energy Union (CFMEU) in its submission to the inquiry was to the effect that there were fundamental abuses or rorts of the 457 visa program:

The fundamental abuse or rort of the 457 visa program is when the Australian government authorises an employer to employ a foreign national on a 457 visa when a qualified Australian citizen or permanent resident is available and willing to do the work.³¹

1.83 The CFMEU submission went on to state that the union would 'provide to the committee, on a confidential basis and upon request, numerous examples of the exploitation of 457 visa workers'.³²

28 Ernst & Young, *Submission 39*, p. 1.

29 *Committee Hansard*, 23 May, p. 24.

30 *Committee Hansard*, 23 May, p. 67.

31 Construction, Forestry Mining and Energy Union, *Submission 41*, p. 8.

32 Construction, Forestry, Mining and Energy Union, *Submission 41*, p. 8.

1.84 Coalition Senators note that the evidence provided by the CFMEU on a confidential basis to the inquiry referred to six cases of alleged rorting.

1.85 At the public hearing for the inquiry, Mr Tony Sheldon of the Transport Workers' Union of Australia (TWU) stated that he believed there were more than 100 000 people on 457 visas having their human rights exploited:

Mr Sheldon: And you would look at the question Senator Cash rightly asked, as you are asking: is there exploitation of people on 457 visas beyond those two months? When you are talking about having a human right taken from you whereby you can be deported from the country, I would argue that the entire 100,000 plus are human rights exploited...³³

1.86 Coalition Senators note that the total number of principal visa holders in Australia at 30 April 2013 was estimated by DIAC to be 108 810.³⁴

1.87 When asked by Senator Cash how many allegations of cases of exploitation or rorting had been reported the TWU, Mr Sheldon's evidence was that there were only 24 such cases:

Senator CASH: In your oral evidence today you did use the word 'exploiting' in relation to 457 visas. How many allegations or cases of either exploitation or rorting have been reported to the TWU?

Mr Sheldon: It is 24.³⁵

1.88 The evidence of Mr Sheldon regarding his claims of exploitation of people on 457 visas appears to be similar to the exaggerated and factually inaccurate claims made by Minister O'Connor and the CFMEU.

Work-related fatalities among 457 workers

1.89 The inquiry at its public hearing heard evidence from Mr Kinnaird of the CFMEU that the CFMEU had data on the work-related fatality rate among 457 visa workers which showed that it is more than double the rate as that amongst Australian workers:

Mr Kinnaird: Finally, we have data on the work-related fatality rate among 457 visa workers, which shows that the fatality rate is more than double the rate among Australian workers in equivalent occupations. So you would expect that the injury rate would be similar.

CHAIR: What is the source of that and can you provide that further information on notice, please?

1.90 In relation to the evidence provided by Mr Kinnaird on notice to the committee, Coalition Senators note that the data that Mr Kinnaird referred to only

33 *Committee Hansard*, 23 May, p. 11.

34 Department of Immigration and Citizenship, 'Subclass 457 State/Territory summary report 2012-13 to 30 April 2013', p. 2.

35 *Committee Hansard*, 23 May, p. 9.

covers the period 2008-09, one financial year, and that the number of such deaths in that year was atypically high.

1.91 In relation to work-related fatalities among 457 visa holders, Coalition Senators note that the department holds a register of deaths of 457 visa holders.

1.92 The department on notice advised the committee that it was aware of the death of 58 visa holders since 2007. Forty-seven of these deaths were non work-related and 11 work related.³⁶

Coalition Senators' conclusions on allegations of rorting the 457 visa program

1.93 The lack of authoritative statistical or substantive evidence provided by Minister O'Connor, the CFMEU and the TWU in their spurious claims of widespread rorting of the 457 visa program is not consistent with the records published by the department, which indicate that such incidents are rare and isolated within the 457 visa program.

1.94 Based on the evidence provided to the inquiry, Coalition Senators conclude that the extremely damaging statements made by Minister O'Connor, the CFMEU and the TWU, alleging widespread rorting of the 457 visa program, were politically motivated and designed to undermine the 457 visa program and are not supported by their own evidence or any other authoritative statistics or sources.

Evidence regarding Labor Market Testing

1.95 Labour Market Testing (LMT) was previously a requirement for not only subclass 457 sponsorship but also sponsorship under the Employer Nomination Scheme (ENS) and Regional Sponsored Migration Scheme (RSMS).

1.96 LMT was abolished in all of those areas as it was deemed to be complex, onerous and ineffective.

1.97 The 457 visa program is only accessible to those employers with a strong record of, or a demonstrated commitment to, employing local labour and, also, a demonstrated financial commitment to training Australian workers

1.98 Coalition Senators note the compelling evidence from industry groups and labour market experts who argued against the introduction of stringent LMT as part of the 457 visa application process.

1.99 Coalition Senators agree that the reintroduction of stringent LMT will undermine the rationale and purpose of the 457 visa program, which is intended to facilitate the rapid filling of employment positions during temporary skill shortages.

1.100 Coalition Senators note that there is already an adequate inbuilt mechanism for LMT within the current 457 visa process.

36 Department of Immigration and Citizenship, responses to questions on notice, 23 May 2013 (received 12 June 2013), p. 8.

1.101 The adequacy of the current inbuilt mechanism for LMT was supported by the evidence of the Australian Mines and Metals Association (AMMA), which set out and described the basis upon which an employer is able to access the 457 visa program:

Before a position in a business can be filled with an overseas worker, the sponsor must certify that it is suitably skilled and that the qualifications and experience of the visa holder are equivalent to what would be required of an Australian employed in that occupation. Market rates and conditions that would be paid to an Australian in the same job in the same workplace must also be provided.

Sponsors incur additional costs for employing workers on 457 visas such as paying for health insurance, flights to and from Australia, and agent fees for finding the worker. These additional costs of sponsorship can amount to \$60,000 per person.

457 visas are not a low cost option to avoid the costs of employing Australian residents. It would be unsound to proceed on any other basis than that employer's hire foreign workers only as a last resort. This in-built mechanism makes it unnecessary to incorporate further labour market testing into the visa application process.

Furthermore, labour market testing – insisting that employers show evidence of having recruited locally would be debilitating for employers urgently seeking to fill a position, and who are familiar with the challenges of the local employment market. Employers seek foreign workers when they urgently need skills that are not otherwise accessible to them.

Labour market testing would also be fraught with bureaucratic and administrative problems, as DIAC case officers would also have to assess the additional information provided, thereby increasing DIAC workload and inflating processing times for 457 visas. To take this a step further and be absolutely clear, deliberately inflating process times as a disincentive to using 457 visas would be: very poor governance indeed, a rank waste of public resources; and would ill serve the interests of the Australian economy and job opportunities.³⁷

1.102 Coalition Senators believe that the introduction of stringent LMT ignores the reality that it is in the employer's best interests to conduct their own LMT and assess the availability of local skills prior to seeking to utilise the 457 visa process.

1.103 Coalition Senators note the evidence from various submitters, including Consult Australia, that Australian businesses overwhelmingly prefer to hire Australians. Consult Australia submitted that, as it is more economical and less complicated to fill skills requirements from the local workforce, employers unsurprisingly conduct their own LMT in the first instance.

1.104 Consult Australia's submission stated that employers consistently advise that they prefer to recruit locally available staff rather than having to seek out temporary skilled migrants:

37 Australian Mines and Metals Association, *Submission 22*, p. 7.

The cost of employing a temporary skilled migrant is much larger than the cost of recruiting locally, especially in terms of the cost of the process and the cost of relocating a new employee and their family to Australia. Temporary skilled migrants require more support to settle into Australian business practices, and their families require support to ensure their experience is a positive one and they do not return home early.

This demonstrates that labour market testing is a normal procedure for employers in the built environment consulting sector. Placing new requirements on employers to document and report on labour market testing is not required, and will end up as unnecessary regulation.³⁸

1.105 Consult Australia's evidence was supported by the submission of Hamilton's Migration Law, which stated:

...labour market testing is already conducted by employers with a range of means...Employers are entitled to determine how best to recruit to fill a vacancy given the workforce available in their particular area. The statutory form of labour market testing has already been rejected as a feature of the 457 regime as it was seen to be incompatible with the purpose of the program which is to flexibly and quickly fill short-term vacancies.³⁹

1.106 The evidence of the Ai Group also supported an employer's preference to recruit locally available staff:

Sourcing skilled labour via 457 visas attracts a significant premium over hiring locally and this ensures that in the vast majority of cases employers will only go down the 457 path when they have exhausted local options. In this way, employers themselves test the market thoroughly before choosing to hire through the 457 program. The visas are also available only for skills which are demonstrated to be in demand. Stringent testing will simply add more unnecessary bureaucracy...Delays caused by such testing could prevent a business from meeting urgent commercial needs.⁴⁰

Government proposal to introduce stringent labour market testing

1.107 The Gillard Government is proposing to reintroduce LMT as a requirement for 457 visa sponsorship through the Migration Amendment (Temporary Sponsored Visas) Bill 2013 (the Bill), which is currently before the Parliament.

1.108 The Bill provides that employers may be required to provide evidence that they have made attempts to fill the position locally before seeking to become a 457 visa sponsor. Evidence to be provided would include:

- advertising of the position by the employer;
- participation in career expos;
- fees paid for recruitment; and

38 Consult Australia, *Submission 3*, p. 6.

39 Hamiltons Migration Law, *Submission 15*, pp 3-4.

40 Australian Industry Group, *Submission 16*, p. 4.

- results of recruitment attempts.

1.109 The Bill introduces new LMT requirements across all skill level occupations with the Minister having the power to exempt some, but not all, higher skill level occupations.

1.110 The Bill proposes that the following types of occupations may be exempted if specified in a legislative instrument:

- professionals and managers: occupations requiring a bachelor degree or five years of work experience would be exempt by default; and
- associate professionals: occupations requiring a diploma or three years of work experience would be exempt by default.

Evidence against the introduction of stringent labour market testing

1.111 Coalition Senators note that the inquiry received strong and credible evidence that the introduction of stringent LMT will reverse the balance of minimal administrative burden, which is vital to the success of the 457 visa program, and reduce the ability of an employer to access skilled labour in an efficient and economical manner.

1.112 In its submission, the Chamber of Commerce and Industry Queensland stated its belief that LMT is ineffective, time consuming and of little value to small and medium employers.⁴¹

1.113 BCA strongly recommended against the introduction of LMT as an onerous requirement that would impose additional, unnecessary regulatory costs on industry, and would be impractical in most cases. BCA noted that LMT introduces complex and costly process without providing any demonstrated benefits:

Businesses overwhelmingly prefer to hire Australians first. It is cheaper and faster to fill skills requirements from the permanent local workforce. Employers are taking on additional costs of hiring, training and relocating overseas when applying for 457 visas – it is in their commercial interest to have already assessed whether there might be Australian workers available to fill the roles.

There is next to nothing to be gained from mandatory labour market testing. Labour market testing would only add more cost and delay to employers and curtail business activity.

Furthermore, the introduction of labour testing could be inconsistent with Australia's commitments under World Trade Organization and free trade agreements, as noted in the government response to the report of the Joint Standing Committee on Migration in 2009.⁴²

41 Chamber of Commerce and Industry Queensland, *Submission 13*, p. 7.

42 Business Council of Australia, *Submission 18*, p. 10.

1.114 The evidence of the ANU College of Law was that the introduction of stringent LMT within the application processes for the 457 visa program would be inefficient and ineffective.⁴³

1.115 ACCI submitted that the introduction of stringent LMT requirements could cause significant time delays and would only slow down access to skilled overseas workers under what is supposed to be a fast, flexible visa solution to skilled labour shortages.⁴⁴

Failure of government to provide a Regulation Impact Statement

1.116 Coalition Senators have significant concerns regarding the failure of the Government to provide a Regulation Impact Statement (RIS) in relation to Schedule 2 of the Bill, which contains the LMT provisions, given the cogent evidence of the likely detrimental impact these provisions will have on business.

1.117 The requirement for a RIS is set out on the Office of Best Practice (OBPR) website, which states:

A Regulation Impact Statement (RIS) is required, under the Australian Government's requirements, when a regulatory proposal is likely to have an impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements.⁴⁵

1.118 On 14 May 2013, the OBPR advised the department that a RIS was required in relation to Schedule 2 of the Bill, which contains the LMT provisions.

1.119 The department advised the OBPR that it would not be able to fulfil the request in the short time frame given that the Bill was to be tabled on 29 May 2013.

1.120 On 22 May 2013, the Minister requested the Prime Minister to grant an exemption to the RIS process, and on 27 May 2013 the Prime Minister granted that exemption.

1.121 No reasons have been provided in relation to why the Prime Minister granted an exemption citing 'exceptional circumstances'.

1.122 The Government was advised of the concerns of business and industry in relation to the detrimental impacts of the Bill in the 'Open letter to members of the Federal Parliament regarding the Migration Amendment (Temporary Sponsored Visas) Bill 2013' (17 June 2013).

1.123 The letter was from the MCA and signed by: Innes Willox, Chief Executive Officer of the Ai Group; Jennifer Westacott, Chief Executive of the Business Council

43 Migration Law Program, Legal Workshop, Australian National University College of Law, *Submission 19*.

44 Australian Chamber of Commerce and Industry, *Submission 21*, p. 10.

45 Department of Finance and Deregulation website, 'Australian Government RIS', <http://www.finance.gov.au/obpr/ris/gov-ris.html> (accessed 19 June 2013).

of Australia; and Carla Wilshire, Chief Executive Officer of the Migration Council Australia.

1.124 An extract from the text of the letter setting out the concerns of business and industry is as follows:

We are writing to ask for your support in opposing the Migration Amendment (Temporary Sponsored Visas) Bill 2013 in full when it is introduced into the parliament this week.

We are greatly concerned by the lack of supporting evidence, damaging rhetoric and poor process associated with the proposed changes to the 457 visa scheme, along with the considerable risks posed for investment, job creation and economic growth. Furthermore, there has been minimal consultation with industry about these changes. The legislation risks undermining the capacity to fill identified skills gaps in a timely way without a proper assessment of whether there is a genuine problem to be solved. What is so concerning is that the government is seeking to rush these changes through the final session of parliament before the election without subjecting its claims about alleged scheme abuses and inadequacies to the rigor of its own Regulatory Impact Statement (RIS) process.

The RIS exemption for the new labour market testing requirements in the Bill cites 'exceptional circumstances'. It is unclear what these circumstances are, given that the minister's department has provided no hard evidence of a systemic problem with the scheme. The government's primary argument for a systemic problem rests on a misleading interpretation of an ambiguous survey finding in a recent Migration Council Australia report. This is not an adequate foundation for introducing costly new regulation.

A Regulatory Impact Statement, with full consultation with industry, is the appropriate way to assess whether a problem exists with the 457 visa scheme and the costs and benefits of solving any purported problems through specific actions, including regulation.

Unwarranted additional regulation of the 457 visa scheme risks penalising all employers and their employees, and undermining investment, skills transfer and development and broader job creation, to address a relatively small number of instances that may be better dealt with through other means.

Coalition Senators' conclusions on Labour Market Testing

1.125 Coalition Senators concur with the concerns highlighted by the evidence from business and industry that the Government's LMT requirement undermines the rationale and purpose of the 457 visa program, which is intended to facilitate the rapid filling of employment positions during temporary skill shortages.

1.126 The ability to rapidly fill vacancies with a skilled overseas worker is an important feature in the overall success of the program.

1.127 Coalition Senators believe the proposed regime for LMT will be cumbersome to implement and difficult to monitor, and will increase the burden of regulation, obligations, compliance and enforcement on employers seeking to sponsor workers on 457 visas.

1.128 Based on the evidence provided to the inquiry, and the false statements of the Minister in relation to the 10 000 alleged cases of abuse and rorts and the spurious evidence of the CFMEU and TWU regarding abuse of the 457 visa program, Coalition Senators have formed the view that the re-introduction of LMT is politically motivated and is being used as a vehicle to frustrate and discourage business from utilising the benefits that underpin the 457 visa regime.

1.129 Coalition Senators do not support the introduction of stringent LMT.

1.130 Coalition Senators consider that the Government should delay the passage of the Migration Amendment (Temporary Sponsored Visa) Bill 2013 to allow a RIS assessment and consultation with relevant parties in relation to the Bill and, in particular, its impact on business and industry.

Recommendation 2

1.131 Coalition Senators recommend that the Government delay the passage of the Migration Amendment (Temporary Sponsored Visa) Bill 2013 (the Bill) to allow a RIS assessment and consultation with relevant parties in relation to the Bill and, in particular, its impact on business and industry.

Labour market testing and Enterprise Migration Agreements

1.132 Coalition Senators note that EMAs require significant demonstration by business that the proposed positions cannot be filled from the local labour market. As set out on the department's website:

Labour from outside Australia will only be supplementary, with resources projects required to demonstrate effective, genuine and ongoing local recruitment efforts...

All 457 sponsors, whether under an EMA or not, have to attest to having a strong record of, or a demonstrated commitment to, employing local labour and non-discriminatory employment practices. The jobs board provides a way for EMA holders to show they have made genuine attempts to recruit Australian workers before recruiting workers from outside Australia.⁴⁶

1.133 The department's advice was confirmed by evidence from the Ai Group that EMAs require:

a) Evidence that there are genuine skills shortages in the local area, and b) Evidence of efforts to use Australian workers first.⁴⁷

The economic and social benefits of skilled migration and the 457 visa program

1.134 The department's submission to the inquiry acknowledges that the 457 visa program is an important mechanism to address skills needs in the labour market which

46 Department of Immigration and Citizenship website, 'Fact Sheet 48a – Enterprise Migration Agreements', <http://www.immi.gov.au/media/fact-sheets/48a-enterprise.htm> (accessed 20 June 2013)

47 Australian Industry Group, *Submission 16*, pp 4-5.

cannot be met domestically. It states that the 457 visa program and EMAs are particularly important for the resources and construction sectors.

1.135 The submission also states that temporary skilled migration ensures that major resources projects are not constrained or jeopardised by a shortage of appropriately skilled workers that are needed to deliver a project on time and on budget.

1.136 For the resources sector, temporary skilled migration is an important mechanism to demonstrate labour security and the capacity to deliver major projects on time, which can be a critical factor to support business and investor confidence, and access to project finance.

1.137 In the report 'Population Flows: Immigration Aspects 2010-11 Edition', the department confirms the economic benefits of the 457 visa program. The report states:

The fiscal contribution of migrants to Australia's bottom line is significant. According to the Migrants' Fiscal Impact Model the total contribution from the 2010–11 Migration and Humanitarian programs and the Temporary Business subclass 457 program is \$1.6 billion in the first year after arrival and \$15.4 billion over the first 10 years.⁴⁸

1.138 The department also noted that 457 visas generate a larger immediate return to Australian taxpayers than all other visa categories.

1.139 The Ai Group provided compelling evidence on the economic benefits of the 457 visa program and what could be lost if access to required labour is not facilitated. Its submission stated that, for a company already under significant economic pressure, failure to be able to source skilled labour could 'mean the difference between their survival and continuing operations'.⁴⁹

1.140 Ai Group concluded that for those without access to the program the pressure to move operations off-shore may become compelling to the detriment of the employees in domestic operations.⁵⁰

1.141 The ACCI submission noted that Australia garners significant economic and social benefit welcoming migrants to work in Australia. It observed that skilled migrants live and work in Australian communities, rent houses, buy groceries, holiday in our major tourist areas, send their children to our schools and provide employers with the skills they need to operate effectively and productively.⁵¹

1.142 This evidence was supported by AMMA:

With regard to the general economy, 457 visas workers were found to transfer their knowledge, skills, cultural richness and contribute directly to the economy through spending money on living expenses and by paying

48 Department of Immigration and Citizenship, 'Population Flows: Immigration Aspects 2010-11 Edition', April 2012, p. 151.

49 Australian Industry Group, *Submission 16*, p. 6.

50 Australian Industry Group, *Submission 16*, p. 6.

51 Australian Chamber of Commerce and Industry, *Submission 21*, p. 13.

taxes. They often possess world-class project management experience that rubs off on the local enterprise and advances the skills and employability of Australian employees. Skilled migrants in the resource industry are subject to a high rate of taxation, without the offsets afforded to domestic taxpayers. On average, 457 visa holders were found to pay a tax rate of about 8.5% more than Australian citizens and residents, which represents valuable tax receipts to the Government and a legacy for our community of their period working in this country.⁵²

1.143 AMMA also provided evidence as to the benefits of the 457 visa program to the 457 visa holders themselves:

Amidst all the hysteria surrounding the 457 visa 'debate', one voice has been forgotten in particular: the 457 visa holders themselves. The Edith Cowan research indicated several benefits for visa holders working even for a short time in Australia including: improved choice, career prospects, equality in that they are valued for their skills, financial reward, a safe working environment, the weather and a pleasant lifestyle. Workers from the Philippines, for example, found the higher financial rewards available highly beneficial to improving the lives of their children back home (this is simply Australia becoming part of the massive Philippine Diaspora around the world seeking to bring remittances back into that country).⁵³

1.144 The submission from Fragomen noted:

...[it seems] inconceivable how many infrastructure projects recently completed, currently underway or those being proposed could possibly have been undertaken without access to the engineers, IT professionals, contract and project managers and other highly skilled professionals from around the world. Australian companies and staff and the underlying labour market in Australia would simply not be able to undertake this scale of work.⁵⁴

1.145 Fragomen's views were supported by the submission from Consult Australia, which stated:

If the facility to quickly and efficiently recruit temporary skilled migrants did not exist the Australian economy would cease to function as we know it. Large infrastructure projects would be slow to complete, and it would be impossible for private investors and developers to make planning decisions that rely on accurate workforce supply data.⁵⁵

1.146 The evidence of the Minerals Council of Australia was that:

52 Australian Mines and Metals Association, *Submission 10*, p. 10.

53 Australian Mines and Metals Association, *Submission 10*, p. 10.

54 Fragomen, *Submission 36*, p. 6.

55 Consult Australia, *Submission 3*, pp 6-7.

Simply, without temporary skilled migration, the Australian minerals industry would not have been able to respond to the significant investment demand in mining experienced over the past decade.⁵⁶

1.147 In relation to the social impact of such agreements, the Minerals Council of Australia submitted:

...regional economic and social impacts are clear with thriving mining communities across Australia – a recent MCA KPMG Report based on 2006 and 2011 ABS Census data shows that incomes and educational attainment are higher, unemployment is lower and there are more families and working aged residents in Australia's mining regions than in regional Australia more generally.⁵⁷

1.148 The MCA, in its report 'More than temporary: Australia's 457 visa program (the MCA report)', concluded that its survey results reinforced that skills transfer and knowledge from 457 visa holders play an essential part in building Australia's human capital.⁵⁸ The MCA report observed:

...temporary migration does not just fill skills shortages; it addresses skills deficits by training Australian workers. It is critical in keeping us competitive in the era of international knowledge wars, when industry innovation is global. In effect, Australia's temporary migration system is our answer to the 'brain drain': that is, brain circulation. The flow of people has not only helped us to keep pace, it also has created a skills pull in some sectors that has enabled Australia to lead innovation.⁵⁹

1.149 Fragomen in its submission to the Inquiry set out the benefits of the subclass 457 visa to Australia:

The subclass 457 visa allows multinational businesses to transfer skills and talent in an efficient and effective manner and Australian business to access a global pool of talent, often with skills and experience not available in the Australian labour market. This results in:

- increased competitiveness and productivity in the Australian economy;
- the ability to introduce new skills, processes and technology and increased employment opportunities for Australians that derive from this;
- skills transfer from overseas trained professionals to the Australian workforce;
- the ability to satisfy short-term labour demands; and

56 Minerals Council of Australia, *Submission 8*, p. 5.

57 Minerals Council of Australia, *Submission 8*, p. 5.

58 Migration Council of Australia, 'More than temporary: Australia's 457 visa program', additional information received 14 May 2013, p. 4.

59 Migration Council of Australia, 'More than temporary: Australia's 457 visa program', additional information received 14 May 2013, p. 4.

- The ability to manage Australia's permanent migration needs by ensuring that migrants are tried and tested and that they have had the opportunity to properly assess a long-term commitment to life in Australia.⁶⁰

1.150 The MCA report concluded that its survey provided a body of evidence indicating that the 457 visa program is meeting the needs of both employers and 457 visa holders. It also found that a high level of employment satisfaction demonstrated that 457 visa holders are integrating well into the Australian workforce. It concluded that, on the whole, employer usage and attitudes reflect the policy intention of the 457 visa program and found that employers indicate a high level of satisfaction and an ongoing commitment to using the program.⁶¹

1.151 The submission of Berry Appleman and Leiden (BAL Australia) stated:

...it is apparent from our observations that temporary skilled migration across all relevant visa categories provides a wide range of benefits including by not limited to:

- ensuring complex projects— of substantial economic significance and of importance to the nation—may advance even when there are local labour market bottlenecks because of lack of required local expertise or labour shortages in particular occupations
- ensuring the Australian economy has access to world-best technology and practices, to ensure the economy is able to enhance efficiencies and local based knowledge
- Sharing of overseas cultures for the enrichment of Australian society as a whole.⁶²

1.152 The Commonwealth Fisheries Association (CFA) submission noted the economic benefit of access to 457 visa labour to ensure the sustainability of its industry:

At present we employ at the deckhand level on 457 visas. Some of these employees have over three years service with us and have been promoted up the ranks...and are critical to our operations... is a recognised regional centre that has chronic labour shortages...We also employ another 20-30 deckhands at any one time that are foreigners from various countries who are on working holidays visas, and can only be employed with us for 6 months, although most would love to stay longer with us. Without a doubt we need to have access to 457 employees at the deckhand level to remain viable. (Fishing operator, March 2011; communication with CFA)⁶³

60 Fragomen, *Submission 36*, pp 5-6.

61 Migration Council of Australia, 'More than temporary: Australia's 457 visa program', additional information received 14 May 2013, p. 12.

62 Berry Appleman and Leiden, *Submission 12*, p. 8.

63 Commonwealth Fisheries Association, *Submission 14*, p.

1.153 In the same vein, the Law Council of Australia (LCA) submission noted that, without the ability for employers to sponsor foreign workers, it has been recognised that many business, including public hospitals, would cease to function. It noted that the Premier of NSW has stated that the NSW Health Department engages 2800 foreigners on 457 visas, and that these individuals 'ensure the continued functioning of the state's hospitals: [and that] without them the health system in NSW would simply collapse'.⁶⁴

Coalition Senators' conclusions on the economic benefits of the 457 visa program

1.154 Coalition Senators believe that the 457 visa program plays a vital role for employers to source skilled labour if appropriate skills cannot be found locally, and that Australia's skilled and semi-skilled migration program should only be employed to supplement our domestic workforce where necessary.

1.155 If designed effectively, the 457 visa program should enable employers to respond to short term skill shortages.

1.156 There is a national economic benefit in enabling highly skilled migrants to complement the local workforce, bring expertise and global experience and make a positive long-term contribution to the Australian community.

1.157 Coalition Senators believe that the 457 visa program has provided significant benefits to Australia.

1.158 The program, if managed in an efficient and effective manner, has the capacity to deliver the skilled workers Australia needs to remain competitive in the global economy. Australia has been a successful and prosperous nation in large part due to its skilled and productive workforce.

1.159 It is critical that appropriate policies be implemented if Australia is to have a workforce that is capable of ensuring the nation's strong growth and continued economic success.

Fair Work Ombudsman

1.160 On 18 March 2013, the Government announced that it would 'give powers to the Fair Work Ombudsman to monitor and enforce compliance with 457 visa conditions, to ensure workers are employed in the right jobs and are receiving market salary rates'.⁶⁵

1.161 Given the previous false claims by Minister O'Connor regarding claims of 457 visa rorting, Coalition Senators were at the time concerned that this move was another cheap political stunt that would mean an increased workload for the Fair Work Ombudsman with little to no evidence for an additional regulatory burden.

64 Law Council of Australia, *Submission 29*, p. 14.

65 The Hon Brendan O'Connor, MP, Minister for Immigration and Citizenship; and the Hon Bill Shorten, MP, 'Fair Work inspectors to monitor rogue 457 employers', joint media release, 23 February 2013.

1.162 At Senate Estimates, departmental officials advised that a Memorandum of Understanding (MoU) between the Fair Work Ombudsman and the department would be needed:

Senator CASH: Can I now move on to the \$3.4 million that has been allocated to the dual arrangements with Fair Work Australia. Could you take me through how the arrangements are actually going to work, who will have jurisdiction and in what circumstances?

Mr Kukoc: We are still working out an MoU with the Fair Work Ombudsman but we hope to finalise this MoU very soon. Based on the current policy, the intention is to have 300-plus Fair Work Ombudsman inspectors with the power to investigate 457 noncompliance when they visit work sites, as part of their regular duties. They will focus on two aspects of the 457 program. The first is the salary that is being paid—whether the 457s are engaged under the same terms and conditions as an equivalent Australian worker—and the second will be whether they are working in the occupation that was nominated by the sponsor. They will provide that information to our operational integrity and operational integrity will then, based on the risk matrix that they have, make a decision on how to deal with that noncompliance.⁶⁶

1.163 Yet, courtesy of the Bill introduced into the House of Representatives on 6 June 2013, it is now clear that a MoU will not suffice and that amendments to the *Fair Work Act 2009* (Fair Work Act) will be required.

1.164 This comes after Labor promised at the 2010 election that it would make no changes to the Fair Work Act in this term of government, and we have now seen more than 400 pages of legislation. This is just another breach of promise, on a long list, in order to appease union bosses.

1.165 While the Government have provided an additional allocation in the budget to the Fair Work Ombudsman, they have provided evidence at Senate Estimates that this will employ only an additional six or seven inspectors.⁶⁷

1.166 Further, this additional burden should be viewed in the context that, since 1 July 2011, due to financial and budgetary constraints and budget cuts, there has been a cut of 213 inspectors at the Fair Work Ombudsman.⁶⁸

1.167 Coalition Senators are deeply concerned that this highly political move by the Government will spread the Fair Work Ombudsman thin and could impede the Fair Work Ombudsman from assisting small businesses and employees.

66 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Committee Hansard*, 23 May 2013, p. 55.

67 Mr Michael Campbell, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Estimates Hansard*, Senate Standing Committee on Education, Employment and Workplace Relations, 3 June 2013, p. 10.

68 Senate Standing Committee on Education, Employment and Workplace Relations, Question on Notice EW0768_13.

COALITION'S RESPONSE TO RECOMMENDATIONS

CHAPTER 2 (Effectiveness of the 457 visa program)

Recommendation 1

The committee recommends that, for the exclusive purposes of the 457 visa program, the Australian Workforce and Productivity Agency be given the responsibility and commensurate funding to compile and prepare a skills in-demand list which also takes into account regional labour market skill shortages.

Coalition Senators' response:

1.168 Coalition Senators do not oppose this recommendation.

1.169 Coalition Senators note, however, that in the current fiscal environment the allocation of 'commensurate funding' may not fall within the current budget parameters.

Recommendation 2

The committee recommends that the government institute a review of the extent to which Australia's immigration system does and should facilitate the flow of low- and- semi-skilled labour into Australia.

Coalition Senators' response:

1.170 Coalition Senators do not oppose this recommendation.

Recommendation 3

The committee recommends that a dedicated pathway for intra-company transfers be introduced to the 457 visa program.

Coalition Senators' response:

1.171 Coalition Senators do not oppose this recommendation.

CHAPTER 3 (Protection of 457 visa holders' rights)

Recommendation 4

The committee recommends that the *Fair Entitlements Guarantee Act 2012* be amended to make 457 visa holders eligible for entitlements under the Fair Entitlements Guarantee scheme.

Coalition Senators' response:

1.172 Coalition Senators do not oppose this recommendation.

1.173 The Coalition has a long and proud history of protecting employees' entitlements. It was the Coalition that established the General Employee Entitlements and Redundancy Scheme (GEERS) safety net almost ten years ago, following the high-profile collapse of National Textile.

1.174 The GEERS safety net is a basic payment scheme established to assist employees who have lost their employment due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements. GEERS covers

capped unpaid wages, annual and long service leave, capped payment in lieu of notice and capped redundancy pay.

1.175 Coalition Senators note that the Government in 2012 legislated this program and what is now the Fair Entitlements Guarantee.

1.176 Coalition Senators support the extension of the *Fair Entitlements Guarantee Act 2012* to protect workers let down by employers who have not left provision for employee entitlements at a time of company insolvency or bankruptcy.

Recommendation 5

The committee recommends that the Government initiate an inquiry into the extent to which relevant workplace and occupational health and safety legislation protects the legal rights, remedies and entitlements of 457 visa holders and whether temporary migrant workers in Australia are adequately protected by relevant workplace and occupational health and safety laws.

Coalition Senators' response:

1.177 Coalition Senators do not support this recommendation.

1.178 Coalition Senators remain to be convinced of the evidentiary need for such an inquiry noting the majority report did not point to any evidence.

1.179 That said, should there be a clear need and evidence, Coalition Senators would be minded to further consider any proposals put forward in that context.

Recommendation 6

The committee recommends that the immigration program be reviewed and, if necessary, amended to provide adequate bridging arrangements for 457 visa workers to pursue meritorious claims under workplace and occupational health and safety legislation.

Coalition Senators' response:

1.180 Coalition Senators do not support this recommendation.

1.181 Coalition Senators remain to be convinced of the evidentiary need for such an amendment noting the majority report did not point to any compelling evidence.

1.182 Coalition Senators note that any claim could only be considered meritorious after the conclusion of any such proceedings and such proposals seem to be ill-considered. That said, should there be a clear need and evidence, Coalition Senators would be minded to genuinely consider any proposals put forward in that context.

Recommendation 7

The committee recommends that the Department of Immigration and Citizenship be required to provide 457 visa holders, on each approval, variation or re-approval of an application, with comprehensive information regarding sponsors' obligations; relevant workplace and human rights governing the employment relationship; and sources of workplace, legal and migrant advice and assistance while working in Australia.

Coalition Senators' response:

1.183 Coalition Senators do not support this recommendation.

1.184 Section 125 of the Fair Work Act requires employees to be provided with a Fair Work Information Statement, prepared by the Fair Work Ombudsman.

1.185 Given the Fair Work Ombudsman is a well trusted institution that already provides information to both employers and employees on the operation of the Fair Work Act, Coalition Senators believe that the Fair Work Ombudsman is best placed to assist all workers, including 457 visa holders, with information.

1.186 The department is not equipped to provide the kinds of advice that is being suggested and would require a significant duplication of work already undertaken.

1.187 Coalition Senators contend that the information that is being suggested is already available courtesy of the Fair Work Ombudsman and more specific information about the operation of 457 visas is provided to visa-holders already.

CHAPTER 4 (EMAs and RMAs)

Recommendation 8

The committee recommends that the Government prepare and release submission guidelines for Enterprise Migration Agreements and Regional Migration Agreements.

Coalition Senators' response:

1.188 Coalition Senators do not oppose this recommendation.

1.189 Coalition Senators note that the recommendation above goes to this issue—that is, that the Government instruct the department to process in a timely fashion the EMAs and RMAs that are currently lodged with the department.

CHAPTER 5 (Potential impact of proposed changes to the 457 visa program)

Recommendation 9

The committee recommends that the government initiate a review of the Ministerial Advisory Council on Skilled Migration (MACSM) to establish clear terms of reference, operating guidelines and consultation and communication strategies for that body.

Coalition Senators' response:

1.190 Coalition Senators do not oppose this recommendation.

Recommendation 10

The committee recommends that the proposed changes to on-hire arrangements and sponsors' obligation not to recover certain costs be effected immediately and separately to the regulation currently proposed to commence on 1 July 2013.

Coalition Senators' response:

1.191 Coalition Senators do not support this recommendation.

Recommendation 11

The committee recommends that the proposed empowerment of Fair Work Inspectors under the *Migration Act 1958* and to subclass 457 visa condition 8107 be effected immediately and separately to the Migration Amendment (Temporary Sponsored Visas) Bill 2013.

Coalition Senators' response:

1.192 Coalition Senators do not support this recommendation.

Senator Michaelia Cash

Senator Sue Boyce

Senator Gary Humphries