

ADDITIONAL COMMENTS BY SENATOR NICK XENOPHON

1.1 The ability of the Australian labour market to respond in a time effective manner to changing labour market needs is of utmost importance. During the course of this inquiry the committee heard how the Temporary Work (Skilled) Standard Business Sponsorship (Subclass 457) visa program (457 visa program) seeks to strike a balance in addressing temporary labour shortages with protecting the employment opportunities and conditions of Australian (or permanent resident) workers. Based on the evidence received by the committee, it appears as though the right balance has not yet been struck. The committee has made a number of important recommendations which I believe go some way to achieving this sought after balance. However, I would like to take this opportunity to reflect further on some of the issues explored in the committee's report and to make additional recommendations.

The effectiveness of the 457 visa program

The social, cultural and economic benefits of the 457 visa program

1.2 The 457 visa program can provide a meaningful 'circuit-breaker' when employers are faced with an inability to source appropriately skilled candidates from the local market, which has the flow-on benefit of allowing job-creating projects to begin without significant delays.¹

1.3 Labour shortages in critical industries and services, such as the healthcare sector have also been addressed through the use of the 457 visa program. It is important however not to over emphasise the necessity of the 457 program in filling critical skills shortages, particularly in light of the Australian Nursing Foundation's evidence that Australian graduate nurses are often being overlooked in favour of 457 visa holders.²

1.4 The committee also heard how the 457 visa program has been a valuable platform for skills exchange between local and overseas workers:

The employment of subclass 457 visa holders is extremely beneficial, as the skill the visa holder possesses is passed to existing and new employees of the Australian sponsor. Subclass 457 visa holders accordingly enhance

1 Australian Mines and Metals Association, *Submission 22*, p. 5.

2 Australian Nursing Foundation, *Submission 27*, p. 6.

Australia's skill base and assist in developing Australia's economy to become more efficient on a global comparison.³

Deeper systemic issues

1.5 The inquiry touched on but did not have the time or resources to explore deeper systemic issues relating to education and particularly vocational training in Australia. Whilst such issues strictly fell outside the scope of the inquiry, they cannot be ignored if medium to long term labour and skills shortages are to be addressed. Tackling these issues would of necessity involve better labour market forecasting, and a thorough assessment of where improvements can be made in our education and training programs. It would also need to assess mobility of the workforce, appropriately balancing incentives and social criteria.

Recent divergence of 457 visa applications from labour market trends

1.6 However, concerning evidence was received by the committee in relation to a recent divergence between Australia's unemployment rate, the number of job advertisements and the number of 457 visa applications. Mr Kruno Kukoc of the Department of Immigration and Citizenship told the committee:

Quite frankly, this was something that became of concern to the department last year, when we briefed the government and minister.⁴

1.7 As to the underlying causes of the divergence, there is now suspicion that the 457 visa program is no longer being used as a measure of last resort and that 'various loopholes in the current legislative framework' are enabling 'employers to source skilled workers from offshore without sufficient commitment to recruiting and training locally'.⁵

1.8 I fully endorse the committee's support for assessment of the effectiveness of the 457 visa program in ensuring overseas workers are only employed in situations where there is a genuine skills shortage. Particular attention should be paid to industries (such as the accommodation and food services industries),⁶ which

3 Berry Appleman and Leiden (BAL Australia), *Submission 12*, p. 3.

4 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Committee Hansard*, 23 May 2012, p. 71.

5 Department of Immigration and Citizenship; Department of Education, Employment and Workplace Relations; Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education ; and Department of Resources, Energy and Tourism, *Submission 24*, p. 3.

6 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Estimates Hansard*, 27 May 2012, p. 69.

historically have been shown to exhibit higher levels of non-compliance with the requirements of the 457 visa program.

1.9 I believe the lack of penalties associated with hiring a 457 visa holder where a qualified worker is available has contributed to the inappropriate and unnecessary use of the 457 visa program. As Mr Bob Kinnaird, National Research Director, Construction and General Division, Construction, Forestry, Mining and Energy Union, told the committee:

It is worth noting that there is absolutely no sanction whatsoever for what is in effect the fundamental breach of the 457 visa program by an employer – and that is to engage a 457 visa worker when there was a qualified Australian worker available. That is intended to be the fundamental objective of the 457 visa program, yet under the current regulations there is no breach of the regulations where an employer actually discriminates against an Australian worker. Our view is that that particular breach, which is currently non-existent, should exist and should in fact attract the highest penalty under the sanctions regime.⁷

Recommendation 1

1.10 That a system of warnings and penalties apply for hiring a 457 visa holder when an appropriately skilled Australian worker is available, and there was evidence no genuine effort was made to source a suitably qualified local worker.

The Consolidated Sponsored Occupations List

1.11 Occupations are included in the Consolidated Sponsored Occupations List (CSOL) based on their level of skill as defined in the Australian and New Zealand Standard Classification of Occupations (ANZSCO).⁸ The committee identified serious concerns that the composition of the CSOL is not reflective of identified skill shortages but is rather a 'broadly based occupational list' which has transformed the 457 visa program into a source of 'general labour supply'.⁹

7 Mr Bob Kinnaird, National Research Director, Construction and General Division, Construction and General Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 23 May 2013, p. 12.

8 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 5.

9 Dr Joanna Howe, Associate Professor Alexander Reilly and Professor Andrew Stewart, *Submission 11*, pp 3-4.

1.12 Dr Joanna Howe, Associate Professor Alexander Reilly and Professor Andrew Stewart told the committee that, rather than skill shortages dictating which occupations appear on the CSOL, it is now the case that the CSOL is dictating which occupations are deemed to be in shortage.¹⁰ The result of this inversion of roles is the appearance of occupations such as 'cook' and 'flight attendant' on the CSOL when 'it is arguable these are jobs for which unemployed Australian workers can be trained to do'.¹¹

1.13 The committee noted that it received very little detailed evidence regarding how the CSOL is compiled. This lack of transparency has been of concern to me for some time, particularly in relation to the inclusion of 'flight attendant' on the CSOL. As the Transport Workers' Union of Australia explained:

...flight attendants were added to the CSOL on 1 July 2012. The DIAC did not seek advice from the DEEWR on the labour market status before considering it for inclusion. This is despite ABS Labour Force (Air and Space Transport) figures showing the number of persons working in the aviation industry, including flight attendants has fallen from 59,400 in November 2010 to 53,500 for the same period last year.¹²

1.14 The committee has recommended:

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.

1.15 While I support this recommendation, I believe it needs to be made explicitly clear that transparency as to how a skills in-demand list is compiled is paramount in order to avoid confusion in the future as to why certain occupations appear on the list.

Recommendation 2

1.16 That the input and processes used by the Australian Workforce and Productivity Agency in compiling a skills in-demand list be made publicly available.

10 Dr Joanna Howe, Associate Professor Alexander Reilly and Professor Andrew Stewart, *Submission 11*, p. 3.

11 Dr Joanna Howe, Associate Professor Alexander Reilly and Professor Andrew Stewart, *Submission 11*, p. 4.

12 Transport Workers' Union of Australia, *Submission 20*, p. 9.

Protection of 457 visa holders' rights

Vulnerability of 457 visa holders

1.17 The committee heard how 457 visa holders are in a position of great vulnerability, largely due to:

- their reluctance to speak out about unfair working conditions or breaches of work health and safety legislation for fear of putting their employment at risk and jeopardising their opportunity to obtain permanent residency;¹³
- their reliance on their sponsors as the main conduit through which information to and from the Department of Immigration and Citizenship is shared;¹⁴ and
- condition 8107 attached to 457 visas, which requires these visa holders to leave Australia within 28 days of ceasing work for their sponsoring employer, which makes it virtually impossible for visa holders to pursue their rights in instances where work health and safety or employment laws may have been contravened.¹⁵

1.18 Shockingly, it was reported to the committee that, for the period March 2007 to December 2011, the work-related fatality rate among 457 visa holders was more than double the rate among Australian workers.¹⁶ Any evidence that there is a higher death and injury rate in industries amongst 457 visa holders needs to be addressed urgently. Part of addressing this issue is to ensure 457 visa holders are empowered to speak up when they feel unsafe in the workplace, without fear of repercussions.

Senator Nick Xenophon

13 Australian Council of Trade Unions, responses to questions on notice, 23 May 2013 (received 30 May 2013), p. 2.

14 Law Council of Australia, *Supplementary submission*, pp 6-7.

15 Human Rights Council of Australia, *Submission 33*, p. 6.

16 Mr Bob Kinnaird, National Research Director, Construction and General Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 23 May 2013, p. 12; and Construction, Forestry, Energy and Mining Union, response to questions on notice, 23 May 2013 (received 3 June 2013), pp 2-5.