

Senate Education and Employment References Committee
Answers to Questions on Notice – Friday 19 June
Melbourne, VIC

Inquiry into the impact of Australia's temporary work visa program on the Australian labour market and on the temporary work visa holders

Questions number	Hansard page number	Witness	Question asked by	Answered
1	Page 8	Australian Pork	Chair	Yes
1	Page 22 -23	Australian Nurses and Midwifery Federation	Senator McKenzie	Yes
2	Page 25	Australian Nurses and Midwifery Federation	Senator Sinodinos	Yes
1	Page 34	Electrical Trades Union	Senator McKenzie	Yes
2	Page 34	Electrical Trades Union	Senator McKenzie	Yes
3	Page 35	Electrical Trades Union	Senator McKenzie	Yes
1	Page 40	Hazeldene's	Chair	Yes
2	Page 41	Hazeldene's	Chair	Yes
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Questions taken on Notice – Australian Pork

1. HANSARD, PAGE 8

Ms Kerr: The 417 is not a very widely used visa for our workers. I know there have been one or two producers who have used them for those workers. The issue was that they transitioned so well into the piggery that the conditions around that did not allow the producer to retain the worker, and they were really keen to explore opportunities to see how they could be retained. But generally the 417 visa holders are going around the country; they are not the sort of workforce our producers tend to look to employ. They need somebody permanently in piggery sheds. They need people with appropriate husbandry skills for keeping pigs and assisting with things like farrowing sheds. Generally the seasonal workers do not meet those requirements.

CHAIR: But if, as you say, they sometimes use those 417s, where are they sourcing that workforce from?

Ms Kerr: I am not familiar with where they are sourcing them from.

CHAIR: Are you able to take that on notice?

Ms Kerr: Yes, I can take that on notice.

Australian Pork Limited' response to Question on Notice – Hansard, Page 8

Through its Delegates system APL requested information on the level of the pork industry workforce on 417 visas and the use of labour hire contractors.

Respondents indicated that there was limited use of employees on 417 visas or labour hire contractors in the pork industry. People on 417 visas were estimated to be around 3-4 per cent of the workforce.

Only one respondent indicated that labour hire is used in their piggery through contractors employed to perform certain tasks (shed cleaning etc.) where jobs are contracted on an on-going basis. Contractors hire staff directly and are responsible for the management of these staff. There was no knowledge as to the level of staff employed by contractors on 417 visas.

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Questions taken on Notice – Australian Nurses and Midwifery Federation

1. HANSARD, PAGE 22 -23

Senator McKENZIE: During the Senate aged-care inquiry, the aged-care sector in regional WA were saying—it was not anecdotal; it was across the board and it ended up with significant recommendations out of our Senate inquiry—that they had to use temporary visa holders to keep their facilities open because they could not find the graduates; they could not find the qualified domestic workers. Why is that?

Ms Butler: While I cannot speak to the specific circumstance that you are mentioning there—

Senator McKENZIE: Could you take that on notice then?

Ms Butler: Yes, I can take that on notice—absolutely. As we indicated, we understand that there are times when that is a good use of your temporary migrant worker. We understand that there are times. We want to see the scheme used as it is intended and used appropriately—

ANMF Response

While the ANMF is not aware of the specific aged care Inquiry referred to by Senator McKenzie nor the submissions/evidence from the aged care sector in regional WA , we maintain the view that employment difficulties facing new graduates are widespread and occur in every state and territory.

In 2013 1013 nurses graduated from Western Australian higher education facilities (Department of Education and Training Higher Education Statistics Data Cube) and many struggled to find employment. This was evidenced in the 2014 ANMF national survey of nursing and midwifery graduate employment. An extract relating to WA is attached to this email and shows that many WA graduates who responded to the survey were unsuccessful in obtaining employment or could only find precarious employment. The actual number would have been much higher in our view.

In respect to the aged care sector in WA we note that the survey responses show that applications for employment by the graduates were unsuccessful in ;

2. Aegis aged care
3. Southern Cross aged care
4. Hall & Prior aged care
5. Alfred Carson Lodge Claremont
6. Brightwater Aged Care Group
7. Baptist Care Australia
8. Silver Chain Nursing Home
9. St Ives Aged Care
10. Juniper Aged Care.

Most if not all of these aged care providers would employ off shore labour

Some of the graduates also provided details of their employment experiences . Two from WA are set out below

“Graduating from uni is an exciting time but in all honesty I'm starting to sweat it. It seem gone are the days where you could get a job with a credential and personality, it seems one must have experience in nursing before applying for a job in nursing. ITS NUTS. The question I have been asked time and time again is, "so have you got a grad program?".. and I honestly don't necessarily really want one. I want a job, a position as a nurse. The support sure, but the mere fact that graduates are being bypassed is ridiculous. If nurses aren't coming out ready to work in hospitals then seriously we need to bring back hospital based training or a fusion of the two because something is going amiss. I am determined to work before the end of the year with or without a grad program, I seriously hope that someone takes a chance on me.”

“I recently graduated from 12 month combined graduate program with SCGH/KEMH with my contract ending on 4th may 2014 and was not offered any position with SCGH or KEMH after completion , I then resorted to country positions and casual contracts as I start midwifery in august with KEMH so I'm looking short term for 3 months .Due the state wise freeze on employment until after the 30th June I am unable to gain work as a registered nurse and may have to resort to a job de skilled outside of the industry”

2. HANSARD, PAGE 25

Senator SINODINOS: Sure. But on this issue of influencing how the training dollar is used, are you represented anywhere these decisions are made?

Mr Blake: No.

Senator SINODINOS: And is that something that would be of benefit to you?

Mr Blake: It varies so much the different sectors of the health industry. We should probably take that on notice.

Senator SINODINOS: Sure. There is obviously an imbalance in bargaining power between doctors and nurses, and we have seen that in other contexts.

ANMF Response

ANMF federal office is unable to nominate a forum in which we participate that allows the union or nurses to have a direct influence on “how the training dollar is used”.

Certainly we participate in a range of fora where the delivery and type of training is discussed and while this is very useful it falls short of having a direct influence on where the funds are actually spent .

Our frustrations with the training obligations on employers who use offshore nursing and midwifery labour has been long held and is reflected in our submission to commonwealths government 2014 inquiry into the Integrity of the 457 system below ,

Training obligations

- 9.1 *The current training obligations are ineffective.*
- 9.2 *At present employers of 457 labour can meet their training obligations by either:*
- *Paying the equivalent of at least two per cent of total payroll expenditure to an industry training fund; or*
 - *Paying the equivalent of at least one per cent of total payroll expenditure on the training of Australian workers and permanent residents employed by the business.*
- 9.3 *The reality of this regime is that little, if any, other training resource becomes available to nurses as it is typically consumed by medical staff, specialists and senior management.*
- 9.4 *As employers are under no obligation to train in the same occupations as their 457 visa workers it is open to them to expend the monies where they like.*
- 9.5 *The Nursing and Midwifery Board of Australia (NMBA), requires nurses and midwives to maintain competence in order to provide safe, quality nursing or midwifery care. To achieve this the NMBA requires every nurse to undertake 20 hours of continuing professional development*
- 9.6 *Measures to achieve continuing competence may include evaluation of professional practice against relevant professional standards; workplace performance appraisal; attendance at a relevant conference, seminar and/or continuing professional development sessions and relevant post graduate educational courses. Accordingly there is significant scope for a sponsor to contribute to this requirement for mandatory continuing professional development.*

Recommendation on training obligations

At least 2 per cent of the total gross wages for the sponsor's total nursing workforce be expended on training directly linked to the requirement for nurses to undertake continuing professional development.

EXTRACT ANMF 20124 GRADUATE SURVEY

Postal Code	1. Are you a...?	2. Where did you complete your undergraduate nursing/midwifery education?	3. When did you complete your undergraduate nursing/midwifery education?	4. Did you seek work as a nurse/midwife upon graduation?	5. Did you seek a place in a nurse graduate programme?	6. Could you please list up to five employers where you were unsuccessful in obtaining employment.	7. If you were successful in obtaining a graduate placement were you offered on going employment at the conclusion of the programme?	8. Are you working now?	9. If you are working how long did it take you to obtain your first nursing job?	10. Would you like your personal details (eg. name) to remain anonymous?
6007	Registered Nurse	ECU	2010	Yes	Yes	PMH Joondalup RPH SCGH OPH	Yes	Yes	Offered p/t work in Mental Health following inception of first 12 month grad program MNAHS MH, straight into post grad MHN, also Nurse West prior to obtaining f/t work NMAHS MH, currently ASDN.	Yes
6009	Registered Nurse	Murdoch University Perth	Nov-13	No	Yes	Sir Charles Gairdner Hospital	No	Yes	currently completing graduate program	Yes
6028	Registered Nurse	edith cowan university	Dec-12	yes	yes	geraldton hospital, aegis aged care, southern cross care, hollywood hospital, hall & prior	No	No	n/a	No
6052	Registered Nurse	Curtin University	Dec-13	Yes	Yes	Royal Perth Hospital, Joondalup Health Campus, Hollywood Private Hospital, Rockingham Hospital, Bentley Hospital	No	No	N/A	Yes
6060	Registered Nurse	University of Notre Dame, Fremantle.	Dec-13	YES	YES	Fremantle Hospital and Health Service, St John of God Subiaco, St John of God Murdoch, Alfred Carson Lodge Claremont	No	Yes	3 months	Yes
6060	Registered Nurse	Edith Cowan university joondalup campus	Dec-13	Yes	Yes	Sir Charles Gairdner Perth, Hollywood Hospital, Armadale Hospital, Swan district Hospital, The Mount Hospital	No	No	Still searching	No
6064	Registered Nurse	Edith Cowan university	2012	Yes	Yes	SCGH, PMH, RPH, JHC, Kalgoorlie regional hospital.	No	No	I was successful obtaining a 12 month contract at SCGH, but due to budget cuts they were unable to renew my contract, so now I'm unemployed. I have now been out of work for over a month.	No
6065	Registered Nurse	ECU Western Australia	Nov-13	Yes, most places want 1 year experience before hiring.	Yes, not enough graduate programs	Sir Charles Gairdner, Hollywood private hospital, Royal Perth, Joondalup, St John of God	No	No	N/A	Yes
6065	Registered Nurse	Edith Cowan university, perth WA.	Dec-13	Yes	Yes	Princess Margaret hospital St. John of God hospital Bethanie group Brightwater aged care group Aegis aged care group	No	No	Still have not gotten any nursing job	Yes

6101	Registered Nurse	Curtin University of Technology	Dec-13	yes	yes	Fertility of Western Australia, Baptist Care Australia, Joondalup Health Campus, Hammond Park Family Practice, Perth Sleep Clinic	No	Yes	4 months	Yes
6112	Enrolled Nurse	Central Tafe Mt Lawley	Sep-12	Yes	Yes	Murdoch, Armadale, Royal Perth, Bentley, PMH	No	Yes	Im NOT working as a Nurse.	No
6149	Enrolled Nurse	Challenger Institute of Technology Murdoch Campus TAFE completed December 2014	Diploma of Nursing (Enrolled Nursing) completed December 2014	Yes	Yes	Royal Perth Hospital, St John of God Murdoch, St John of God Subiaco, Bunbury Hospital, Fiona Stanley Hospital	No	No	I currently work as an AIN in Royal Perth Hospital in the Casual AIN pool looking for work in the Nursing Sector, everywhere I've asked they are seeking nurses with at Least ONE year clinical experience or graduate program experience pertaining to ONE year.	Yes
6167	Registered Nurse	Edith Cowan University	Jan-14	Yes	Yes	Rockingham general hospital, Armadale hospital general, Peel health campus, St John of god Murdoch, Aramdale hospital peri-op	Yes	Yes	2 months, but I am casual. Some weeks I only get 1 shift	Yes
6171	Registered Nurse	Murdoch University - Peel Campus	Nov-13	YES	YES- This year of rounds was cut short, however I only obtained 1 interview in the whole process	St John of God – Murdoch, Royal Perth Hospital, Rockingham Hospital, Peel Health Campus, SKG radiology, Armadale Hospital, Silver Chain, Mount Hospital	No	Yes	It took me 5 months, I start on Monday 28th April 14 at a General Practice as I was unable to gain work in hospitals	Yes
6173	Registered Nurse	ECU	Aug-13	yes	yes	Bentley health service, narrogin hospital, silver chain nursing, st ives, juniper	No	No	na	Yes
6180	Registered Nurse	Murdoch university	2013	Yes	Yes	Sir Charles Gardiner, Peel health campus, SJOG Murdoch. Rockingham, SJOG Subiaco	No	Yes	Immediately at a private hospital	Yes
6208	Registered Nurse	Edith Cowan University Joondalup	Graduated in January 2014	Yes	Yes	Fremantle Hospital Hollywood Private Hospital	No	No	Still seeking employment	Yes
6503	Registered Nurse	Edith Cowan University (Joondalup)	Dec-13	Yes	Yes	WA Department of Health- Moora, WA Department of Health- Kondinin, SJOG Subiaco, Aegis- The Pines, Ellenbrook, Ramsay- Joondalup Health Campus	No	No	not working	Yes
6530	Registered Nurse	Queensland University or Technology	Jul-13	A year before graduation I started to seek work	Yes, in rural and remote programs	Queensland health Royal Brisbane Hospital, Mater hospital, Wesley Hospital. Greenslopes Private Hospital	No	Yes	I am still completing my graduate program and I am looking for work back home. But a lot of the job advertisements state 2 plus years experience even in aged care. which is going to be difficult to find work after the program is completed.	Yes
6725	Enrolled Nurse	Kimberley	2014	Yes	They are not available in the Kimberley so no	No	No	No	I am not working	Yes

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Questions taken on Notice – Electrical Trades Union

1. HANSARD, PAGE 34

Senator McKENZIE: And you went through that process and they were laid off again. I am in no way backing the behaviour of that company or that contract, but there is an appropriate process to go through to try to come to a resolution with that. The workers having been laid off a second time, did the ETU then go to the Fair Work Ombudsman before the article was published?

Mr Boyd: I would not be able to comment on that.

Senator McKENZIE: Could you take that on notice?

Mr Boyd: Yes, I will.

The ETU did not refer the Thies Contract issue to the Fair Work Ombudsman prior to the publication of the article.

The ETU's first obligation is to advocate and resolve issues on behalf of its members. This was the ETU's focus and dictated our actions.

The ETU in dealing with multiple redundancies was acting in accordance with our usual procedures, and as instructed by members to assist the effected workers.

The ETU commenced its usual procedures which included:

- Verifying the redundancies were legitimate
- Investigating that procedures for the redundancies met the conditions in the Agreement
- Reviewing of current and historical claims of non payment of entitlements
- Attempting to negotiate with Thies for re-employment/ redeployment options
- Assisting members to access redundancy entitlements

The retrenched members reported historical non-payment of entitlements. They did not report the non-payments at the time they occurred (ie. contact the union) which is normal for temporary workers in our experience.

This then became a time consuming task for the union to review that the entitlements under the Agreement were paid, or otherwise, based on roster and time-sheets, cross checked with payslips for all members, for an extended period.

Myself, Mathew Boyd, with the assistance of other ETU Organisers, Member Services' Administrators and ETU in house Lawyer, Lucy Weber were heavily engaged in undertaking these usual processes.

It was through this process that the ETU Victorian Branch became aware of the existence of the 'Master Contract'.

Senator McKensie should understand it is extremely unusual for members involved in disputes, especially temporary visa workers, to want the dispute or conduct of the employer and their name to be made public. For the majority of people the risk of being seen as unemployable for being a 'whistleblower' is enough to deter them from going public with their case.

It is our understanding that the 'first time they were laid off' the ETU in WA was never given direction or consent by the members to do anything other than seek the best outcome achievable for them. This is the normal 'procedure' for unions.

We trust Senator McKenzie, if not familiar with how unions operate, would understand from the terms and conduct of the Heydon Trade Union Royal Commission, that unions are primarily bound by the obligation to act in accordance with their members' interests and direction.

If Senator McKenzie has views about the circumstances in which the principles of 'duty to members' should be abandoned by unions, it may provide some insight into the processes she considers 'more appropriate'. It is entirely unclear to us what 'the appropriate process to go through' Senator McKenzie is referring to.

(The 'proper process' as we understand it would have been for the Department of Immigration not to allow this circumstance to occur at all, and to take responsibility for granting Thiess 457 sponsorship rights and for the approval of 457 visas for workers on illegal terms and conditions in their employment contracts. In our view if the 'proper processes' had occurred the Department of Immigration would have acted years earlier to revoke Thiess right to sponsor temporary overseas workers.)

There is no clear 'primary regulator' for breach of 'employment conditions' obligations of temporary workers in our sectors. The Department of Immigration and Border Control, the Fair Work Ombudsman and the Fair Work Building Inspectorate, all have powers to investigate and prosecute for the same activities, which constitute a breach under their legislation or regulations. In fact, we thought the Fair Work Building Inspectorate, that almost exclusively investigates 'coercive conduct' in our sectors, would have been the most appropriate regulator. They declined to investigate and prosecute. This appears to be because Mr Hadgkiss can unilaterally decide which cases of coercion he wants to pursue or otherwise: Irrespective of the gravity or number of people affected by the illegal conduct, or the public interest in the outcome.

As it is, it is still not clear to us why the Department of Immigration and Border Control are taking a secondary role to the Fair Work Ombudsman in this investigation. At the very least we would have thought the 'proper process' would be for them to independently determine a gross breach of sponsorship conditions has occurred, by the content of the contract and number of people that received it, and to have revoked Thiess right to sponsor workers.

We did not have the consent of members to refer their issue to the Fair Work Ombudsman, in pursuit of a prosecution for the 'greater good' of all other effected workers. Even after writing to the Ombudsman, we were not given consent from the members to provide them the names of the effected.

We are extremely proud and humbled by the courage of the two individuals who were prepared to be named in the media story. We believe they did it for the greater good of other individuals who still feel 'threatened' working under the same contracts.

It was only after the release of the story in Fairfax media and the overwhelmingly horrified and supportive response they received that the members collectively agreed the ETU could refer the issue to the Ombudsman.

They consented on the condition that their names would remain confidential.

This is a condition that the Fair Work Ombudsmen Investigators agreed to at the outset of our discussions, so we were able to continue to assist. (With the caveat that should the investigation proceed to legal action members' names would not necessarily be able to be kept confidential. We agreed to proceed in assisting the FWO on the basis that the individuals who wanted to retain the confidentiality could withdraw from any legal action).

The ETU was positively disposed towards an investigation to be undertaken by the Ombudsman to identify the other recipients of the Agreement, and relieve them of the dangerous stress of believing company had the right to do what was threatened in the contract. Eg. resolve any work issues 'at the Philippine Embassy closest to the worksite' which is interpreted by many workers as immediate deportation.

Having had no real experience with the Fair Work Ombudsman, our understanding is that they would investigate breaches of the Fair Work Act by an employer only where there is a substantial public interest.

The article in Fairfax and considerable social media attention about the content of the contract elicited substantial public interest.

Our understanding of the 'public interest' test was confirmed by the Fair Work Ombudsman investigators when we met with them following our correspondence. Indeed they initially only investigated the two named persons in the report. They were not going to pursue interviews with the other members, because they were not in the media report, which was the limit to their scope.

When we wrote to the Fair Work Ombudsman, we perhaps naively believed that they would be seeking to identify who was responsible for the illegal content and distribution of the Contracts, and commence prosecute them accordingly.

The level of public interest demonstrated on social media (eg. the picture of some of the offending clauses in the Contract was shared by more people than any story in the preceding 12 months.) we believe demonstrated a public interest in the pursuit of a prosecution of those responsible for those clauses.

We genuinely believed that the media attention would be sufficient for at least the Department of Immigration, and possibly the Fair Work Building Inspectorate, or Fair Work Ombudsman to commence an investigation.

We expected to be contacted by at least one of the aforementioned regulators for information to assist with their investigation/act on breaches of their legislation. It was only when we failed to hear from any of the above, for approximately 2 weeks after the release of the Fairfax article that we were shocked enough to write to them, requesting an investigation.

- We received no reply from the Department of Immigration for over a month – even following further correspondence of the proceeding 2 weeks.

- The Fair Work Building Inspectorate declined to investigate, except possibly a breach of a Building Code, we have not heard anything further about this investigation.
- The Fair Work Ombudsman agreed to meet with us, but at our first meeting had received information from Thiess that led them to believe there was nothing further to investigate. It was an “administrative error in the Philippines” we were told.

2. HANSARD, PAGE 34

Ms Kershaw: Do you want to ask the workers themselves if they understood the distinction between the regulators? They are here.

Senator McKENZIE: I am asking the union because you have told me you are acting on their behalf. So I am assuming you know our system here. I will look forward to that information on notice

I just want to take you to some of your recommendations. In recommendation 3 you say: All 457 visa applications be temporarily suspended for industries where unemployment levels exceed 5% ...

I am just wondering how we would measure that, because when we are looking at skill shortages we look at it as a global five per cent, six per cent, four per cent, but we might actually have regional differences in that. How did you see that might actually play out for regional skill shortages, such as in the horticultural industry?

The recommendation relates to addressing the problem of a surplus of unemployed skilled people, and the recruitment of people with the same skills from abroad.

It is understood that regional ‘skills shortages’ are not the same as urban. ‘Skills Shortages’ in rural and regional areas often relate to migration patterns related to the accessibility and quality of essential services such as health, education and transport. These are issues related to government policy, more than they are labour market indicators.

That does not mean that regional areas should be automatically be exempt from measures that protect employment of local people from an influx of temporary workers with the same skills.

Ideally it would ‘play out’ through a better alignment of real time information about the availability of unemployed people with specific skills – and a timely revision to the skills shortage list for regional areas, and the national skills shortages list.

There are already ‘Regional Skills Shortages’ procedures for identifying skills shortages for regional areas. These would include employment and skills related horticultural sector. But they are not particularly robust and they are not revised in a timely manner.

At the moment, for example the ETU has recently witnessed the lay off of over 300 Electrical Linesmen who maintain the powerlines. Queensland and NSW are projecting lay-off in excess of 3,000 Linesmen, some of which have commenced, others are contingent on their plan being accepted by the Australian Energy Regulator. Yet Linesmen are still on the skills in demand list nationally and a regional levels. There is no process that we can find, for their removal.

We are suggesting that where major layoffs in an industry occur in a regional area, where the surplus of skilled workers is created, that is communicated in ‘real time’ and ‘skills in demand’ lists for migration purposes are amended accordingly.

The recommendation is that when unemployment of a main ABS Categorically recognised skilled occupation over 5% unemployed is evident. Those occupations are no longer on Skills in Demand list in the regional areas.

For local and regional areas we suggest it is the local council, who has the data on the employment by industry and occupation in the region, as well as the real time knowledge of major layoffs, can send an advisory to the State and National 'Skills in Demand' list administrators.

It is not difficult, with some knowledge of the ABS, Census and Labour Market Data, to see how this information could be used in tandem with real time information on known investment withdrawal/major layoffs to make 'Skills in Demand List' for temporary overseas workers more responsive: That is, to improve the alignment between the **actual** number of people with particular occupational skills who are unemployed and the **actual** number of temporary skilled workers migrating to commence work in those occupations.

Senator McKENZIE: I do not know; that is why I am asking you—because I am assuming you would know.

Ms Kershaw: We do not know what the level 6 is but they are competent in English.

Senator McKENZIE: That is all. I will put some questions on notice about the free trade agreement.

Written Question on Notices from Senator McKenzie

1. **Is the ETU aware that, under the Investment Facilitation Arrangement agreed to with China under the ChAFTA, if a Chinese company wishes to recruit overseas workers, it is required to first conduct labour market testing, and provide evidence that it has been unable to recruit Australian workers?**

Under the Investment Facilitation Arrangements in the China – Australia Free Trade Agreement, labour market testing is optional.¹

However, the inexplicably large concession given to China that will most impact the employment of Australians are the provisions in the ‘Movement of Natural Persons’ Chapter and specifically the ‘Contractual Service Suppliers of China’ clauses.

The ‘Contract Service Providers’ provisions in the China-Australia Free Trade Agreement are the ones that permit recruitment of skilled or semi skilled Chinese persons – without advertising the job in Australia first.

Under these provisions **any company in Australia will be able to employ any number of workers from China with ‘trade, technical or professional skills’ on 457 visas, for 4 years or more, without advertising the jobs in Australia first.**

As well as any Chinese Company that provides services in Australia— whether they have presence in Australia or not.

The Agreement test clearly states **Australia is prohibited from requiring any employer to advertise jobs locally before recruiting directly from China** – that is **Australian Governments are prohibited from imposing any reduction on the unlimited number of working visas**: Even if our unemployment rates or economic analysis shows it is detrimental economic outcomes for Australia.

I provide the following references to the clauses and link to the relevant chapters.

¹ The text of the Agreement and IFA provisions are available here:

<http://dfat.gov.au/trade/agreements/chafta/official-documents/Pages/official-documents.aspx>

A short summary by ABC Fact Check is available here

<http://www.abc.net.au/news/2015-08-12/china-free-trade-agreement-cost-australian-jobs-fact-check/6653214>

**CHINA – AUSTRALIA FREE TRADE AGREEMENT
CHAPTER 10
MOVEMENT OF NATURAL PERSONS**

CONTRACTUAL SERVICE SUPPLIERS OF CHINA

9. Entry and temporary stay shall be granted to Contractual Service Suppliers of China for a period of up to four years, with the possibility of further stay
10. A Contractual Service Supplier of China is a natural person of China who has trade, technical or professional skills.

Annex 10-A

Section A: Australia's specific Commitments

Article 10.4: Grant of Temporary Entry

Stipulates Australia will not:

- 3) a) impose or maintain any limitation on the total number of visas to be granted to natural persons of the of the other Party
- b) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry

It is notable that in addition:

- The partners of the 'Contract Service Providers' are also entitled to work in Australia
 - (not reciprocated by China)
- Australia guarantees a minimum of 5,000 'Working Holiday' visas for young Chinese
 - (not reciprocated by China for Australian Youth)
- Australia guarantees a minimum of 1,800 a year of the following occupations to work in Australia: Chinese Chefs, Wushu Martial Arts Instructors, Mandarin Language tutors and Traditional Chinese Medicine Practitioners
 - (no reciprocation for Australian 'cultural' occupations)

<http://dfat.gov.au/trade/agreements/chafta/official-documents/Pages/official-documents.aspx>

2. Does the ETU accept that a key risk to the viability of major projects is attracting a suitably qualified workforce, which project labour agreements can provide?

Moreover does the ETU/ACTU understand that a project does not go ahead if this certainty cannot be provided, or a business that closes because it cannot find the skilled labour it need, employs no one?

The ETU does not accept the assumptions in the first question that in Australia a “key risk to the viability of major projects is attracting a suitably qualified workforce”.

Skilled labour shortages for major projects are a ‘key risk’ in developing countries where skilled labour is not abundant and mobile as it is in Australia.

We refer Senator McKenzie to the Reserve Bank of Australia’s Report on “Labour Movement During Resources Boom”, August 2014. It provides evidence and insights into the source of labour for major projects: availability, mobility and transferability of skills of skilled labour in Australia and on major projects.

Even without a detailed understanding of skilled trades’ labour markets, it is mysterious to hear this claim made about the necessity of overseas labour in Australia at all in the current economic climate, with unemployment at its highest rate in over 10 years, at 6.3%.

Economic analysis and industry surveys have not shown ‘tight’ labour market conditions for construction and infrastructure skilled workers since the peak in mining construction in 2013.²

The dramatic reduction in public investment into infrastructure at its historical low point is also provides a major source of un-utilised skilled labour.³

The Reserve Bank of Australia has been forecasting a reduction in resources employment of 80,000 people between 2014 – 2018. While there was some expectation that housing and infrastructure construction would absorb many of these jobs, the extent of the mining downturn was not predicted and job losses have exceeded projections, hence rising unemployment.

Notwithstanding the steady rise in unemployment of skilled trades and reasonable projection of declining employment, temporary trades workers have escalated dramatically over the period the downturn was foreseeable and occurring.

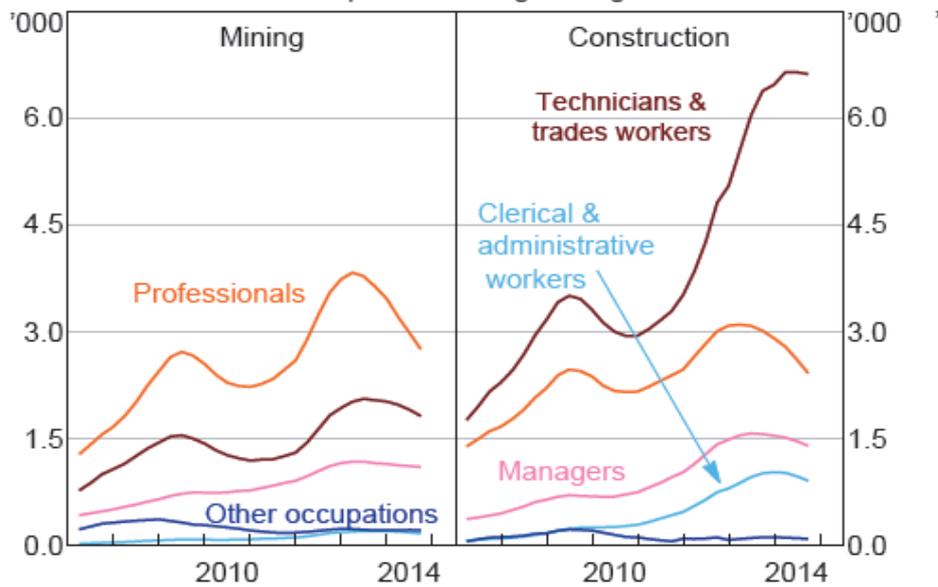
² Construction Outlook, AiGroup & Australian Construction Association Survey, May 2015

http://www.aigroup.com.au/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/LIVE_CONTENT/Economic%2520Indicators/Construction%2520Survey/2015/construction%2520outlook%2520survey%2520may%252015%2520final.pdf

³ Reserve Bank of Australia, <http://www.rba.gov.au/publications/bulletin/2014/dec/pdf/bu-1214-2.pdf>

457 Visa Holders – By Industry and Occupation

Four-quarter moving average



Source: Department of Immigration and Border Protection

4

Enabling employers to rapidly recruit overseas skilled workers, removes their incentive to invest in skills training and apprenticeships.

Since the increase in construction trades into Australia on temporary visas, there has been a corollary reduction in the number of trades' apprentices. The number of trade training and apprenticeships commencements has consistently declined from the September 2013 quarter.⁵

⁶With youth unemployment at 13.3% in the second quarter of 2014, rising to 14.4% in 2015 – it is alarming that our politicians are still favouring offering preferential recruitment deals to companies to employ overseas labour.

In Senator McKenzie's own region of Ballarat, youth unemployment is at 17%.⁷

We understand as a Senator it is not Senator McKinsey's primary obligation to advocate for her local community. However it is unclear who the Senator is advocating on behalf of in relation to promotion of labour market programs, designed not to employ local or Australian residents.

If Senator McKenzie has a particular employer or project in mind, that have claimed to her they have a project that is only not viable due to accessibility of Australian skilled labour, the ETU would be more than happy to assist in directing them to the available skilled labour experienced in the construction, power, manufacturing, mining and transport sectors.

⁴ <http://www.rba.gov.au/publications/bulletin/2014/dec/pdf/bu-1214-2.pdf>

⁵ Completion and attrition rates for apprentices and trainees 2014, (and previous) By NCVER, Statistical report, 20 July 2015

⁶ <http://www.oecd.org/australia/EMO-AUS-EN.pdf>

⁷ <http://lmip.gov.au/default.aspx?LMIP/DownloadableData/LabourForceRegionLFR>

We strongly encourage Senator McKenzie to acquaint herself with the contemporary labour market figures, at a regional as well as national level. We believe this should dispel the erroneous assumption that otherwise 'viable' projects in Australia are not proceeding because of skills shortages: Or otherwise 'viable' businesses which have failed because they could find skilled labour in Australia.

Although we also encourage the Senator to consider the NCVET Data on apprenticeship commencement and completions, to gain an understanding of the future risk of skills shortages due to policies which favour rapid recruitment of skilled foreigners, over training Australian youth.

Senate Education and Employment References Committee
Questions on Notice – Friday 19 June

Melbourne, VIC

Inquiry into the impact of Australia's temporary work visa program on the Australian labour market and on the temporary work visa holders

Questions taken on Notice – Hazeldene's

1. HANSARD, PAGE 40

CHAIR: So you have a current enterprise bargaining agreement that has a boning rate in it. Can you tell me, on notice if you do not know it now, what that rate is—or rates if you have a couple of classifications for boners—and what the award rate is, and what the percentage difference is?

Mrs Conway: Okay.

Hazeldene's Response: Hazeldene's does not directly employ boners. If Hazeldene's employed boners under the Enterprise Agreement they would be employed as Level 5 (\$21.79 per hour). Under the Poultry Award boners are classified as Level 5 (\$18.66 as at 30/06/15), however, we are advised that the boners are paid an above the award entitlement.

2. HANSARD, PAGE 41

CHAIR: How often do you do that payslip check?

Mrs Grima: I am not sure how often we do it. I could not tell you that. We have done it as recently as—

Mrs Conway: In the last month we have certainly done those checks, but we can take on notice how frequently we did them before that.

CHAIR: That would be good. Do you just specify a period for when you do the check? Let us assume that I worked overtime last week and I was not paid for it. If you were checking this week and my payslip was fine, you would miss the fact I was not paid for overtime unless you were checking all of the payslips.

Hazeldene's Response: Hazeldene's conducted ad hoc payslip checks prior to 9 June 2015. On 9 June 2015 Hazeldene's formalised a process whereby sample checks would be conducted on a quarterly basis.

3. HANSARD, PAGE 41

CHAIR: Are these workers employed by the labour hire contractor are they through a bank account or by cash?

Mrs Conway: Are we talking about Drake International?

CHAIR: No, the boners.

Mrs Conway: The boners. To our knowledge they are being paid appropriately. I do not know in what manner they are being paid.

CHAIR: Can you take that on notice?

Mrs Conway: Yes

Hazeldene's Response: One of the boning contractors pays their employees via EFT and the other pays their employees by cash – they will be EFT by the end of July.

4. HANSARD, PAGE 44

CHAIR: Thank you, Mrs Conway and Mrs Grima. We will probably put some questions on notice to you. We appreciate you coming here today. Thank you very much for your evidence.

Mrs Conway: Thank you for your time.

Written Questions on Notice from Chair

1. What is the instrument that is regulating wages and conditions that are being paid to staff employed by labour hire companies?

Hazeldene's Response: The boning contractors are regulated by the Poultry Processing Award 2010.

2. Are any labour hire contract workers being paid piecework rates? If so, in what capacity are they working (i.e. boners or packers)?

Hazeldene's Response: Hazeldene's pays the boning contractors via invoices which include piece rates. The employees are paid in accordance with the Poultry Processing Award 2010. Additionally, boners receive an above award payment for work performed.