

Coalition Senators' Additional Comments

1.1 Throughout the course of this inquiry Coalition Senators have been very concerned about the examples of unscrupulous employers who have exploited temporary work visa holders in Australia, which must be condemned. Coalition Senators have no tolerance for those who do the wrong thing, and believe the case has been made for stronger laws to deter wrongdoing and better enable wrongdoers to be held to account.

1.2 Coalition Senators note that the Minister for Employment has established a Ministerial Working Group, which includes the Minister for Immigration and Border Protection, Assistant Treasurer, and Minister for Justice.¹ The benefit of such a group is that it can address issues concerning vulnerable visa holders which transcend the silos of government, over multiple portfolios.

1.3 While Coalition Senators are broadly supportive of the Chair's Report they note that many of the recommendations have been made before the Ministerial Working Group established by the Government has had adequate time to respond to these issues in the labour market.

1.4 Additional comments have been provided below against some of the recommendations of the Chair's Report as follows:

Recommendation 2

1.5 Coalition Senators do not agree with this proposal as it could create an additional incentive for temporary residents to remain onshore long-term and lead to perverse market, social and demographic outcomes. For example, the existence of streamlined pathways to permanent residence for international students prior to 2010 lead to poor social, demographic and labour market outcomes.

1.6 Skilled migration visa settings are based on national need, and aim to target high quality migrants who will use their skills and attributes to contribute directly to Australia's economic well-being, and who are less likely to compete with Australian workers in the labour market.

1.7 Australian workers should have priority in the labour market, and this proposal adds additional supply to the labour market without appropriate reference to labour market need, impacts on Australian workers or the skill level of the temporary visa holder.

1.8 Temporary visa holders can apply for permanent residence at any time providing that they meet the requirements for a permanent visa.

¹ Senator the Hon Michaelia Cash, Minister for Employment, Minister for Women, and Minister Assisting the Prime Minister for the Public Service, 'Ministerial Working Group to help protect vulnerable foreign workers', Media Release, 15 October 2015, <https://ministers.employment.gov.au/cash/ministerial-working-group-help-protect-vulnerable-foreign-workers>

Recommendation 4

1.9 Coalition Senators do not support this recommendation.

1.10 Transparent and accountable consultation with stakeholders is a key part of the labour agreement programme to ensure that employment and training opportunities for Australians are not undermined and that the risk of exploitation of overseas workers is mitigated. Prior to requesting a labour agreement, applicants must consult with relevant industrial stakeholders. Relevant stakeholders include the industry body which best represents their interests, the union which best represents the interest of the applicant's employees, and any other agency or community group that may be impacted by the proposed labour agreement, such as schools and health services. The feedback from stakeholders is taken into account in the determination of the labour agreement application.

1.11 The requirement for consultation adds a significant impost on the applicant for a labour agreement. A requirement to further consult stakeholders on the outcome of the labour agreement would be of no value, but would add additional, unnecessary impost on the applicant. The outcome of the labour agreement application may also be of commercial sensitivity, and there may be privacy implications.

Recommendation 5

1.12 Coalition Senators do not support this recommendation.

1.13 The 2014 independent review of the temporary work Subclass 457 visa programme (the Azarias Review) recommended that the Temporary Skilled Migration Income Threshold (TSMIT) be reviewed within two years. On 23 December 2015 the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, announced that Mr John Azarias had been appointed to undertake an evidence-based review of the TSMIT, and this Review has commenced. The Terms of Reference for this review require consideration of a range of issues, including factors that should determine the settings, the appropriate base level, indexation and regional concessions for TSMIT.

1.14 Any decision to amend or index the TSMIT should only be taken following consideration of the evidence and recommendations made by this independent review.

Recommendation 8

1.15 Coalition Senators do not support this recommendation however would support a review of the current exemption settings.

1.16 The *Migration Amendment (Temporary Sponsored Visas) Act 2013*, which was introduced and passed under the former Labor government, provides exemptions from labour market testing in circumstances where the skill level of the nominated occupation is equivalent to Skill level 1 or Skill Level 2 as provided for in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) (except for protected qualifications or protected experience).

1.17 Exemptions to the labour market testing apply to specific occupations within skill levels 1 or 2 are prescribed by legislative instrument. The legislative instrument of exemption for occupations in skill levels 1 and 2 is disallowable by either house of the parliament.

1.18 In introducing this legislation, former Labor Minister O'Connor provided for these exemptions from labour market testing for higher skilled occupations in recognition that labour market testing of these higher skilled occupations is not always appropriate and may be impractical. Former Minister O'Connor also noted in his second reading speech that he intended to exempt most highly skilled occupations.

1.19 Further, the 2014 Azarias Review of the integrity of the 457 programme noted that labour market testing adds unnecessary regulatory cost.

Recommendation 9

1.20 Coalition Senators note that this recommendation would be incompatible with Australia's obligations under the World Trade Organization General Agreement on Trade in Services (WTO GATS) Commitments, and free trade agreements.

1.21 Australia's international trade obligations fall under two categories: World Trade Organization General Agreement on Trade in Services (WTO GATS) Commitments, and free trade agreements. Australia is bound under these international trade obligations to provide exemptions to certain categories of workers, and the adoption of this recommendation as currently worded would be incompatible with these obligations

1.22 The recommendation should be amended to include the following words "unless Labour Market Testing would be inconsistent with Australia's Free Trade Agreement obligations".

Recommendation 13

1.23 Coalition Senators believe this recommendation is problematic and would create an additional regulatory burden for employer sponsors of 457 visa workers, limiting the ability of businesses to respond to labour shortages in a timely and flexible way. It is impractical and would add unnecessary costs to small businesses and regional employers.

Recommendation 14

1.24 Coalition Senators do not agree with this recommendation as it would create an additional regulatory burden for employer sponsors of 457 visa workers and be difficult for Government to monitor and enforce. It is impractical and would add unnecessary costs to small businesses and regional employers.

Recommendation 15

1.25 Coalition Senators note that the \$4000 value of this proposed levy amount is not based on any evidence or underpinning. The 2014 Azarias Review of the integrity of the 457 programme recommended that the current training benchmarks be replaced with a training levy of \$400-800. This recommendation was accepted by the Government and is under development by the Department of Immigration and Border Protection and the Department of Education. Most Subclass 457 visa holders are employed in professional occupations, so a focus on apprenticeships would not address skill shortages experienced by Subclass 457 sponsors.

Recommendation 18

1.26 Coalition Senators note that there would be significant practical hurdles with implementing this recommendation.

1.27 Temporary visa holders, by definition, are only in Australia temporarily; a Fair Entitlements Guarantee (FEG) recovery process is likely to take some time, and the amount of entitlements which could be recovered may not be justified.

1.28 As the FEG is underwritten by the taxpayer, it should be a programme reserved for the protection of Australian citizens, who may have decades of entitlements payable after years of working.

Recommendations 23

1.29 The Coalition Senators believe this recommendation is unnecessary, as a visa breach does not currently invalidate employment, nor would it stop the remedies available to an employee under the Fair Work Act.

1.30 It is also very important that there are no incentives for workers, especially those from overseas, to work in contravention of the Migration Act or their visa requirements. Similarly we must make sure there is no benefit for employers to engage those in breach of their visa obligations.

Recommendation 24

1.31 Coalition Senators do not support this recommendation as it provides tacit endorsement for visa holders to breach their visa conditions without recourse or penalty and is inappropriate. Decision makers already have discretion, so visas are not cancelled for minor or less serious non-compliance therefore the recommendation is redundant.

Recommendation 25

1.32 It is beyond the scope of this review to impose restrictions on future Free Trade Agreements. Coalition Senators reiterate the significant benefits that flow from entering into Free Trade Agreements.

Recommendation 28

1.33 Coalition Senators note that the Department of Immigration and Border Protection is not funded to provide visa holders with workplace entitlement training.

1.34 The government proactively makes available information on employee entitlements and protections. Unions and other groups are not prevented from supplementing this information, but their actions in doing so should not be funded by public monies.

Recommendation 29

1.35 Coalition Senators do not support this recommendation. Migration regulations provide discretion for delegates to not cancel a visa, and it is appropriate that these discretions are exercised on a case by case basis. The cooperation of visa holders with regulatory agencies in investigations and prosecutions, including the Fair Work Ombudsman, is given strong weight by delegates in their considerations to refrain

from cancelling a visa. Furthermore, it would be inappropriate for a government agency to withhold important information of unlawful activity from another agency.

1.36 Coalition Senators reiterate the importance of not providing incentives for workers to work in contravention of the Migration Act or their visa requirements.

Recommendation 31

1.37 The Coalition Senators do not agree with this recommendation. This is a review recommending another review.

1.38 The matters referred to in this recommendation are matters of policy for the incumbent government, not an 'independent tripartite panel'.

Recommendation 32

1.39 Coalition Senators do not agree with this recommendation as it would punish those labour hire firms which are already complying with relevant laws.

1.40 While there are undoubtedly a minority of labour hire firms which are doing the wrong thing, what they are doing, in most cases, is already illegal. Coalition Senators support the prosecution of these illegal operations.

1.41 Coalition Senators also note that there are other inquiries underway at present into labour hire companies and look forward to the resolutions.

Recommendation 33

1.42 The Coalition Senators do not agree with this recommendation. The scope of this inquiry did extend to the consideration of the ratification of international treaties. Furthermore, the mere ratification of a treaty does not itself alter any domestic laws.

Senator Bridget McKenzie
Deputy Chair

