

457 visa worker awarded \$96k kidnapping compensation Sep 21, 2007

Posted Fri Sep 21, 2007 5:49pm AEST

The employers of a temporary 457 visa worker have been ordered to pay almost \$100,000 compensation for kidnapping and assaulting him.

Jae Sik Kim severely injured his back, but when he pressed his employers Kyung Ja Song and Jin Ho Park over medical bills they reported him as a visa overstayer and he was deported.

Mr Kim returned to Australia last year on a false passport and contacted his former tiling employers to pay the medical costs.

The Sydney District Court has found they falsely imprisoned Mr Kim and assaulted him.

In granting this civil compensation claim, Justice Chris Geraghty said Mr Kim was very vulnerable as he did not speak English and was completely reliant on his employers.

He awarded Mr Kim over \$96,000 compensation.

The Construction Forestry Mining and Energy Union (CFMEU) says the court ruling has again highlighted the need for 457 visa workers to be told about their rights.

CFMEU spokesman Andrew Ferguson says the case is not uncommon.

"We have employers right across the country using guest workers and when they complain, or when they are injured, the employers cancel the visas and the Howard Government is arranging for those workers to be dutifully shipped offshore," he said.



Exploitation of skilled migrants exposed

Dead men working

A HERALD INVESTIGATION

Matthew Moore
and Malcolm Knox

CONDITIONS in remote Australian workplaces, where two foreigners died within three days in June, are so harsh that a leading immigration expert says they are "akin to slavery".

A *Herald* investigation has exposed blatant breaches of the 457 skilled visa scheme and uncovered hidden details of the deaths of the two workers in the Northern Territory and Queensland, and of a third north of Perth.

The investigation highlights disturbing exploitation of overseas workers, too afraid to speak out, under a scheme that allows employers to sponsor thousands of foreigners to come into Australia and do jobs locals cannot or will not do. It reveals the "extremely ugly face" of the 457 visa system, according to the immigration expert Professor Bob Birrell, from Monash University.

The *Herald* has found that a university-trained Filipino farm supervisor, Pedro Balading, was thrown off the back of a Toyota utility and killed on a Gulf of Carpentaria cattle station in the Northern Territory. A witness, who was on the back of the ute, says it was being driven very fast on a rough road.

Mr Balading, 35, left behind a wife and three young children. His wife says that in the months before his death he complained

repeatedly that his working conditions were much tougher than he had been told to expect, and he was forced to do menial work such as fencing, in breach of his skilled visa.

Two days earlier, a logger from Inner Mongolia, China, 33-year-old Guo Jian Dong, died in a remote state forest 700 kilometres west of Brisbane when a tree he was felling brushed a dead tree which then fell and crushed him. Although the visas only allow foreign workers into Australia to do jobs for which they are skilled, Jack Watson, the man who trained Mr Guo, says he had never used a chainsaw before he arrived in Queensland. Mr Guo left behind a wife and a child he had never met.

Others who work for N.K. Collins, the company that employed Mr Guo, are still living in western Queensland, including three who live in a caravan in a timber mill next to the Mitchell town dump, speak no English, and push a wheelbarrow nearly three kilometres to town to buy food.

The company will not say where many of its other Chinese employees live, nor reveal the address of the deceased man's wife or allow employees to talk openly of the accident that killed him.

Professor Birrell said: "The specific instances ... are akin to slavery. That derives from the

fact that these people are cowed into believing that if they move away from their contract they will have to go home. Employers are exploiting their power in the relationship and ... these people feel they have lost their rights."

In March, 10 weeks before the two deaths, a Filipino specialist stonemason, Wilfredo Navales, 43, was crushed to death by two slabs of granite in a stoneworks north of Perth. Mr Navales's family says he died doing labouring work he was forced to do rather than using the skills for which he was ostensibly brought to Australia.

The 457 visa requires employers to abide by strict conditions, but the *Herald* found numerous breaches, including:

- Workers in positions that have no benefit for the local workforce;
- Accommodation and meal expenses wrongly deducted directly from workers' wages;
- Workers employed in locations other than stated on their visas;
- Safety standards being routinely ignored;
- Overtime unpaid.

A Federal Government report into the deaths, due for release in mid-July, was still not finished, a spokeswoman for the Minister for Immigration, Kevin Andrews, Continued Page 6



Exploitation of skilled migrants exposed

From Page 1

said. But action may be taken against the employers in the Northern Territory and Queensland. "Both employers have been asked to provide further information why action should not be taken against them."

Don Collins, from N.K. Collins, said it was a tragic accident that killed Mr Guo. Despite the contract trainer, Mr Watson, telling the *Herald* that Mr Guo had no experience as a logger, Mr Collins said: "They had experience in cutting trees." Of the workers camping in a caravan, he said: "I don't think it does any harm."

While the 457 visas were originally designed for professionals, in the past couple of years they had been "picked up by much more marginal employers", Professor Birrell said.

Another expert on the visas, a former public servant, Bob Kinnaird, of R.T. Kinnaird and Associates, said design faults in the visa scheme had set up a "race to the bottom in work conditions".

"The dangerous aspect of the 457 visa is that people from low-wage countries, even if they are being underpaid by Australian standards, are still earning more than at home, so they will be tempted to put up with anything to stay here," he said.

The Immigration Department has only 65 officers to monitor compliance with the visas, which makes it impossible to police more than 100,000 visa holders living across Australia. The Government says 21 people have died on 457 visas in the past five years but insists only three deaths were work-related. It has provided only a one-line statement on the cause of the three work-related deaths investigated by the *Herald*, but refused to release the names. It would give no details on the other deaths, other than the five countries of origin, China, Japan, the Philippines, the US and Britain.

Its own figures point to rising exploitation. Abuses of the visa system saw the Government cancel the rights of 95

employers to use them in the past year, mainly for underpaying workers – up from three the previous year.

Gino Lopez, head of Migrante International, which represents Filipino workers in Australia, said the scheme gave employers an opportunity to "treat employees badly" and "if the bosses are able to get more sweat out of the workers, many of them will do it".

"They are afraid of saying something to their boss, because they fear they will be sent home."

John Sutton, from the Construction Forestry and Mining Employees Union, revealed last month that the three 457 workers had died, but had scant details. He said he was not surprised to learn of the working conditions in which they were killed.

"I regard it is as modern-day slavery," he said. "They are being treated as lesser citizens."



Still no word on how her husband died ... Maria Baiading at her home in Manila. Photo: Cheryl Ravelos

Injured 'Mack' dies

REBEKAH HOLLIDAY

11/09/2008 10:32:00 AM

THE worker badly injured in last week's industrial accident at Byrne Trailers has died in a Sydney hospital.

Lian Rong Xia, known as Mack, passed away at St Vincent's Hospital at 3am yesterday when his life support machine was turned off.

Sadly, all attempts to have his parents brought from China failed although several of his friends and wife Daisy were by his side.

Mack, a 31-year-old welder, received critical head injuries while working on the production line at Byrne Trailers on Hammond Avenue in Wagga last Tuesday.

He was airlifted to St Vincent's Hospital where he remained on life support until yesterday. Doctors gave him no chance of recovering.

Byrne Trailer's owner Mick Byrne said it was unfortunate Mack's parents could not get to Australia to see their son before he died.

He said their rural locality and bureaucracy within the Chinese embassy meant they were unable to get here in time.

"It was very difficult to contact them (Mack's mother and father) and very difficult to get them passports but not on behalf of the Australian government. They might still come however," Mr Byrne said.

"We did our very best to try and facilitate it. It was very difficult with the language barrier. Daisy speaks no English.

For the past eight days, Daisy had maintained a bedside vigil along with two of Mack's friends.

They were expected to arrive home in Wagga last night ahead of a meeting with the Department of Immigration today.

"It's been a very difficult time for all of us with the language and cultural barriers. Daisy and Mack's friends were hoping against hope the doctors were wrong. He was kept on life support as long as they possibly could – longer than usual, from my understanding," Mr Byrne said.

Mack started work in Wagga in May last year. He was one of the first in an intake of Chinese workers to join the company on a 457 visa.

Funeral arrangements are not yet known.

<http://dailyadvertiser.yourguide.com.au/news/local/news/general/injured-mack-dies/1269725.aspx>

Rajan Kandasamy & other Guest workers sacked after refusing AWA's that cut pay 261006

Four guest workers, employed in Australia on controversial 457 visas, have been sacked and face deportation for refusing to sign individual contracts that cut their pay, according to the building union.

The workers were employed as crane operators and metal fabricators alongside six other guest workers for a subsidiary of western Sydney based manufacturer Southern Cross Rigging & Constructions. Each worker was required to pay \$10,000 just to get the job, paid their own airfares to Australia, and then spent \$100 a week in rent to live on bunk beds in two crowded rooms above the factory.

The workers, with little knowledge of Australian law, contacted the Construction Forestry Mining Energy Union for help following advice from local members of the Indian community.

CFMEU NSW Secretary Andrew Ferguson said this was a case of an employer using new work laws to bring overseas workers into Australia and pay them at lower rates than local workers.

"This is a clear case of unscrupulous employers using the Howard Government's guest worker scheme and radical workplace laws in tandem to import cheap foreign labour rather than employing Australian workers with appropriate pay rates and conditions," he said.

"Three weeks after arriving here these workers were handed AWA's, told the Immigration Department required them to sign, and those who refused were then sacked and evicted from their accommodation.

"The failure of the Howard Government to act on the abuse of 457 visas by employers demonstrates that the government is complicit in this systematic abuse of overseas workers.

The workers were hired by Southern Cross managing director Mark Merhi after responding to a newspaper advertisement in a Singapore newspaper seeking metal fabricators and crane drivers.

Rajan Kandasamy, one of the sacked workers, believes they have been terribly exploited.

"I gave up a job in Singapore to come here," he said. "They told me it would be a good job, with good money and that we would live in very good accommodation and have food provided.

"I feel I was tricked, because after I paid thousands of dollars to come here for this work I was told I must sign the new agreement, but I knew there was something wrong with it.

"Now we have no job, nowhere to live, and only four weeks to find a new job or the Immigration Department will deport us from Australia."

Media contact: Tim Vollmer (CFMEU Media Officer) 0404 273 313

Record fine for Hanssen over exploitative treatment of 457 visa workers 12 March 2008

A prominent Perth builder who exploited 15 vulnerable subclass 457 guest workers, mostly from the Philippines, when he deliberately breached AWA approval and lodgement obligations has been ordered to pay a record \$174,000 in penalties.

In a decision handed down yesterday in Perth, Federal Magistrate Tony Lucev said Hanssen Pty Ltd director and secretary Gerry Hanssen exploited the vulnerability and malleability of the workers.

He told the court the employees "would sign anything" because they were frightened of being sent home.

Hanssen had sponsored the workers to come to Australia on the [long-stay visas](#).

The company admitted the breaches alleged by the Workplace Ombudsman, including:

- lodging 10 unapproved AWAs (contravening s341);
- failing to lodge an approved AWA within 14 days (s342);
- failing to take reasonable steps to ensure five employees had ready access to their proposed AWAs for seven days (s337(1) and (8)); and
- failing to take reasonable steps to ensure five workers received an information statement seven days before their AWA was approved (s337(2) and (9)).

Hanssen Pty Ltd's breaches were compounded by its failure to follow "detailed legal advice" it had sought about making and lodging AWAs.

Hanssen admitted asking the employees not to date the AWAs, because he intended to do so, due to the seven-day access obligation.

Federal Magistrate Lucev found Hanssen had deliberately undertaken the conduct, "in circumstances where he knew that the documents might not accurately reflect whether or not the employees had been afforded the requisite 7 day access period".

He said Hanssen tried to justify his conduct on the basis that it was common practice in the industry not to date documents. But Federal Magistrate Lucev said such a practice couldn't be countenanced for statutory requirements.

He said Hanssen appeared to regard the breaches "as being of little consequence", while he argued that the Workplace Relations Act's scheme of self-regulation was an excuse for the company's conduct.

But Federal Magistrate Lucev said Hanssen Pty Ltd's conduct didn't reflect its "responsibility as an employer in a deregulated environment to conduct itself appropriately and comply with its statutory obligations".

He said the company was entitled to a 65% discount on the penalty due to its cooperation with the Workplace Ombudsman, contrition (although he pared back the discount on this basis because of the absence of contrition in affidavit evidence), its first offender status and the fact that although the breaches were deliberate and exploited vulnerable employees, they were not in the worst category of offences.

He ordered Hanssen Pty Ltd to pay \$115,500 for lodging the unapproved AWAs, \$57,750 for failing to comply with the ready access and information statement requirements and \$750 for failing to lodge an AWA within 14 days - a total of \$174,000.

"This was a deliberate case of exploitation and something that the community, quite rightfully, will not tolerate", Workplace Ombudsman Nick Wilson said in a statement today.

"The penalty imposed on Hanssen Pty Ltd today reinforces that the Workplace Ombudsman and the Courts won't tolerate exploitation."

Jones v Hanssen [2008] FMCA 291 (11 March 2008)

Just \$9650 for 18 months restaurant work, so the boss faces court 13 October 2008

A restaurant owner who paid a full-time employee just \$9650 for 18 months work will face the Melbourne Magistrate's Court.

The federal Workplace Ombudsman has commenced legal proceedings against Poh Meng Hong for allegedly underpaying staff at his former Malaysian restaurant at Box Hill.

The restaurant, which was known as [Kayu@Boxhill](#), no longer operates.

However, the Workplace Ombudsman claims one former staffer who received just \$9650 for 18 months' full-time work there is still owed \$88,000 in back-pay.

Documents filed in the Melbourne Magistrate's Court alleged Hong underpaid 14 of his employees – including a 457 visa holder - around \$125,000.

Workplace Ombudsman Victorian director Paul Werner says while a part payment of \$25,000 has been made, some \$96,000 remains outstanding.

Mr Werner says his office has decided to prosecute Hong, a director of Penang Kayu Nasi Kander Pty Ltd, for his involvement in breaches of both the Liquor and Accommodation Industry (Restaurants) Victoria Award and the Australian Fair Pay and Classifications Standard.

If convicted, he faces a maximum penalty of \$33,000 per breach.

Media inquiries: Craig Bildstien
Director Media & Stakeholder Relations – Workplace Ombudsman
Mob: 0419 818 484 Email: craig.bildstien@wo.gov.au

NSW Restaurant to Pay More than \$18,000 for Exploiting Overseas Worker 17 March 2008

A decision by the Federal Magistrates Court in Sydney to fine New South Wales business Yoga Tandoori House Pty Ltd \$18,200 for eight breaches of the Restaurant &c., Employees NPSA is a win for vulnerable workers right around Australia, the federal Workplace Ombudsman said today.

Workplace Ombudsman Nicholas Wilson said the employee, an Indian subclass 457 visa holder, depended on his employer to do the right thing and meet his workplace obligations.

“The worker came to Australia for the sole purpose of employment with Yoga Tandoori House. He had no understanding of the English language, no other means of financial support and absolutely no understanding of what his lawful entitlements were in the workplace.”

The investigation by the Workplace Ombudsman commenced after slavery charges were levelled at the business last year in relation to employees at the company.

The Court found Yoga Tandoori House Pty Ltd failed to:

- pay wages for ordinary hours of work;
- pay wages for overtime hours
- pay wages for work performed on Saturdays and Sundays;
- pay wages for public holidays;
- pay wages within the required time;
- display a roster;
- pay laundry allowance;
- give payment in lieu of accrued annual leave on the termination of the employee's employment.

“The worker was a vulnerable employee and the loss of such basic entitlements as his wages were significant particularly given the employee had no one else to turn to in the country,” Mr Wilson said.

“The excuse of ignorance cannot be accepted given that the owner has 18 years experience in the restaurant business and at the time owned and operated four restaurants.”

Federal Magistrate Cameron said although Yoga Tandoori House Pty Ltd had since rectified found the \$11,500 in underpayments, it could not be ignored that the breaches were deliberate.

“No regret or contrition was expressed by the respondent (Yoga Tandoori House Pty Ltd),” Federal Magistrate Cameron said.

“As such a special deterrence is appropriate in this matter.”

In imposing the penalty Federal Magistrate Cameron said slavery charges had been laid and withdrawn in relation to the business and that the adverse media coverage of these events had already visited "significant financial consequences" upon Yoga Tandoori House Pty Ltd with the closure of three of its four restaurants.

Media inquiries:

Craig Bildstien

Director Media & Stakeholder Relations – Workplace Ombudsman

Ph: (03) 9954 2554 Mob: 0419 818 484 Email: craig.bildstien@wo.gov.au

Suzana Talevski

Workplace Ombudsman Media Adviser

Mob: 0434 365 924 Email: suzana.talevski@wo.gov.au

**Filipino 457 visa nursing assistants treated shabbily, says workplace watchdog
August 15, 2008**

The national workplace watchdog has labelled as reprehensible the exploitation of three Filipino's recruited as nursing assistants in Sydney.

The Workplace Ombudsman says the treatment of one male and two female 457 visa-holders was nothing short of shabby.

"There were times when these vulnerable workers did not have enough money to put food on the table," Workplace Ombudsman Executive Director Michael Campbell revealed.

Mr Campbell says the migrant workers were treated unconscionably by a Sydney-based labour hire agency, which deliberately underpaid them more than \$15,000.

"When they asked about their wages, they were fobbed off with false promises and threats," he said.

Mr Campbell said the case highlighted a serious dereliction of duty by Healthcare Recruiting Australia and its sole director Michelle Lloyd.

Lloyd and her company have been fined a total of \$48,000 in the Federal Magistrate's Court for four breaches of the *Workplace Relations Act*.

Mr Campbell says the company withheld the workers' entitlements for more than a year after workplace inspectors identified the underpayments.

He says the company unlawfully deducted significant sums of money from their wages for training that was never provided, for rent, agency fees and airfares.

"The workers have told how there were times when they were living on the charity of others and felt ashamed they could not pay their rent," he said.

"They were upset and frustrated and their treatment was obviously a very difficult time both financially and emotionally."

HRA placed the three workers at two Sydney nursing/aged care facilities in 2005 and 2006 where they provided residents with personal care and assisted them with showering, dressing and eating.

However, Mr Campbell says HRA failed to pay full wages, casual loadings, penalty rates and holiday pay and made unlawful deductions without the workers' consent.

He described the case as very serious and said the court penalty should serve as a warning to other recruitment companies bringing in migrant workers.

The Philippine Consulate General in Sydney welcomed the ruling of the Federal Magistrate's Court.

Consul General Maria Theresa Lazaro said: "We are pleased with the outcome of the case and we are very appreciative of the efforts and the assistance extended by the Workplace Ombudsman to the affected Filipino nurses."

The Workplace Ombudsman has investigated more than 400 matters relating to 457 visa-holders over the past two years, recovering more than \$1.3 million in underpayments for overseas workers.

Media inquiries:

Craig Bildstien

Director Media & Stakeholder Relations – Workplace Ombudsman

Ph: (03) 9954 2554 Mob: 0419 818 484 Email: craig.bildstien@wo.gov.au

Filipino 457 visa worker unfairly sacked over illness union Jan 20, 2008

Posted Sun Jan 20, 2008 9:00am AEDT

- [Map: Darwin 0800](#)

A Northern Territory union official says the case of a Filipino guest worker who contracted melioidosis while working in Darwin, highlights confusion surrounding the 457 visa system.

Rico Mavotas was fired after contracting the potentially fatal illness last year and is now claiming he was illegally dismissed in the Industrial Relations Commission.

In his termination letter the company said he was fired because he was not skilled enough, but the union says he was fired because he became ill and could not work.

Australian Manufacturing Workers Union spokesman Jamey Robertson says he wants to see Mr Mavotas receive the same payout as any other worker, but that is not guaranteed under the 457 visa system.

He says the case also shows there is confusion about whether employers have to provide medical insurance or not.

"The employer is meant to supply medical insurance, it appears some employers have been able to do it by just giving them documents to fill out and charging them for it," he said.

"Neither of these things were done, so technically they just weren't insured."

Deaths prompt calls for 457 visa inquiry Aug 28, 2007

By Emily Bourke

Posted Tue Aug 28, 2007 9:00pm AEST

The Immigration Minister says there is no need for an inquiry as bad employers face stiff penalties if they breach the 457 visa rules. (File photo) (Reuters: Aly Song)

Australia can be a dangerous place for a foreign worker on a 457 visa - almost twice as dangerous as for Australian workers in fact.

After revelations about the deaths of three overseas workers in the workplace in the past year, there are now calls for a judicial inquiry into the scheme which lets employers sponsor temporary overseas workers to fill vacancies.

Immigration Minister Kevin Andrews says there is no need for an inquiry. He says bad employers face stiff penalties for breaching the 457 visa rules.

But immigration experts say things are about to get worse with a new visa scheme aimed at students.

The deaths of three foreign workers who died on the job in the past year have been labelled "regrettable and tragic" by the Immigration Minister and "revolting" by the Opposition.

News of the three deaths has prompted calls for a judicial inquiry into the controversial 457 visa scheme.

But that call has been dismissed by Immigration Minister Kevin Andrews.

"The reality in Australia today is we've got the lowest unemployment rate for 33 years, in states like Western Australia and Queensland in particular, it's almost impossible to find some workers, in particularly skilled areas, and we're crying out for workers, without which we wouldn't be able to continue to run the economy of Australia," he said.

"So this is a valuable scheme, but... if anybody does the wrong thing we will jump on them like a tonne of bricks."

The Federal Government is still rolling out a revised penalty scheme of fines and jail terms for unscrupulous employers, but in the past year more than 90 employers were found to have breached the 457 rules.

Unions have mounted a fierce campaign against the use of 457 visas.

But John, a Sydney baker, told Virginia Trioli on ABC local radio in Sydney he has had no choice but to turn to overseas workers.

"I've got two staff here at the moment on 457 visas, I've got a couple more that are on the way," he said.

"I actually went overseas and did the recruitment and hired them out of absolute desperation. We cannot find bakers, I've spent several thousand dollars this year on advertising [and] trying to retain apprentices is hard work."

He says part of the problem in retaining apprentices in his industry is they are paid so little.

"They just seem to want it all straight away, they don't want to do the study, I mean the wages are low for an apprentice, it's less than \$10 an hour for a first-year apprentice," he said.

Effectiveness?

Labor supports the 457 scheme, but Opposition Leader Kevin Rudd says there needs to be an investigation into the effectiveness of the program.

"457s are a part of the way in which this country has been managing its labour force needs, in part because there's been no effective skills strategy in this country for more than a decade," he said.

"This is part of the overall economic equation at present, including, resulting certain inflationary pressures in the economy, because there has been inadequate investment in skills but more broadly, an inadequate and virtually non-existent national skills strategy. We're paying the price for that today."

According to immigration analyst Bob Kinnaird, 457 visas are a recipe for exploitation.

"An employer is lawfully able to bypass anybody who might be available to do the job in Australia and employ a foreign worker under these visas," he said.

"Secondly, employers are not required to pay market rates. The effect of that provision is that employers can lawfully employ foreign workers below the market rate for Australian workers."

Dangers

To highlight the risks facing some 50,000 overseas workers on 457 visas, Mr Kinnaird points to the fatality rate for Australian workplaces - three for every 100,000 workers.

"Now what these three fatalities on the 457 program imply is that the 457 workplace fatality rate is about 5.8, so the 457 program is a very dangerous place to be and that suggests a serious investigation is required," he said.

Things could be about to get worse with the introduction on September 1 of the 458 visa, Mr Kinnaird says it has some of the worrying features.

"It's official name is the graduate skills visa. Now this visa is going to give overseas students graduating from Australian universities the right to temporary work in Australia for up to 18 months after graduating," he said.

"But the grounds for concern about this visa are that we already know, that from experience of some overseas students, that they are so keen if not desperate to get permanent residence that they will work for as little as \$4 an hour.

"And in some cases there's been reports that some overseas students have been prepared to actually pay the employer for that job."

Company ordered to pay 457 visa migrant workers \$650,000 Oct 31, 2006

Posted Tue Oct 31, 2006 4:35pm AEDT

Updated Tue Oct 31, 2006 10:08pm AEDT

The Federal Government's workplace watchdog has forced a company to hand over more than \$650,000 to underpaid workers in Australia on temporary migrant visas.

The 38 Chinese workers were employed in March in Sydney by Hunan Industrial Equipment under the controversial 457 visa program.

The Office of Workplace Services (OWS) says the workers were underpaid between \$15,000 and \$30,000 each.

The OWS is investigating several similar complaints about the visa program.

The director of the OWS, Nicholas Wilson, says Hunan Industrial Equipment may face legal prosecution.

"Quite clearly, one issue which we need to consider is whether or not there are breaches which may require us to take the matter to court," Mr Wilson said.

"Our priority to date has been to recover the underpayment of wages and we've now done that.

"Clearly, with the continuing investigation, we can now turn our attention to what we do about those breaches."

The Federal Opposition and unions want the visa program overhauled or scrapped.

Mr Wilson says the OWS can and will protect workers.

"The office has been in existence now, I think, for about six months," he said.

"Quite clearly, we're starting to hit our straps and this is, I suppose, a sign our investigations are coming to a point where we can take matters to court.

"I think it proves obviously that the office is very concerned about people getting their full entitlements.

"We won't hesitate to take matters to court if need be."

Australian Manufacturing Workers Union (AMWU) NSW secretary Paul Bastion says the system needs to be properly audited and vetted.

"This is a totally unregulated scheme, it's on a system that if simply the boss needs it he can get it and check them off a list," he said.

"In this case it is a foreign-owned labour hire company that was issuing the 457 visas."

Company fined \$40,000 for underpaying Chinese employees 18 September 2008

A Melbourne-based training provider which recruited students from China but then underpaid them and failed to give them properly supervised workplace training has been fined \$40,000.

The federal Workplace Ombudsman took legal action against Education Training and Employment Australia Pty Ltd (ETEA) over its failure to pay correct hourly rates of pay, shift allowances, casual loading and penalty rates and for making unlawful deductions from the employees' pay.

The Victorian Magistrate's Court heard that ETEA initially proposed to pay the eight Chinese students only \$150 a week, but this was later increased to a flat rate of \$439, irrespective of the hours they worked or when they worked.

Workplace Ombudsman Executive Director Michael Campbell says the students were sent to work as nursing attendants and personal care attendants at at least 15 aged-care facilities where they worked up to 68 hours a week, including shift work and work on weekends and public holidays.

The court was told that facilities where the students were placed had requested and understood they were being supplied with staff "capable of performing their duties, rather than as trainees". The employees were charged out at up to \$34.37 an hour for their services.

Each of the employees, who held nursing qualifications recognised in China but not Australia, had paid for a 12-month program which would train them to work in aged care to Australian standards.

Mr Campbell says investigations by workplace inspectors found ETEA had underpaid the eight Chinese nationals over \$29,000 over a period of 10 months. The underpayments were not rectified for more than a year.

He said the employees were in a significantly inferior bargaining position because they relied on ETEA to remain in Australia on occupational trainee visas and their capacity to know and assert their workplace rights was limited.

Handing down her 34-page decision today, Magistrate Kate Hawkins described ETEA's breach of the Workplace Relations Act as "extremely serious, not a mere oversight".

Magistrate Hawkins said the company had sought to justify its substantial underpayment of the Chinese students by saying it failed to read correspondence sent to it by government agencies.

"There can be no excuse for a defendant to avoid its lawful obligations by such wilful ignorance of lawful entitlement. There is no 'mere oversight'," she said.

Her judgment says a prudent employer would have engaged qualified, specialist advisers to ensure it was meeting its lawful workplace obligations.

"Such wilful blindness to the true state of the lawful obligations is inexcusable," she said.

"These employees were foreign nationals without a working knowledge of the Australian industrial relations system.

“They needed help in settling in to life in Melbourne. They were clearly not on a ‘level playing field’ with other Australian employees. They were vulnerable due to their cultural background and less than perfect English skills”.

Magistrate Hawkins said it was only after “numerous extensions of time and the threat of litigation looming large” that the company finally complied with the Workplace Ombudsman’s requests to correct the underpayments.

She said that while the company had indicated remorse in court, “this remorse has, however, not been conveyed to the Chinese employees”.

Mr Campbell said the \$40,000 penalty should serve as a warning to other recruitment companies bringing overseas workers into the country for training that they cannot be exploited.

In Sydney last month, the Federal Magistrate’s Court fined Sydney-based labour hire agency Healthcare Recruiting Australia \$48,000 for exploiting three Filipino’s recruited as nursing assistants after action initiated by the Workplace Ombudsman.

Last week, the Workplace Ombudsman launched a campaign to educate almost 460,000 overseas students studying in Australia about their workplace rights, expressing concerns that they are becoming a new group of vulnerable workers open to exploitation by unscrupulous employers.

Media inquiries:

Craig Bildstien

Director Media & Stakeholder Relations – Workplace Ombudsman

Mob: 0419 818 484 Email: craig.bildstien@wo.gov.au

Dartbridge Welding sacked 457 visa Filipino workers Oct 19, 2006

By Kate Scanlan for The World Today

Posted Thu Oct 19, 2006 3:40pm AEST

Updated Thu Oct 19, 2006 3:51pm AEST

Filipino workers in south-east Queensland, who say they were exploited and then sacked for joining a union, have rejected the Prime Minister's claims that their union is blocking Immigration Department attempts to investigate the case.

The workers say the union has made no attempt to stop them talking to investigators, and that union representatives accompanied them when they met with department officials for the first time this morning.

The Filipino welders were brought to Brisbane two months ago on 457 temporary visas, by the labour hire company Dartbridge Welding.

They say they were promised \$40,000 a year, but are earning closer to \$27,000 and are being forced to foot the bill for overpriced accommodation and transport.

The Federal Government agreed to investigate the case after three of the men claimed they were sacked after joining a union.

But yesterday in Federal Parliament, the Prime Minister accused the Australian Manufacturing Workers Union (AMWU) of trying to obstruct that investigation.

"I'm also advised DIMIA tried to interview the workers but the union refused to assist," he said.

But the sacked workers have leaped to the union's defence, saying they have not been silenced.

"The union has not stopped us from talking to anyone," says Roy Yabut, one of the workers.

"We just asked the union to help us and they have been very good to us and the Prime Minister is wrong."

Nothing but help

Mr Yabut says the union has done nothing but help the men since they learnt of their termination on Monday.

He says the workers are happy to answer any questions about their treatment and working conditions.

"We will talk to anyone, provided the union is there to help us, because we are just new here in this country and we have no idea of the labours and so we just want somebody to defend us."

Doug Cameron, national secretary of the AMWU, denies the union tried to stop the workers talking to the department.

"We've got no control over either the department or the workers," he said.

"They have come to us and asked for support - these are workers that have been basically dumped in the backdrops of Brisbane with no access to transport, no decent wages, no decent conditions and they've asked for our help and that's what we're doing."

Mr Cameron has accused Mr Howard of trying to shift the focus from the failures of the 457 temporary visa scheme.

"This is more lies, deception and misrepresentation from him," he said.

"We have been in active discussions with the department, we rang the department yesterday to organise a meeting with them.

"The Filipino workers were concerned to meet any government bureaucrat on their own, they had asked for the union to represent them."

The union and the workers met with the department a short time ago.

Sacking defended

Later this afternoon, the men will appear before Queensland's Industrial Relations Commission, which is conducting an inquiry into the effect of the Federal Government's new industrial relations laws.

The new owner of Dartbridge Welding, the company that employed and sacked the welders, has defended his decision to let them go.

Dennis Hickman says the men were not sacked because they joined a union.

"It was explained to me that I had to make immediate changes in a number of staff," he said.

"And let me say this: it's a very, very difficult decision to have to retrench three workers. I did not unlawfully dismiss these men at all. I simply don't have the money."

But Mr Cameron says the company has a case to answer.

"The behaviour of the company is absolutely abominable," he said.

"There are, in our view, legal breaches of the Act, and there are also moral obligations that companies should have in this country.

"You can't just abide by the letter of the law if you behave immorally, and that's what's happening here."

457 visa sponsor West Australian Company Found Guilty of 21 Workplace Breaches 12 March 2008

The Commonwealth Workplace Ombudsman has secured its biggest ever penalty in a single case and sent a message to employers not to exploit foreign workers.

The Federal Magistrates' Court in Perth has fined West Australian construction company Hanssen Pty Ltd \$174,000 for 21 breaches of the *Workplace Relations Act 1996* in relation to the lodgement requirements of Australian Workplace Agreements.

Commonwealth Workplace Ombudsman Nicholas Wilson said that Gerry Hanssen, the director of the company, exploited fifteen 457 visa holders from the Philippines and Ireland by not providing access to their proposed AWAs and information statements and by demanding that they not date the agreements when they signed them, or they would lose their jobs and be sent back overseas.

“Hanssen professed that the AWAs were signed and dated by the workers lawfully when clearly they were not,” Mr Wilson said.

Mr Wilson said the workers were in a vulnerable position because of their status as migrant workers.

“As highlighted in court, Mr Hanssen, the director and secretary of the company, gloated that the employees would sign anything because they were frightened of being sent back overseas,” Mr Wilson said.

“This was a deliberate case of exploitation and something that the community, quite rightfully, will not tolerate. The penalty imposed on Hanssen Pty Ltd today reinforces that the Workplace Ombudsman and the Courts won't tolerate exploitation.”

In handing down his decision Magistrate Lucev found:

- The company lodged and attempted to have registered AWAs which had not been approved in accordance with the provisions of the Workplace Relations Act.
- Five employees were not afforded the ready access to the AWAs to which they were entitled in the seven day access period prior to approval.
- Five employees were not provided with information statements concerning the AWAs within the required seven day period prior to approval
- One approved AWA was not lodged within the required time period after approval.

“The vulnerability of these particular employees only highlights the seriousness of the consequences of the contravening conduct,” Magistrate Lucev said.

In his findings Magistrate Lucev said the breaches were “deliberate and exploited vulnerable workers”.

“The respondent was aware of the employees vulnerability,” Magistrate Lucev said.

“It is appropriate that the penalty reflect a greater level of specific deterrence than might ordinarily be the case.”

Media inquiries:

Craig Bildstien

Director Media & Stakeholder Relations – Workplace Ombudsman

Ph: (03) 9954 2554 Mob: 0419 818 484 Email: craig.bildstien@wo.gov.au

Suzana Talevski

Workplace Ombudsman Media Adviser

Mob: 0434 365 924 Email: suzana.talevski@wo.gov.au

\$93K Recovered from Aprint (Aust) Pty Ltd for four 457 visa workers 30 October 2006

The Office of Workplace Services (OWS) has recovered \$93,667.66 in underpaid wages from Aprint (Aust) Pty Ltd for four employees, ranging from \$785.20 to \$31,706.96 gross.

Aprint is a printing firm based in Hawthorn, Victoria.

OWS sought to litigate Aprint for the underpayment of wages of four Chinese workers, on temporary long stay business visas.

OWS has initiated proceedings in the Federal Magistrates Court against Aprint for underpayment of wages for ordinary hours, underpayment for overtime worked and underpayment of weekend overtime, unauthorised deductions from the workers' pay, annual and personal leave under the Australian Fair Pay and Condition Standard.

OWS Director Mr Nicholas Wilson said that despite the company's voluntary rectification of the underpayments of wages the OWS was intending to pursue litigation and penalties for breaches of the Workplace Relations Act 1996 (the Act).

"The breaches in this case, are so serious and numerous, that it is clearly in the public interest to prosecute and OWS will be seeking penalties against the company," said Mr Wilson.

"The OWS is seeking penalties for five breaches of the Act, amounting to a possible \$165,000 in fines for the company and \$33,000 for the company director.

"The OWS wants employers and the public to understand that the exploitation of any workers, including overseas workers will not be tolerated.

Overseas workers in Australia on subclass 457 visas are entitled to the same level of protection under the law, as Australian workers.

"The central role of the OWS is to ensure that the rights and responsibilities of workers and employers under the Act are understood and enforced fairly" Mr Wilson said.

The investigation is continuing and further complaints arising out of the matter may be laid before the Courts.

Employers and employees who would like more information on their rights and obligations should contact the Workplace Infoline on 1300 363 264.

**Media Enquiries: OWS Media & Communications Adviser Jacinta Waide 0423 820
852 or email [Jacinta.Waide @ ows.gov.au](mailto:Jacinta.Waide@ows.gov.au)**

04 November 2008

Peter Hallahan
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Via Email: legcon.sen@aph.gov.au



Dear Mr Hallahan

Re: Inquiry into the Migration Legislation Amendment (Worker Protection) Bill 2008

Arising from my evidence to this Inquiry last Friday, I undertook to provide some additional evidence to the Committee in respect to my oral submission.

First, please find set out below the article to which I referred in regard to Interstaff Recruitment;

Calls for state migration policy

By Anna Moreau

The WA Business News (Australia), October 30, 2008

<http://www.wabusinessnews.com.au/login.php?url=http%3A%2F%2Fwww.wabusinessnews.com.au%2Fstory%2F1%2F67745%2FCalls-for-state-migration-policy>

*Western Australian businesses and recruiters have expressed concerns over possible cuts to Australia's migration intake, calling for a state-based approach to immigration quotas. The federal opposition last week asked Immigration Minister Chris Evans to cut the number of migrants by 25 per cent, only a few months after the government announced it would lift immigration numbers to a record 190,000 in 2008-09. The debate over migration quotas coincided with a WA Business News forum on skilled migration, which heard that business in WA still needs extra labour. **Interstaff Recruitment executive director Daniel Engles said that states like WA or Queensland are becoming exceptions to the national unemployment trends and may end up being overlooked in the policy making process. 'The issue that they [the government] have now is pockets of skills shortage,' Mr Engles told the forum.***

'There is a regionalisation issue and WA is going to find it difficult to run an argument that they still need access to world labour force in the face of significant prospect of economic slowdown in other states,' he said. Research released in the past week showed that the country's jobs market was in for a rocky ride over the next two years, with one economist predicting the unemployment rate would rise as high as 11 per cent. But others had a less negative view. JPMorgan chief economist Stephen Walters said he expected the jobless rate to jump to 9 per cent by

2010, while Commonwealth Bank chief economist Michael Blythe has predicted that the jobless rate was likely to peak at 5.5 per cent by late 2009. Chamber of Commerce and Industry of WA chief executive James Pearson said a state-based approach to immigration quotas could be on the cards. 'Having spoken to the locally-based representatives, my understanding is that there is a move towards more state-based approaches to the immigration quotas for permanent and temporary [migrants],' Mr Pearson said. 'There is an understanding that we need to be more discriminating about where workers are needed in this country,' he said. 'I would be looking to encourage the relevant organisations at the state level, the SBDC [Small Business Development Corporation], the state governments and chambers to be working with business communities to understand what the needs are and encouraging the federal government what WA needs and what WA businesses need and not be overly influenced by what's happening on the eastern seaboard.' WA's unemployment rate currently sits at 3 per cent, lower than the national rate of 4.3 per cent. The number of 457 visas granted during the past year is up 41 per cent on the previous year to 11,800, another reflection that the lack of locally sourced workers is still a major issue for WA businesses.

Ultimateskills Global chief executive George Gelavis told the forum that his clients in WA and QLD were still experiencing high demand for skilled labour, despite the global financial crisis. 'I can absolutely categorically tell you that our customers are ploughing along as if nothing had happened. The shortages they have are so severe that any change at a macro level is not coming into their thinking at a local supply of labour level.' Attendees of the forum agreed that the immigration problem should be looked after by the Minister for Employment and Workplace Relations, Julia Gillard. 'I would like the government and maybe Julia Gillard to have a look at the protection of the Australian labour market and pick that issue apart,' Mr Engles said. **'We have to look at the benefits that we get from skilled international workers coming in. Some paid for all the education and training, they're job ready and willing to do it at \$60,000 a year compared to the ridiculous labour rates that we're getting at the moment,' he said. (Emphasis added.)**

The second set of remarks from Mr. Engles clearly show the real reason many employers favour temporary migration under the current provisions of visa 457. Whilst his first set of remarks could be regarded as the 'publicly stated reasons'. Clearly some employers have an aversion to trades qualified workers earning more than a meagre wage and are turning to the visa 457 programme to undercut local market rates.

Second, I have attached a presentation given by Bob Kinnaird to a Catalyst Forum in May this year. I have extracted a table from this presentation which demonstrates a key structural weakness of the current visa 457 programme.

457 median vs ABS median earnings 2006-07

ASCO Sub-major group	457 Visa grants	457 Median Salary	ABS Median Earnings, 2006*	Difference
			\$	\$
<i>Selected occupations</i>				
23 Health Professionals	7,065	56,400	59,498	-3,098
34 Health and Welfare Associate Professionals	300	41,900	46,890	-4,990
41 Mechanical and Fabrication Engineering Tradespersons	3,225	41,900	52,100	-10,200
43 Electrical and Electronics Tradespersons	930	47,000	49,495	-2,495
71 Intermediate Plant Operators	170	40,700	44,285	-3,585
73 Road and Rail Transport Drivers	95	41,400	44,546	-3,146

Source: DIAC and ABS unpublished data.

* Full-time employees, persons. ABS 6310.0

This table shows the discrimination built into the design on the visa 457 programme. That being the effect of the minimum salary level on median rates of pay. This analysis of median earnings itself does not take into account the levels of remuneration available under CFMEU enterprise bargaining agreements.

The following is an example of what a trades level employee (CW3) can earn under a typical New South Wales CFMEU Enterprise Agreement.

CW3 hourly rate as at 01/10/08 = \$24.07 per hour, in addition the following is paid;
 Productivity allowance for each hour worked = \$3.50;
 Daily fares and travel allowance = \$25;
 Weekly redundancy Allowance = \$68;
 Overtime meal allowance = \$20 per weekday overtime shift.

Assuming a typical commercial working pattern of three ten hour days (6 hours at 150% pay) and two eight hour days Monday to Friday, with an eight hour day (2 hours at 150%, 6 hours at 200%) on Saturday, a CW3 employee will earn;

Ordinary Hours: 24.07 x 36	= 866.52
150% Hours :39.26 x 8	= 314.08
200% Hours: 52.34 x 6	= 314.04
Productivity: 3.50 x 50	= 175.00
Fares and travel 6 x 25	= 150.00
Overtime meal allowance 3 x 20	= 60.00
Sub Total	= \$1879.64 x 48 weeks
	= \$90,222.72
Annual leave (24.07 x 36 x 4) x 1.175 + (4 x 5 x 25)	= \$4572.65
Redundancy Allowance 52 x 68	= \$3536.00
Superannuation Base = 1117.52 x 9% x 52	= \$5229.99
Total Remuneration	= \$103,561.36

This brings into sharp focus the comments of Mr. Engles that *'they're job ready and willing to do it at \$60,000 a year compared to the ridiculous labour rates that we're getting at the moment'*, and hopefully gives the Inquiry an understanding of the raw commercial advantage that the visa 457 programme can give to an employer.

Last we promised some case studies of visa 457 abuse. These are attached and in the absence of any detailed research by DIAC or DEEWR they give at least an anecdotal picture of the visa 457 programme at the ASCO 4 level.

I thank the Inquiry for taking the time to hear my evidence and the opportunity to provide this further material.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J. Sutton', written in a cursive style.

John Sutton
National Secretary
CFMEU