

**Dave Oliver address to Migration Institute of Australia conference
Thursday, 30 October 2014, Canberra**

As part of the debate around the 457 visa program, unions often get accused of being xenophobic or playing the race card. It's a slur we will continue to hear from our opponents I'm sure.

I want to make very clear again today that we will never support the debate being hijacked in that direction.

For our part, the union movement is proud of the role we have played in advocating on behalf of all workers affected by the 457 program.

For years now, unions have been standing up not only for Australian workers whose right to jobs and training opportunities have been ignored by those employers who prefer to take the easy option of the 457 visa program.

We have also gone into bat for the many 457 visa workers who continue to suffer at the hands of unscrupulous employers, and agents, who have taken unfair advantage of them

In recent months, unions have again taken up the cudgels on these issues as the review of the 457 visa program (headed by my fellow panelist John Azarias) has unfolded.

The temporary 457 visa program has been with us now for well over a decade and it seems that it creates as much interest and passion as ever from all quarters.

The suggestion that we are somehow trying to demonise 457 visa workers is, frankly, an insult to unions who are out there in workplaces across the country every day helping those very same workers (even when they are not union members).

The ACTU and our affiliated unions are longstanding supporters of a strong, diverse and non-discriminatory immigration program.

Immigration is an absolutely integral part of the Australian story. Migrants have made and continue to make an invaluable contribution to Australia's social, cultural and economic life.

Through their skills, hard work and initiative, migrants have played a crucial role in building the nation, the Snowy Mountains Scheme being just one, oft-cited, example.

Unions are particularly proud of the fact that hundreds of thousands of our members across the country are migrants or come from migrant backgrounds. A quick look through the names in any union phone directory will show that union officials too have similarly diverse backgrounds.

We recognise and support the fact that skilled migration will continue to be a part of the response to our future national skill needs.

Our clear preference is that this occurs primarily through permanent migration where workers enter Australia independently.

We believe this is the form of migration that best gives migrants a stake in Australia's long-term future and it removes the 'bonded labour' type problems that can emerge with temporary, employer-sponsored migration.

But we do acknowledge that temporary migration can have a role to play in filling genuine short-term skill shortages, provided that some fundamental conditions are met:

1. That the priority must always be on maximising jobs and training opportunities for Australian workers – that is, citizens and permanent residents of Australia, regardless of their background or country of origin. Whether it is young Australians looking for their first job or older Australians looking to get back into the workforce or change careers, they deserve an assurance that they will have first access to Australian jobs.
2. That when overseas workers are required on a temporary basis to fill genuine shortages that can't be filled locally, those workers must be treated well, be safe in their workplace, receive proper Australian wages and conditions, and be able to join and be represented by a union, just as all Australian workers can.
3. This is also about ensuring that employers are not let off the hook; making sure employers can not just take the easy option of the 457 visa program without first looking at the local labour market and investing in training to develop the skills of local workers – and ensuring employers who do do the right thing are not undercut by those employers who exploit and abuse the 457 visa program.

Today, we are currently waiting for the Government's response to the report and recommendations from John Azarias and his panel.

I'd like to just take a bit of time today to consider two elements of the report – one, the finding that there is no evidence of widespread rorting, and two, the recommendation to abolish labour market testing.

The overall message from the report is that there are no real problems with the program, just a few isolated cases here and there, but really nothing to worry about, no systematic exploitation.

Well, that's what we keep being told, but yet the evidence of major problems just keep coming.

Unfortunately, we hear of cases of exploitation all too often.

Just to name a few:

- 457 visa workers having half their salary deducted by their sponsoring employer to pay for migration agent fees on the promise of getting permanent residency
- Exorbitant charges and interest payments of up to 48% on loans for 457 visa holders to be placed into jobs
- In one case, a large number of nurses from China were brought to Australia on the promise of getting a 457 visa after they received some English language training, but the jobs never materialised and they were forced to return home with large debts for the training and the agent's fees.

We also provided evidence from the results of independent surveys of sponsoring employers that suggest thousands of cases of rorting of the program.

The Panel report failed to acknowledge any of this evidence.

It also failed to consider that reported cases are only ever the 'tip of the iceberg' – a fact acknowledged by the 2008 Deegan report – as it is difficult for vulnerable workers fearful of losing their visa and their goal of permanent residency to bring their cases forward.

Instead, the panel relied on the level of non-compliance uncovered by the monitoring of sponsors by the Department of Immigration.

The obvious shortcoming of relying only on what the Department of Immigration uncovers is that it ignores the insufficient resources dedicated to monitoring and compliance and the reluctance of the Department to take action when warranted.

As a case in point, unions who reported cases of gross underpayment of Korean workers on Gina Rinehart's Roy Hill project four months ago are still waiting for a response from the Government.

Nothing in response for four months.

We also heard this week that the Department does not even bother to maintain an information-sharing arrangement with state WorkCover authorities that would help monitor workplace injuries and deaths of 457 visa holders and improve workplace health safety for these vulnerable workers.

The only response from the Government so far is to indicate it will accept the Panel recommendation to lower English language standards for the 457 visa program.

For those who think the debate about English language standards is an academic one, can I bring this sobering finding to your attention.

Since the 457 visa program came into place, there have been 12 reported deaths of 457 visa workers.

All but one of these deaths occurred when lower English language standards were in place prior to 2009.

Yet the Government wants to take us back to the pre-2009 standards.

Since the panel report came out, more damning evidence of rorting and widespread problems with the scheme has emerged in the form of a 457 visa monitoring report by the Fair Work Ombudsman that has been reported in the Fairfax media recently.

Of the more than 1800 cases it investigated, around half of those involved 457 visa workers on salaries below the legal wage floor for the program – the Temporary Skilled Migration Income Threshold or TSMIT – which is currently set at \$53,900 per annum.

Of those 1800 cases investigated, FWO identified more than 300 workers either being underpaid, or not doing the job they were meant to be doing under the visa, or both.

For example, you had:

- A visa holder who was nominated as a customer service manager but was found to be actually working as a cleaner for \$28,000 a year - \$25,000 below the TSMIT of \$53,900 a year.
- A registered nurse receiving just \$43,368 per annum
- Electricians being engaged on salaries as low as \$40,000, well below the TSMIT, not to mention well below market rates for that occupation.

Many of the problems were in the hospitality industry. The report shows:

- Chefs and cooks brought in promised salaries of more than \$50,000 only being paid \$30,000 – more than \$20,000 below the TSMIT.
- Visa holders nominated as Chefs and cooks but actually working as a kitchen hand or waiter.
- Visa holders nominated as café and restaurant managers actually working as wait staff or casual delivery drivers, occupations that are not even on the list of eligible occupations for the 457 visa program.

The list goes on.

Not even the priesthood is immune from the problems of the 457 visa program. The report identified underpayment concerns in two cases where priests from overseas countries were engaged on 457 visas with a nominated salary of \$72,000 but once in Australia they took a pay cut of \$16,000, with their actual salary found to be \$56,000.

This is all from a report that looked at less than 2% of the current total of 108,000 plus 457 visa holders in Australia. If you applied these findings to the whole program, we are talking about 18,000 visa holders who are not being not paid what they should have been paid, were not working in the occupation they were meant to be working in, or both.

And even when 457 visa workers are treated okay by their employers, they are still treated as second class citizens for most other purposes.

457 visa holders pay tax just as Australian workers do, yet, for example:

- If a 457 visa holder gets sick, they have no access to Medicare.
- If they are here with their children, in some states they have to pay for the privilege of sending their kids to a state school
- If they are injured at work, they lose their entitlement under Workers' Compensation if and when they leave Australia and return home
- If their employer goes belly up, they are not entitled to compensation under the Fair Entitlements Guarantee Scheme

The other side of the same coin is that while 457 visa workers continue to be exploited, Australian workers are missing out on jobs and training opportunities.

In a recent case, one of the multinational resource contractors on the Gorgon project in Western Australia was seeking 30 overseas welders under the 457 visa program.

It claimed it had spent six months trying unsuccessfully to recruit Australians.

Yet within 30 minutes the AMWU were able to find 30 local welders who were skilled, qualified, and looking for work.

We regularly see job ads on sites like Gumtree that don't even make any pretense of seeking local workers.

It demonstrates why a rigorous system of labour market testing is absolutely essential if we are serious about the integrity of the 457 visa program and ensuring the community can have confidence in the program.

We don't argue that each and every 457 visa worker is taking a job from an Australian. That's not what we are saying.

If employers wish to use the 457 visa program, they should first be required to provide evidence of their domestic recruitment efforts.

It's not really much to ask, is it?

And it's not much to ask particularly at a time when unemployment remains stubbornly at 6% and above, its highest levels in a decade.

When youth unemployment is above 13% and up to 20% in some regions.

And at a time when we have seen the announcement of a major series of job losses across the country in the past 12 months.

And frankly, it is a bit rich for a celebrity chef like Neil Perry to be complaining that he has to look overseas for staff for his restaurants when each year our training schools are churning out thousands of chefs and waiting staff and our unemployment rate is heading skywards.

The current labour market testing provisions were a good start, but they are far from perfect, and this Government has only sought to dilute them further.

In fact, if you followed the Government's own administrative guidelines for labour market testing, an employer could meet their labour market testing obligation by posting a single job ad on Facebook or their own company website as far back as 12 months before they sought to engage a 457 visa worker.

On labour market testing, the answer to this problem is to strengthen the current provisions and tighten them up - not to say it's all too hard and abolish labour market testing altogether as the Panel recommends.

In our submissions to the Panel, we identified a number of areas where the current provisions could be improved if the Government was serious about improving the integrity of the program, as it claims.

The exemptions to the labour market testing provisions granted as a result of free trade agreements are a particular concern.

It leads to the absurd situation we have seen with the recent Korea-Australia Free Trade Agreement, where the Australian Government has been played like mugs.

Essentially, the end result of that agreement is Australian employers will have easier access to 457 visas for Korean workers with virtually no labour market testing or other restrictions on Korean workers coming to work in Australia.

Yet South Korea, as is their right, has successfully insisted on labour market testing for Australians working in South Korea.

We await with much trepidation the details of the looming China Free Trade Agreement.

Our position on this is clear. The Australian government should not be entering into any free trade agreements that trade away the right of the Australian Government and Australian community to require that labour market testing occur and Australian workers are given the first right to Australian jobs.

* * *

So to recap our position, there are four simple elements to improving the integrity of the 457 visa system.

1. Ensure that workers who come here under skilled migration programs, irrespective of where they are from, are not treated as second class workers or second class citizens.
2. Maintain rigorous labour market testing so Australians have opportunities to get jobs.
3. Have better enforcement and compliance to protect workers and punish bad employers.
4. Require employers to invest in skills and training – and apprenticeships – to develop sustainable and decent jobs here in Australia, so that employers do not need to go shopping overseas.

To conclude, it's worth just restating why this is such an important issue for the union movement.

And quite simply, it's because the fundamental issues at stake here are about support for Australian jobs, support for Australian training opportunities, and support for fair treatment and decent wages and conditions for all workers.

Above all, it's about dignity at work regardless of who you are or where you come from.

If nothing else, that's what unions are about.

And that's why unions will continue to campaign and advocate strongly in debates over the 457 visa program – on behalf of all workers.

Thank you again and I wish you all the best for your conference.

*** ENDS ***