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457-Visas; The International Brigade  
of The Reserve Army of Labour

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## **Introduction**

This paper examines the way that temporary business-visa are used to enable skilled manual workers to work in Australia. Known as 457 visas they are used like an extension of competition policy, to provide a pool of labour to give choice not to the worker, but to the employer. It will be shown that 457-visas not only influence wages and conditions but also affect apprenticeship numbers and training. This parallels the use of Labour Hire (LH) firms, which at both the local and international levels utilise the skills produced by others without creating any of their own. While this has always been the position of local LH firms (i.e. employing skills without ever reproducing any) it has now become possible for them to use migrant labour or guest workers thus extending their services to the international stage.

Since settlement Australia's labour market has been dependent on migration, though the levels of migration have fluctuated according to needs. In fact since World War Two this reliance has been greater than that of any OECD country (Hugo, 2006:211). In the immediate post-1945 period, the migrants sought for the Australian labour market were of the permanent category. A migrant labour population that was stable and also expected to settle and contribute to population growth as well as the economy (Khoo et al, 2003:27). Migration was the favoured method of augmenting the labour force whereas the European approach was to rely on guest workers (Collins, 2005:9), however Australia now shows signs of turning more towards the European model. By 1995-'96 the ALP government acted on a perceived skills shortage in many professional occupations by introducing the 457 visa scheme that enabled employers to import skilled workers on a temporary basis (TNI, 2006). After the election of the Howard government in 1996 a further liberalisation of rules and regulations took place, removing caps or ceilings on the number of visas that could be granted (Khoo et al, 2003:28). In 2001 the Federal Government opened up the scheme further to such an extent that the checks and balances on skilled migration visas were removed (AMWU News, 2006a:6; Collins, 2005:10).

## **457 Visas, Who and How?**

Businesses that cannot source skilled workers from the Australian labour market may sponsor an overseas worker on a temporary basis for up to four years by use of a 457-visa (DIMA, 2006). It is specified in the nomination that the wage(s) of the worker(s) is/are supposed to be not less than the relevant industrial instrument or award and the working conditions are to be no less favourable than the working conditions provided by the relevant legislation and award (Evans, 2006). The scheme does have the capacity to benefit both Australian and foreign economies. The workers are drawn from many smaller Asian economies and the scheme becomes a source of much needed export earnings for these countries (Sutton, 2006).

Foreign and Australian businesses can electronically lodge sponsorship, nominations and visa applications on the Department of Immigration and Multicultural Affairs (DIMA) website (DIMA, 2006:8). The sponsoring companies are responsible for the 457 workers and have to guarantee that they will provide accommodation, opportunities for permanent immigration and assist the workers to attend English language classes (Evans, 2006). The requirements for application approval however, are that the sponsoring business must be the direct employer (DIMA, 2006:9). Conversely DIMA has ceded much power in the issuing of 457 visas to Regional Certifying Bodies (RCB's). These bodies have the power to give flexibility to the sponsor by giving exemptions from the minimum skills and salary levels (Evans, 2006). This factor may be part of the reason that since 2003-04 the number of 457 visa workers being brought into Australia has increased by sixty six per cent (Schubert, 2006).

To be approved as a sponsor a business must meet a number of requirements. It must demonstrate that it is the direct employer, be lawful and actively operating, have a good business record, will comply with immigration laws, and that the imported worker will bring benefit to Australia and will advance skills through training or technology. (DIMA, 2006:9). In addition, any 457 visas issued have to be for appropriate occupations listed in the Australian Standard Classification of Occupation (ASCO). The employment offered must be for a genuine full time position that is necessary for the operation of the sponsor's business and that the position cannot reasonably be filled locally. Sponsoring employers must make obvious that they cannot fill the positions, usually by demonstrating that they have been unsuccessful when advertising the position a number of times (Evans, 2006). Despite these requirements, in some areas such as manufacturing, the numbers of 457-visas being issued actually outstrip the growth in employment in that sector (AMWU Report, 2006:25). This is indicated by the number of employers sponsoring 457 visa workers, growing by 20% (10,000) in the period 2005-06 (NTHC, 2006).

## **Approving Authorities and Audits**

DIMA requires employers to fill out a monitoring form within twelve months of approval being granted. This form must include evidence of salary levels and training commitments. DIMA also adds that it may also undertake site visits to ensure compliance (DIMA, 2006:12). The monitoring of employers by the carrying out of checks within a twelve-month period was included in the 2000 review of the legislation covering 457 visas (Khoo et al, 2003:29). One migration agent stated that each company when sponsoring a 457 visa is monitored by the Department of Immigration. This monitoring takes place as often as every six months and if there are any breaches the Department will act according to how serious the breach is (7:30 report, 2006). A checklist for employers to show wages and conditions at the particular site is sent out by DIMA (TNI, 2006). Yet in only 25% of cases does DIMA make visits to sites where 457 visas workers are employed, but then this is only a target. In practice, the government admitted that last year it conducted site checks on only 18% of worksites employing 457 visas (NTHC, 2006). Moreover, DIMA actually makes it easier for sponsors to lodge multiple applications electronically (DIMA, 2006:8), thereby increasing its own regulatory workload. From that perspective alone, it is highly unlikely that DIMA's monitoring targets will be met.

Employers in regional or low population growth areas may apply to get certification for lower skill and/or salary and levels from a RCB. With the exceptions of Brisbane, Sydney, Melbourne, Newcastle, Perth, Wollongong and the Gold Coast, accordingly any other part of Australia is deemed to be a regional low growth area (DIMA, 2006:16). Regional cities and areas are thus exposed to lower skill and salary conditions thereby attracting 457-visa nominations, although local unemployment levels may be high. The AMWU has questioned the bona fides of some RCB's as often employer representatives dominate their membership, usually with an employer to government ratio of around five to one. In some cases Directors have been found to be business people or local councillors and with Chambers of Commerce controlling at least three of them (AMWU Report, 2006:22-23). Clearly such RCB's are not neutral. Furthermore, there is nothing in place that actually validates the qualifications of the imported workers. It is simply a tick-off box system where the importer of the labour simply indicates that the worker has the required skills. Workers are not married up to Australian qualifications or standards (Bastian, 2006; AMWU Report, 2006:4).

Clearly there are systemic problems with the 457-visa scheme. This is further borne out by the actual experiences of the temporary workers as the following case studies illustrate. It would appear that DIMA offers little assistance to temporary migrant workers who are abused by their employer (Burrows, 2006).

## **Case Study 1**

In 2005 a group of Korean welders (KW) arrived in Western Australia on 457-visas in search of well paying work and seeking a better life for their families. KSN a Perth LH company arranged the visas so as to fill alleged skill shortages created by the W.A. resources boom. The welders said that they had been promised attractive wages, health insurance and assistance to help them to get settled. KW#1 said that he was making good money in Korea but he thought advertisements for jobs in Australia showed better opportunities so he decided to work here. He believed that he was to get over \$75,000 a year but is unsure how he is getting paid, but it is \$16 an hour after tax. KW#2 was told of a minimum wage of \$54,500 but there was also the possibility to earn up to \$100,000. KW#3 was interviewed in Korea, he was told before coming that everything was provided to enable him to live in proper style. Welder #4 asked the company about health insurance cover and was told he was covered. He received a card but when he went to hospital and showed that card, he was told that it was not acceptable.

*Source: "7:30 Report", Australian Broadcasting Corporation.*

## **Case Study 2**

Dartbridge, a Brisbane LH company, brought a group 40 Filipinos welders (FW) to Australia . The guest workers earned \$21 an hour regardless of whether they worked shiftwork or weekends. They did not receive sick leave and could be terminated with a day's notice. FW#1 claimed that they were earning only \$400 per week for 42 hours of work. FW#2 also said that the wages were only \$400 per week for 42 hours. FW#3 said he was obligated to go back to the Philippines after one year and pay another 105,000 pesos (A\$2,770). FW#4 said that he and seven others were being charged \$175 each for sharing a four-bedroom house that had a market rental value of \$350 per week. Other charges included furniture, transport to work and health costs. Dartbridge LH repeatedly threatened to deport them for not working fast enough. The company told them the men would be sacked if they joined the union. After ABC journalists arrived, they received calls from their wives in the Philippines. FW#2 "The agency in the Philippines called my wife she called me". FW#3 also said that his wife was very nervous and told him not to join the union. Three of the welders had their contracts terminated and five others were told to resign or they would lose their visas.

*Source: "Lateline", Australian Broadcasting Corporation*

## **Case study 3**

A Chinese worker was imported under the 457 visa scheme after paying \$27,000 to a labour hire firm known as 'Worldlink to China Services'. The worker understood that he was to be employed supervising the workplace maintenance programme. However he was employed doing menial tasks and although not having any experience was also expected to do welding work. His contract prohibited him joining a union and he could not speak any English. The worker broke both of his wrists in separate incidents while at work. He was then put off and the company then threatened him with deportation.

*Source: "The World Today", Australian Broadcasting Corporation*

## **Case Study 4**

Twenty four Chinese workers were hired on 457 visas by a Chinese Government Corporation, Hunan Industrial Services and the company gave assurances that it was paying award rates. When questioned by union officials the host employer, ABC Tissues admitted that the workers' wages were being paid back in China but the union was unable to verify rates of pay, or deductions being made. However when AMWU officials spoke to the workers via an interpreter, they were told that these workers were being paid at Chinese rates of pay, which is around 90¢ per hour. They were also promised a bonus when they got home. Safety was also major concern at the ABC Tissues work site. A course was arranged to obtain the obligatory "Construction Induction Certificate" (green card). A Chinese instructor hired by the host company conducted it. The workers did a test for the certificate on the Friday before the Anzac Day long weekend and 10 out of the 14 failed. The test was given again on the Monday public holiday and on this occasion they all passed. A lack of adequate English also contributed greatly to OH&S breaches. Although not being able to read safety signs, understand evacuation or safety procedures the workers continued to work on site.

*Sources: Interview with AMWU official P. Bastian, AMWU News, Spring 2006c & AMWU Enews Vol. 1 Issue 37. 2006a.*

## **Avenues of Exploitation**

Besides exploitation, the common thread that runs through the case studies is the involvement of LH firms be they domestic or from overseas. However this aspect will be dealt with later in the paper. The above cases could be seen as just the tip of the iceberg. When the AMWU audited two major sites they were dealing with, it was found that the workers were not covered by workers' compensation insurance (Bastian, 2006). A report by the WA government showed that of employers using 457-visa labour, 78% were not meeting basic obligations for their workers (AMWU News, 2006a:6). The 457-workers are completely dependent on their employer to reside and work in Australia (AMWU Report, 2006:5). This makes them a bonded form of labour and opens them to greater degrees of exploitation. The AMWU cites research that asserts some employers using 457-visas are paying under the local market rates for skilled tradespeople (Schubert, 2006).

The use of a cheap alternative source of labour has meant that employers adhering to the usual industrial relations norms are placed at a disadvantage. In fact an official from the AMWU, said that there were instances where these short-term migrant workers have replaced Australian workers, rather than being used to fill genuine skill shortages (The World Today, 2006). It can also be common for people being imported on a skilled visa to be allocated unskilled work on a lower wage (Evans, 2006). This in itself allows the importation of unskilled labour as any Australian tradespeople working at a lower level for their usual employer get paid at the trades rate. The skill level of some imported workers has also been brought into question. It has been known for local tradesmen to be expected to train and supervise the imported workers (AMWU News, 2006c:7).

Some employers place advertisements for tradespeople offering employment at lower than market rates of pay. Because the lower rates don't attract local workers it then creates an artificial shortage thus giving credence to any 457-visa application. (7:30 Report, 2006; Burrows, 2006). Yet the number of new visas being issued is many

times greater than the number of new jobs being created (AMWU IS, 2006). But unlike domestic workers the 457 workers are contributing to profits in ways other than their labour. One example for instance is that it is not uncommon for workers to be lodged ten to a house and a fee of \$200 charged to each person (Sutton, 2006).

Doug Cameron, AMWU National Secretary has commented that, “even if the minimum legal rate of \$41,850 is paid the workers are still getting ripped by the application of excessive or illegal fees and charges” (AMWU E-News, 2006b). The legal minimum wage that is guaranteed to a 457 worker is virtually a salary. It is not for a 38-hour week but covers any amount of hours worked at whatever time, thus eliminating any penalty rates, so extra wages to which these people are entitled, are not being paid (Evans, 2006). Also RCB exemptions allow employers to pay the award rate rather than the current market rate which is significantly less than the award rate (AMWU Report, 2006:21).

Leighton Holdings says Australia's skills shortage is forcing up pay rates and forcing the company to look offshore for staff (Lateline Business, 2006). This may be the reason why one AMWU official believes that this scheme, combined with WorkChoices, is a Federal Government ploy designed to reduce wages and conditions (TWT, 2006). Immigration minister, Senator Vanstone has been quoted as saying, “Some parties are opposed to the recruitment drive because it opens up the industry to other pools of employees, which undermines the unions' ability to exploit high wages amid the skills shortage” (Shaw, 2006). This is an admission that the scheme is designed to dampen wage demands. DIMA lists an increase in competition as a principal benefit for Australia from the 457 scheme. (2006:11). But one needs to ask competition for and between whom? It is likely that the keenest competition will occur between local and imported labour in the workforce, which in effect must drive down wages and conditions, a classic application of Marx's reserve army of labour (RAL) thesis (*Marx Capital I*). This would appear to be occurring with the tacit approval of the Australian government as is revealed by a brief look at some of the regulatory aspects of 457-visas.

### **Compliance and Penalties.**

By allowing foreign companies to import labour the government effectively allows these companies to operate outside Australian law (AMWU, 2006c:7). This is because with a foreign company there is not any enforcement or accountability in the process, particularly where breaches are concerned – be they related to industrial, occupational health and safety (OH&S) or visa conditions (Bastian, 2006). When a company located overseas breaches Australian law at the state level, that company cannot be penalised, even when a host employer might be deemed liable, for say Workcover issues. This problem also exists under federal law. The only action that the Australian government can take is to place sanctions on the company concerned (Bastian, 2006). These sanctions include the cancellation of any current visa agreement, deliberation of previous non-observance of obligations and preventing an employer from sponsoring workers for a specified period of time. (DIMA, 2006:12).

However, government action at any level is slow to be implemented. For example, one government watchdog, the Office of Workplace Services (OWS), only took action after unions publicized the plight of the workers and demanded that the government take action. As one AMWU official said, “How can the system be effective when the government relies on newspaper reports?” (AMWU E-news, 2006b). Despite the

promises from the Minister for Immigration that if a company is not doing the right thing they will be taken to task, to the union's knowledge nobody has ever been penalised (Evans, 2006). In response to bad publicity about employers abusing 457 workers, immigration minister Vanstone announced a 'strike team' to carry out random checks on sponsors (AMWU E-news, 2006b). However, this would appear to be mere window dressing. As the AMWU has noted, the 'strike teams' are largely a PR exercise that do little to prevent the scheme driving down wages and conditions (Cameron, 2006). This ineffective "action" is exemplified by a particular recommendation from DIMA in a case involving the underpayment of wages. DIMA suggested that the worker in question should take common law action to recover any monies owing (Evans, 2006).

DIMA has the authority to "disclose information to relevant IR bodies in regard to salaries, working conditions, sponsorship undertakings, and the enforcement of employment, industrial relations and other laws" (2006:35). Yet DIMA refuses to release a breakdown of figures by occupation so that neither the numbers of workers nor the occupational distribution can be determined accurately (TNI, 2006). Under current arrangements 457 workers do not have any rights and if they cause any problem can simply have their employment terminated by the employer. Once unemployed, the worker can be reported by the ex-employer as an illegal immigrant (Bastian, 2006).

As can be seen from Case Studies 2 and 3 above, reports of Chinese and Filipino workers signing illegal work contracts before stepping foot in Australia are increasingly common. Such contracts prohibit the workers from joining unions, seeking union representation or taking part in any form of collective action (News, 2006). After a period some workers have had their employment terminated for refusing to sign Australian Workplace Agreements (AWA's) that would cut their wages by \$3 an hour (WO, 2006; AMWU E-News, 2006). But most have little choice if they want the work. Under these conditions they do not defend their rights but rather become submissive, as they are under the constant threat of being deported by the withdrawal of their visa (Sutton, 2006). As AMWU national secretary Doug Cameron has noted: "Unscrupulous employers are using 457 visas to bring in overseas workers who are too scared to speak up when they are underpaid or treated badly" (Schubert, 2006). Occasionally their rights have been defended successfully when unions have been able to access these workers and represent them. For example in the Hunan LH case, 38 workers received an extra \$650,000 in entitlements. In another case an injured worker and three others were awarded over \$93,000 back pay (AMWU E-News, 2006b). The fact that there have been so many complaints and many injustices committed leaves one wondering why any government would want the system to function in this way. Yet the conclusion is inescapable that this is precisely what the Howard government wants. A proposed Senate enquiry to examine breaches and inequalities associated with the 457-visa system was blocked by the Howard government (Ludwig, 2006).

## **LH Companies**

LH by its very nature uses workers as commodities; they are bought, traded and sold just like any other commodity. The history of those working for LH firms is one of acute disadvantage. Employment in this area is characterised by a lack of career opportunities, adverse OH&S outcomes and low levels of training (Watson, 2005:372). Such characteristics also define the process of the widespread casualisation of the workforce.

It is, however, integral to a new approach to managing labour that boosts labour productivity by pushing many of the costs and risks of employment onto workers.

(Buchanan 2004: 4)

457 visa-labour coming from a non-ESB with English language difficulties is placed at a greater disadvantage (AMWU News, 2006b:7). The ACTU believes 457 workers may be hired through international labour-hire companies working hand in hand with DIMA. These companies tell workers to sign AWA's in their home country prior to departure (News, 2006).

The powerful position of the LH firms is reflected by the fact that one company took sponsored men directly from the airport to open bank accounts that gave the LH firm direct debit access (AMWU E-News 2006b). In another instance a Western Australian LH firm was paid \$40 per hour for the services of Korean welders but paid the workers \$15 per hour (AMWU IS, 2006). LH firm, Worldlink to China Services does not try to hide its *raison d'être*, it declares that it helps Australian businesses source low-cost, high-quality skilled workers from China (TWT, 2006). Although not classed as a regional area the Hunter has had a Korean LH firm advertising skilled migrants for hire. The LH firm does all the work associated with providing the skilled worker and the host firm would not have to worry about anything. The host would just have to pay the hourly rate and the LH firm would get the people out to Australia (Bastian, 2006). Commissions to these LH firms as well as accommodation and health cover are not supposed to be withdrawn from wages (DIMA, 2006:15). However, contrary to what is stipulated in the regulations, in practice these expenses are often removed from wages, as there is not any body or organisation checking compliance with the legislation (Evans, 2006).

## **LH companies as sponsors**

According to Kath Evans from the AMIEU a LH company should not be employing the 457 workers, only the sponsoring company under the provisions of the Act (Evans, 2006). The ACTU is also concerned at the role of labour hire companies in the operation of 457 business visas. The ACTU understood that an employer-sponsored visa could only be issued on application from the actual employer. What is happening now however is an explosion in 'international' labour hire companies who enter into agreements with employers to provide temporary migrant workers (Burrows, 2006). The ACTU does not understand how a labour hire company can conduct its business under such a system. They are not the real employer but merely the intermediary that source the labour to be hired by a third party; the workers are "on-hired" as Burrows describes the practice (Burrows, 2006).

DIMA states that the prospective employer must nominate the position to be filled (DIMA, 2006:6). This refers not just to the prospective skill to be filled, but also to an actual nominated position. The effect of complying with this requirement would nullify any LH firm from applying for these workers. Yet this has not proved to be the case. For example, despite not having a registered office in Australia the Chinese state-owned LH firm, Hunan Industrial Equipment Installation was allowed to bring in their own workers from China without any objections from the Federal Government (AMWU News 2006c:7). Throughout the DIMA information guidebook constant reference is made to the fact that any sponsor must be the direct employer of the visa holder. In one section DIMA classifies the obligations of an employer (2006:11). Besides the usual statutory requirements they indicate that the sponsor should have control over the conditions of employment as well as the day-to-day supervision of the visa holder. These two obligations on their own should preclude any LH firm from being a sponsor of 457-visa holders.

## **Training and Skills**

Part of the reason for skill shortages of today can be sheeted home to LH firms trading in skilled labour but which involves little or no commitment to carrying out any apprenticeship training (AMWU Report, 2006:5). It is ironic that LH firms are feeding off a situation that they in part helped create. While the skills shortage is being deliberately overestimated in order that companies may take the cheaper and short-term option of importing labour, it has an impact on local youth and young people who do not get the opportunity to avail themselves of apprenticeships (AMWU News, 2006a:6). But how can any skills shortage be alleviated by internal labour when, for example, the WA Chamber of Commerce & Industry gives the apology that there will still be shortages even though the best training programmes may become available (7:30 report, 2006)? Or when Peter Hendy from the Australian Chamber of Commerce and Industry when referring to 457-visa labour states, “We think it's a sensible, viable alternative to getting skilled labour” (Lateline, ABC-TV)

The training component of information released by DIMA seems to be somewhat ambiguous. They indicate that any employer:

Will introduce, use or create new or improved technology or new business skills; *OR* have a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents in their business operations (DIMA, 2006:9).

By the above it can be seen that that there is not a real commitment towards training as there are enough reasons presented to allow an employer to circumvent introducing any training regime and thus the reliance on imported skills is perpetuated.

## **Conclusion**

The blue-collar 457-visa scheme has been greatly expanded on the basis that there is supposed huge shortfall in skilled labour. However many contend that this is a ploy to bring in a RAL to limit wage expansion. Australia has a history of using migration to dampen wage demands (see Maddock & McLean, 1984:1060-1061) so this hypothesis is quite plausible. For if a company cannot locate offshore to where there is a large RAL then the next best thing is to bring a RAL onshore. While it cannot be said that all blue-collar 457-visa holders are subjected to the same treatment as those indicated in the case studies, the potential for abuse and exploitation is ever-present as there is

very little control by various government departments over sponsors. There is ample evidence that this scheme is being used to exploit 457 workers by the use of enforced AWA's to drive down wages and conditions. It will only be a matter of time before this has a flow-on effect for the domestic worker.

The fact that DIMA guidelines are open to much interpretation is also of concern; it leaves the system open to exploitation by unscrupulous employers. There is also the fact that the penalties for non-compliance are almost non-existent and for a worker to gain justice, recourse to a civil court appears to be the only solution. Working class organisations make attempts to help but the workers are deliberately shielded from union representation, a situation that is illegal even under WorkChoices. The only reasonable conclusion that one can draw is that the federal government is complicit and is turning a blind eye to any discrepancies in the system. For example the provisions for gaining a sponsorship should preclude the participation of LH companies in the process. Yet many of the companies sponsoring 457 visa workers are traditional LH companies while some are more like recruitment agents. The fact that the latter in many cases charge excessive rates for accommodation, transport, health etc, makes them ersatz LH companies, in this case charging the workers on an ongoing basis, rather than host companies.

The last word on this matter should go to Senator Amanda Vanstone, the ex-Minister overseeing immigration. As a justification for the scheme she put forward the idea that skilled workers create jobs for Australians by allowing businesses access to the skills they need, when needed (Vanstone, 2006). However this seems a little ironic in that Australia is ostensibly importing temporary workers to cover a labour shortage, but Vanstone maintains these workers are going to create more employment.

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## **Appendix A**

### **Glossary of Terms**

ABC	Australian Broadcasting Corporation.
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
ALP	Australian Labor Party
AMIEU	Australasian Meat Industry Employee's Union
AMWU	Australian Manufacturing Workers Union
ASCO	Australian Standard Classification of Occupation
AWA's	Australian Workplace Agreements
CCI	Chamber of Commerce and Industry
CFMEU	Construction, Forestry, Mining & Energy Union
DIMA	Department of Immigration and Multicultural Affairs
ESB	English Speaking Background
EBA's	Enterprise Bargaining Agreements
IR	Industrial Relations
LH	Labour Hire
Non-ESB	Non- English Speaking Background
OWS	Office of Workplace Services
RAL	Reserve Army of Labour
RCB	Regional Certifying Body
TNI	The National Interest
TWT	The World Today
Vic	Victoria
WA	Western Australia
WO	Workers Online