



Australian Workers' Union, Queensland Briefing

# The 457 visa program

2014

## INTRODUCTION

The Temporary Work (Skilled) (subclass 457), 457 visa program, is officially intended to enable access of overseas, skilled workers at times of temporary skills shortages in specific industries to help Australia remain internationally, economically competitive. Yet since its introduction in 1996, the program has seldom effectively balanced the temporary needs of industry with safeguarding employment, terms and conditions and training opportunities of Australian citizens and permanent residents.

The Australian Workers' Union and other unions have vehemently campaigned for a temporary skilled visa system robustly enforcing its official aims. However, the temptation to adapt and poorly monitor the program to the benefit of big business and employers so they might access cheap overseas labour, skilled and unskilled, has been a temptation that the Liberals in particular have found too hard to resist. **This has been bad news not only for local workers but for overseas workers also, both of whom are at the mercy of the program's weaknesses, political interests and unscrupulous employers.**

Increasingly, Australian workers have had their pay, terms and conditions undermined and undercut as a result of the 457 program. Some have missed out on training and promotion opportunities, as companies unwilling to invest in training for locals access cheaper, 'off the shelf' workers. The 457 visa program has even included unskilled work. Official statistics show that the most common 457 occupations have changed from highly skilled positions like engineers and medics to those lower skilled such as cooks and retail workers.<sup>1</sup>

The exploitation of 457 visa holders has also been responsible for the 'race to the bottom' of workers' rights.<sup>2</sup> Most often employers have not paid the 457 market salary level. Some have taken money out of their pay wrongly charging them for sponsorship costs or overcharging for accommodation and food. Others have made them work excessive hours, not paid overtime or penalty rates and/or not met their legal responsibilities under the Fair Work Act or National Employment Standards - including the right to join a union. Some employers have simply hired overseas workers skilled in a role on the skilled occupation list but employed them in an unskilled role.<sup>3</sup> This vulnerable group of workers are easy targets for dubious businesses and taking advantage of their hopes to stay in Australia (as some 70% of 457 visa holders do<sup>4</sup>) or their poor English literacy. **In this way, employers not only deprive individual overseas workers of their rightful reward, but they also ultimately undermine the rights and conditions of the Australian workforce as a whole.**

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<sup>1</sup> <https://www.immi.gov.au/media/statistics/pdf/457-quarterly-report-2014-03-31.pdf>

<sup>2</sup> <http://www.immi.gov.au/pub-res/Documents/reviews/migration-council-aus.pdf>

<sup>3</sup> See for instance <https://www.immi.gov.au/skilled/457-integrity-review.htm>, <http://www.theage.com.au/comment/dodgy-visas-could-cost-australian-jobs-20140813-1039no.html> and <http://www.migrationcouncil.org.au/assets/files/f700eb611.pdf>

<sup>4</sup> <http://www.migrationcouncil.org.au/assets/files/f700eb611.pdf>

### Ben Swan

Queensland Branch Secretary  
The Australian Workers' Union  
Level 12, 333 Adelaide Street, Brisbane, Qld 4000  
Phone: 07 3221 8844 | Fax: 02 8005 3300  
Website: <http://www.awu.net.au> | Email: [secretary@awu.org.au](mailto:secretary@awu.org.au)

## THE 457 VISA PROGRAM IN QUEENSLAND

Following substantial year on year increases in the 457 visa grants, 2013-2014 saw a decline of 30% in Queensland from 8,540 applications granted to 5,980. Yet, the number of visa holders in Australia grew again by 5.9%, a record high.

In Queensland the industry with the highest numbers of nominated positions in 2013-2014 are Accommodation and Food Services (950), Other Services (750) and Health Care and Social Assistance (630).<sup>1</sup> The top three nominated occupations in the same year were cooks (400), café or restaurant managers (380) and mechanical engineering technicians (210). The top three countries where 457 visa holders are citizens were India (1,150), the UK (1,000) and the USA (410).

It is too early to provide a definitive answer for why the decline occurred last year, but Labor's strengthening of the program's governance to ensure that it is being appropriately implemented could be behind the fall.

## RECENT CHANGES TO THE 457 PROGRAM

- In 2013, in response to mounting concerns about its susceptibility to fraud and rorts, the National Labor Government strengthened 457 visa rules including employers having to carry out labour market testing to prove that, before turning to the 457 scheme, "a suitably qualified and experienced Australian citizen or Australian permanent resident is not readily available to fill the nominated position".<sup>5</sup> Although labour market testing would have been better carried out by an independent body rather than the employer, ***it undoubtedly was a vital step in ensuring that employers do not see the 457 visa program as an invitation to secure cheap labour.***
- Despite much evidence highlighting the detrimental impact on workers as a result of the 457 scheme's shortcomings,<sup>6</sup> and the fact that labour testing merely seeks to ensure that the program is working effectively, members of the then Opposition deemed the change "another policy failure....and an attack on skilled migrants".<sup>7</sup> Now in Government, these members have wasted no time in unpicking elements of the 457 program which have been designed to safeguard Australian workers. The Australian Workforce and Productivity Agency, key in determining which occupations

<sup>5</sup> [http://www.austlii.edu.au/au/legis/cth/num\\_act/masva2013501/sch2.html](http://www.austlii.edu.au/au/legis/cth/num_act/masva2013501/sch2.html)

<sup>6</sup> <https://www.immi.gov.au/skilled/457-integrity-review.htm>

<sup>7</sup> <http://www.theguardian.com/world/2013/jun/27/mps-pass-457-visa-bill>

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The Australian Workers' Union  
Level 12, 333 Adelaide Street, Brisbane, Qld 4000  
**Phone:** 07 3221 8844 | **Fax:** 02 8005 3300  
**Website:** <http://www.awu.net.au> | **Email:** [secretary@awu.org.au](mailto:secretary@awu.org.au)

were in shortage, was closed in July 2014. **The Federal Government has also repealed Labor's rules so that now once a company is approved for one employee sponsorship it no longer need reapply for extra workers within a set timeframe, calling it 'union red tape' reduction.**<sup>8</sup>

- From March to August 2014, the Federal Government also carried out a review of the 457 visa program, to which the AWU made a submission<sup>9</sup>, with one objective being "to report on the scope for deregulation". In September, the review published its report<sup>10</sup> which Immigration Minister Scott Morrison said was a "balanced and measured set of reforms".<sup>11</sup> Despite the Labor Government's changes to the 457 visa scheme, the lack of time that has passed to be able to properly assess their impact and whether they are behind the recent decline in visa grant applications or the claims of the current Australian Government that there is "no evidence" or rotting of the system, the report proposes a significant overhaul of the system. **They include the abolition of labour market testing and the watering down of the language requirement – two important elements to ensure the system works effectively and the health and safety of the workplace.** It also includes extending the visa duration from 4 to 5 years, ending the current training requirements so that employers pay a contribution (e.g. \$400) direct to the Government and making it easier for larger companies with sanction free track records to nominate overseas workers.
- Finally, the review suggests that Labour Agreements and designated area migration agreements (DAMAs) should be "responsive and appropriate mechanism[s] of addressing issues specific to regions and/or occupations where the market rates are clearly below the Temporary Skilled Migration Income Threshold (TSMIT)". **The previous concerns that migrant workers could be paid up to 10% less than equivalent local workers, with the award wage to be seen as the minimum, could become a reality.**<sup>12</sup>

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<sup>8</sup> Immigration Minister Scott Morrison: <http://www.irishecho.com.au/2014/04/16/govt-further-relaxes-457-rules-for-employers/31428>

<sup>9</sup> <http://www.immi.gov.au/pub-res/Documents/reviews/awu.pdf>

<sup>10</sup> <http://www.immi.gov.au/pub-res/Documents/reviews/streamlined-responsive-457-programme.pdf>

<sup>11</sup> <http://news.smh.com.au/breaking-news-national/457-visa-scheme-set-for-major-overhaul-20140910-3f6wl.html>

<sup>12</sup> <http://www.theguardian.com/world/2014/aug/29/darwin-migrant-workers-wont-be-paid-less-in-new-457-scheme-coalition-says>

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## 475 VISA PROGRAM AND CURRENT ECONOMIC CONTEXT

In August 2014, the unemployment rate jumped to a 12 year high of 6.4%.<sup>13</sup> Youth unemployment was at a 13 year high of 14.1%.<sup>14</sup> Yet the Australian Industry Group in its submission to the current Federal Government's review on the 457 program called for significantly increasing immigration to meet skills shortages.<sup>15</sup> This is despite cuts to apprentice numbers, and young, skilled Australian citizens and residents – such as nurses and other health professionals - struggling to find employment in the industries for which they are qualified.

There is no doubt that immigration can bring economic and social benefits to Australia. But with more than 1.2 million temporary migrants in Australia<sup>16</sup> who are eligible to work (under a range of different visas including the 457), and in view of Australia's rising unemployment rate in particular, a number of questions need to be asked:

- If there are legitimate and long-term skills shortages in the Australian workplace; then why?
- Why are there not adequate training and education, and national and regional, economic planning and investment to ensure that there is an appropriately skilled workforce in Australia?
- Why is unemployment increasing, yet jobs cannot apparently be filled?
- Are appropriate wages being offered by employers to attract and retain their staff?
- Why are immigration and the use of the 457 visa program being seen and used by governments and employers as a part of workforce planning, and not just a temporary fix?
- Why are programs such as the 457 visa seen as the preferred solution, if not to assist employers in their quest to reduce labour costs?

<sup>13</sup> <http://www.abc.net.au/news/2014-08-07/unemployment-surges-to-12-year-high-at-64-pc/5654926>

<sup>14</sup> Ibid

<sup>15</sup> <http://www.theguardian.com/business/grogonomics/2014/jan/16/is-there-really-a-skills-shortage>

<sup>16</sup> <http://www.theguardian.com/news/datablog/2013/jun/18/457-visa-statistics-workers>

## CURRENT RULES GOVERNING THE 457 VISA PROGRAM<sup>17</sup>

The 457 visa program is an uncapped program, with the aim of being able to respond to temporary skills shortages as and when they arise. It is considered to be the most flexible and easy to use of temporary visa work programs, which is one of the reasons unscrupulous employers prefer to resort to this program rather than, for instance, apply through an appropriate temporary unskilled worker visa program. Below is a list of key elements of the program:

### Key elements of the 457 visa program

- **A 457 visa lasts up to 4 years.** After this time an application for a renewal can be made.

*The number of onshore applicants for 457 visa holders (e.g. those being renewed) has been increasing over time.*

- **An employer wishing to nominate an overseas worker for a 457 visa must apply to be a standard business sponsor.** To become an approved sponsor, an eligible business must establish that they are lawful, meet certain standards set out by the Immigration and Border Protection Department such as in relation to training (although this only applies to businesses who have traded in Australia for 12 months).<sup>1</sup>
- **An eligible business establishes their training standards by meeting or committing to meet one of two benchmarks:**<sup>1</sup>
  - **Training benchmark A:** “recent expenditure to the equivalent of at least two per cent of the payroll of the business, in payments allocated to an industry training fund that operates in the same industry as the business.”
  - **Training benchmark B:** “recent expenditure to the equivalent of at least one per cent of the payroll of the business, in the provision of training to employees of the business who are Australian citizens or Australian permanent residents”.

*Whilst the intention of the training benchmark is right – to prevent employers from avoiding workforce training costs by paying for ‘off the shelf’ overseas workers – it is not clear that the current benchmarks are ensuring that Australian workers have appropriate access to training opportunities.*

<sup>17</sup> <http://www.immi.gov.au/Visas/Pages/457.aspx>, <http://www.fairwork.gov.au/about-us/policies-and-guides/fact-sheets/rights-and-obligations/457-visa-holders-workplace-rights-and-entitlements>  
<http://www.immi.gov.au/skilled/skilled-workers/legislative-instruments/> <https://www.immi.gov.au/media/fact-sheets/48b-temporary-business-visa.htm>

- **A nominated/approved 457 holder is entitled to bring eligible dependents, who can work and/or study, with them.**

*There are some concerns over the lack of evaluation of the impact of these potential workers on the local workforce.*

- **A nominated/approved 457 holder must have a minimum language ability of 5 across the four competencies (although exemptions apply) and the skills necessary to carry out the sponsored position (skills assessments can be carried out), and they must carry out this position only.** If this position is terminated or the approved 457 holder leaves the position, they have 28 days to find another sponsored position.

*This rule is considered to make 457 visa holders more vulnerable to rogue employers as they feel heavily dependent on their employers given the limited time they have to find another job and so are unlikely to complain or leave if their rights are not being met by their employer.*

- **Approved 457 visa holders must receive the market salary rate for their role, and be granted the 10 minimum workplace entitlements set out by the National Employment Standards on issues such as maximum hours of work, paid annual leave and other leave entitlements.** In addition, their employment may be covered by a modern award, which provides minimum wages and conditions (such as breaks or different rates of pay).

- **Sponsorship obligations are monitored by the immigration department, in conjunction with other federal and state bodies, during and for up to five years after sponsorship.** These include requests for written information, site visits and information sharing. If employers fail to meet their obligations, they may face limited barring restrictions. They may be asked to 'promise' in writing that they have taken action to ensure the transgression will not happen again. Infringement notices can also be issued (of up to \$10,200 ) or a civil penalty order can be applied for (of up to \$51,000 for a corporation or \$10,200 for an individual for each failure).

*There is widespread concern that the monitoring processes and sanctions in place are not sufficient to deter employers rorting the program.*

### **AWU POSITION STATEMENT:**

Earlier this year, the AWU responded to the current Government's review into the 457 visa program,<sup>18</sup> and supported the submission made by the ACTU to the same review.<sup>19</sup> These two documents can be read for a comprehensive understanding of the AWUQ's views, but are summarised below.

1. **It is imperative that Australian workers' pay, terms, conditions and training and apprenticeship opportunities are not undermined** by the 457 visa program, or any other immigration program.
2. **The 457 visa program should only be used to meet genuine temporary, skills' shortages**, that cannot be met through the employment and training of Australian citizens and permanent residents.
3. **The first priority for any Australian Government in reviewing the 457 visa program must be to support decent jobs and training for Australian citizens and permanent residents, not dubious employers intent on cutting labour costs.** The current Federal and Queensland State Governments are strong proponents of big business and employers and have been implementing a suite of legislation and policy to help businesses reduce costs, regulations and responsibilities at the expense of the workers' rights and rewards. The AWUQ is greatly concerned that the findings of the Federal Government's review of the 457 visa program presents the complete overhaul of the program, and proposes the abolition of labour market testing and the watering down of the English Language Requirement. Such measures put big business interests before Australian workers' jobs, training and occupational health and safety.
4. **The 457 visa program must be governed by robust checks, processes, monitoring systems and sanctions** to ensure that the program is not used by employers to drive down employment remuneration and conditions, or exploit overseas employees. The changes made to the program by the previous Labor Government must not be weakened, but built on to protect all workers' rights, terms and conditions.
5. To prevent rorting, employers should not be able to access the 457 visa program and overseas workers until they have provided robust evidence of genuine attempts to fill positions locally. **Labour market testing laws are critical to the successful**

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<sup>18</sup> <http://www.immi.gov.au/pub-res/Documents/reviews/awu.pdf>

<sup>19</sup> <http://www.actu.org.au/Images/Dynamic/attachments/8217/ACTU%20Submission%20to%20the%20457%20review%202014%20-%2030%20April%202014.pdf>

**implementation of the 457 visa program and the AWUQ will continue to push for their retention.**

- 6. The AWUQ strongly supports the English Language Standards for workers under the 457 visa program.** Critically, it will help ensure good OHS in the workplace, and minimise the potential for worker exploitation as their rights are better understood. It will also ensure they are effective team members, help their integration both in and out of the workplace and ensure they are able to pass on their skills to their colleagues.
- 7. The Market Salary Rate must be vigorously retained, appropriately increased each year and enforced to protect the most vulnerable workers** (often less skilled or less highly paid) whose jobs are affected by the program or who come from overseas to take up positions in Australia.
- 8. The list of eligible occupations under the 457 visa program must only include skilled – not semi-skilled or unskilled - professions and trades that are temporarily in shortage.** Failure to do so will undermine both Australia's economic competitiveness and social and cultural cohesion.
- 9. The training requirements of the 457 visa program do need revision: they are not effectively helping to train Australian workers, particularly if an apparent skills shortage continues to exist in Australia whilst unemployment increases.** However, it is not clear how the current review's recommendation that a direct employer contribution be made to the Federal Government instead will help provide Australian workers with more training opportunities. Training needs to be managed locally and targeted to areas where employers turn to the employment of overseas workers.

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