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**MIGRATION LEGISLATION AMENDMENT (WORKER  
PROTECTION) BILL 2008**  
**03/12/2008**

**Mr KELVIN THOMSON** (Wills) (12.47 p.m.)—The Migration Legislation Amendment (Worker Protection) Bill 2008 concerns the temporary migrant worker program, referred to as the section 457 visa system. Let me make it clear right from the outset that I am not a fan of this program. There have been at least seven problems with this program. First, the migrant workers have been paid much less than the rate which would be paid to a permanent Australian resident doing the same job. This means that not only are the migrant workers themselves exploited and underpaid but downward pressure is applied to the wages and conditions of Australian workers. Section 457 visa tradespersons, for example, on average are being paid more than \$10,000 per year less than the average Australian tradesperson. Evidence given to the Deegan inquiry—which I will refer to later—points to 80 per cent of section 457 visa tradespersons being paid the minimum rate.

Second, the Howard government did away with labour market testing. That is to say, there is now no requirement to show that there is a shortage of Australians capable of doing the job that the section 457 visa entrant is being brought in to do. This means that people get brought in on a section 457 visa and end up being unemployed. It also means that Australians who might otherwise enter the workforce continue to remain outside it. Third, the skilled migration program in general and the section 457 visa program in particular have become a business, spawning migration agents and labour hire firms who make money—much of it out of the temporary workers—and who have little incentive to enforce the various rules surrounding the 457 visa program and plenty of incentive to rot the whole system. Fourth, the requirement that only employers who have a demonstrated track record of training Australians should be able to access the scheme has not been properly enforced or monitored and has broken down.

Fifth, there are clear weaknesses of the temporary worker scheme compared with permanent skilled migration. For starters, there is no testing or proper accreditation arrangement to ensure that temporary entry workers are properly qualified. In addition, they are not required to have English language skills. It means that such workers are often inadequately qualified and find themselves unemployed. English language skills are ultimately an essential requirement of Australian workplaces. There is no reason, in my view, that these differences between the permanent and temporary skilled migration scheme should continue.

Sixth, the scheme puts enormous power in the hands of employers and is open to abuse. The requirement for a 457 visa applicant to have an employer sponsor is accompanied by a provision that, if a worker loses their sponsor, they have 28 days to find another one or they will be required to leave the country. This enables employers to exploit and abuse migrant workers and to trample on their rights, through the all too simple device of threatening to withdraw their sponsorship.

Seventh, there has been a lack of transparency surrounding section 457 visas. The Howard government refused to release appropriate details about who is employing 457 visa holders, and what they are being paid. There are some clear reforms which would improve the integrity of the section 457 visa and address some of the orts—for example, introduction of labour market testing, a system requiring the payment of market rates and greater transparency. I believe that employers who want governments to bring in cheap, vulnerable temporary migrant labour are trying to avoid basic responsibilities. One is to offer wages and conditions sufficient to attract workers to work for them, and the second is to contribute to an apprenticeship and training system which ensures that Australia has a skilled, modern workforce.

I commend to the House the statement by the Australian Manufacturing Workers Union, the CFMEU and the Australian Nursing Federation concerning temporary migrant labour, which notes that the 457 temporary migrant worker program 'has become notorious for the abuse and rip-off of migrant workers' and that government data shows that 457 tradespersons earn much less than the average Australian tradesperson and are exploited through exorbitant fees and charges which further reduce wages.

The sign-on statement produced by these unions notes that, under the current 457 visa system, employers can pay less than the rate they would pay a permanent Australian resident in the same job, use 457 visa workers on weekends and shifts to avoid the penalty rates they would have to pay the rest of the workforce and threaten workers with the sack and deportation if they question the boss or seek work with another employer. I note that yesterday the *Australian* reported:

The number of warnings given and penalties levied on employers for breaching the controversial 457 visa program has exploded in the past three years ...

The report in the *Australian* notes that the number of formal warnings issued to employers for breaching aspects of the scheme leapt from 99 in the year 2005-06 to 1,353 in 2007-08 and that the number of employers who were actually sanctioned for violating the terms of the program also spiked, going from just three in the year 2005-06 to 19 in 2007-08. It is worth observing that the changing nature of the 457 program has contributed to a rise in abuses. The number of people in the high risk group for exploitation—that is, tradespeople and below—has exploded in the last three years, and compounding this effect is the fact that the program has increasingly drawn people from low-wage countries such as the Philippines, China and India. Mr Bob Kinnaird, who is an expert in this area, says that these two things are related. The increase in 457 visas for tradespeople and below has mainly been from low-wage countries. It is also noted in the report that the number of 457 applicants has been increasing very substantially. The number of 457 applicants jumped from around 46,000 in 2006-07 to 58,000 in 2007-08, an increase of 24 per cent, and a total of 110,000 temporary work visas were issued to workers and their dependents, a rise of 27 per cent. Clearly the 457 visa scheme has been skyrocketing.

I want to support the Migration Legislation Amendment (Worker Protection) Bill 2008 before the House, because it amends the Migration Act: to create a new sponsorship framework with heightened enforcement mechanisms that will give the department new and greater legislative authority for providing a better structure for sponsorship obligations for employers and other sponsors; to improve information sharing across all levels of government; to expand powers to monitor and investigate possible non-compliance by sponsors, with punitive penalties for non-compliance; to introduce of meaningful penalties for sponsors found in breach of their obligations; and to give the power to create significantly broader regulations to define the scope of the newly expanded sponsorship framework.

The bill maintains the sanctions of barring and cancelling where there is a breach of a sponsorship obligation, while providing for two new sanctions: civil penalty proceedings and infringement notices in lieu of civil penalty proceedings. The bill provides that, if an approved sponsor fails to satisfy a sponsorship obligation, the minister may seek an order in the Federal Court or the Federal Magistrates Court that they pay a civil penalty of up to \$6,600 for an individual or \$33,000 for a body corporate. The department will retain the ability to cancel an employer's approval as a sponsor or bar them from making applications for approval as a sponsor for a period of time. The bill introduces new inspector powers, which can be exercised for the purpose of monitoring compliance with sponsorship obligations and for other purposes prescribed in the regulations. The new laws will enable specially trained officers with investigative powers to monitor workplaces and conduct site visits to determine whether employers are complying with redefined sponsorship obligations.

There is also an amendment to the Taxation Administration Act, which will enable the disclosure of tax information to the department, allowing confirmation with the tax office to ensure the correct taxable salary is being paid to visa holders. The existing provisions for the disclosure of information have proved insufficient and ineffective in ensuring that overseas workers are being paid minimum salary levels and that Australian wages and conditions are not undermined. The bill provides that the regulations may prescribe obligations that an approved sponsor must satisfy. The prescribed obligations will clearly set out the period of time in which an obligation must be satisfied and the manner in which the obligation is to be satisfied. As a result, the obligations will for the first time be enforceable by law.

By establishing a new sponsorship framework, the bill will strengthen the integrity of temporary working visa arrangements. These arrangements have been eroded primarily due to a lack of compliance with the existing scheme. The integrity of the 457 visa framework has been undermined by its rapid growth and changing role, and it is time that these problems were addressed. The subclass 457 visa was set up with a particular set of economic conditions and labour demands in mind. It was originally designed to be used by a small number of highly skilled—professional—temporary migrants but over time the operation of the scheme has changed. The scheme has begun pulling in a larger proportion of people in trades level occupations as well as increasing numbers of workers from non-English-speaking countries, particularly the Philippines, China and India. It is absolutely clear that workers in occupations below the professional level, and particularly from non-English-speaking backgrounds, are at much higher risk of exploitation.

The Howard government aggressively promoted the subclass 457 visa as a response to Australia's growing skills shortage, but this approach has been a

failure. Between 2003-04 and 2006-07, the department's 457 employer paper based monitoring fell from 100 per cent to 65 per cent of employers, and site visits fell from 22 per cent to 14 per cent of employers. The former minister for immigration, Senator Vanstone, denied that problems with the subclass 457 visa existed at all and even defended the fact that her department did not have the powers to properly monitor visa holders. When questioned by Senator Evans in question time after a number of horror stories came to light about the abuse of subclass 457 visa holders, she claimed that the system was working. As the stories of exploitation grew in 2006, Senator Vanstone ordered the department to stop releasing information about the program to the public.

Meanwhile, high-profile media stories began to emerge of overseas workers being exploited. We started to hear about cases where local wages and conditions were being undermined by employers bringing in workers under the subclass 457 visa scheme. It is worth mentioning some of these stories to the House. They illustrate the vulnerability to exploitation of these workers and the imperative of legislative change to ensure workers are adequately protected. Mohammad Nayeem's boss sacked him when he asked for overtime pay, threatening Mohammed that he would send him back to India. Mr Nayeem was working 50 hours for only 38 hours pay, with an additional deduction of \$100 per week for 'accommodation' in an overcrowded two-bedroom office shared with five other workers.

Just as troubling is the case of Filipino born Rico Mavotas, who contracted chicken pox in September 2007 and was forced to return to work by his Darwin employer, Mawpump, despite his medical certificate stating he was unfit. Mr Mavotas was forced to work in extremely muddy conditions without any protective clothing, which led to him contracting a life-threatening case of melioidosis caused by bacteria present in tropical soils. At least nine migrants on the visa scheme have died in work related accidents in the past two years, almost double the workplace mortality rate of the general working population. Lian Ron Xia, a welder from China, died in September from a head injury sustained in an industrial accident at Byrne Trailers in Wagga Wagga. This occurred after two attempts by union officials before the accident to meet with him and other 457 visa workers employed by the company. Those union officials had been denied access to the work site.

The Director of the Centre for Population and Urban Research at Monash University, Bob Birrell, has commented that such deaths would appear to be the consequence of the changing nature of the program, where workers are drawn from developing nations. They often lack English skills and have debts to migration agents back home. Mr Birrell has said that migrants were also working for sponsors who were not mainstream corporate entities and in rural areas and higher risk industries such as construction. Bob Kinnaird, the migration analyst I mentioned before, has said many workers on 457 visas speak little English, are hired in high-risk industries and feel compelled to accept harsh conditions. He said:

These people are desperate for Australian wages. Even where wages are undercutting local wages, they're much higher than they get back home.

He also said:

They're over a barrel in the Australian workplace because if they complain, they would be on the plane home within 28 days.

No less an organisation than the International Labour Organisation has emphasised the increased vulnerability of migrant workers to occupational health and safety risks. In the paper from the ACTU responding to paper No. 2 of the Deegan inquiry, this was highlighted:

... in order to ensure OHS for workers on 457 visas, it is imperative that trade unions have access to workplaces at which these workers are employed.

... ..

Research demonstrates that unionised workplaces are safer ones. Australian Government research shows unionised workplaces in Australia are three times as likely to have a health and safety committee and twice as likely to have undergone a management occupational health and safety audit in the previous 12 months.

The safety of guest workers and locals is jeopardised due to exploitation, lack of skills and a failure to provide OHS induction. Looking forward, I think the government should consider facilitating easier access to work sites for unions, along with benchmarking wages and conditions to the relevant industry collective agreement, to ensure that local wages and conditions are not being undermined. The differential in wages, conditions and safety concerns reduces workplace cohesion. Being paid lower wages than domestic workers for the same work increases exploitation of overseas workers with temporary entry. These workers are also more vulnerable than domestic workers in relation to unfair dismissal or unilateral termination of their employment.

The available evidence, according to Bob Kinnaird, justifies the concern that a very substantial percentage of 457 visa holders are not being paid Australian market rates. In 2006-07, 40 per cent of all 457 sponsor sanctions were for breach of the minimum salary level. As an interim measure, the Labor government on 1 August this year indexed the minimum salary levels for 457 workers for the first time in two years on. Furthermore, we applied that increase to existing visa holders. Since February 2008, labour agreements covering business visas have been subject to a more transparent consultation process. Employers seeking labour agreements are now required to consult with relevant industrial stakeholders, including peak bodies, professional associations and unions, about the proposed agreement and to forward their views to the Department of Immigration and Citizenship. While no group has a veto right to block the approval of a labour agreement, the department now takes into account the views of stakeholders when considering the approval of a proposed agreement.

It is also worth noting that the 2008-09 budget allocated \$19.6 million to improve the processing of and compliance with the temporary skilled migration program. In April this year the minister appointed an industrial relations commissioner, Barbara Deegan, to examine the integrity issues of the temporary skilled migration program. She has since been consulting with overseas workers, union and industry representatives, as well as the relevant Commonwealth, state and territory agencies, and has published three discussion papers. Her recommendations will inform the development of longer term reforms to the 457 visa program, and the government has indicated that these reforms will be brought forward in the 2009 budget. Barbara Deegan's work is informing the Skilled Migration Consultative Panel. That panel was appointed to advise the government on the development of a longer term reform package to improve the transparency, accountability and integrity of the temporary skilled migration program.

The government is committed to ensuring the subclass 457 visa scheme operates as effectively as possible, and the Migration Legislation Amendment (Worker Protection) Bill 2008 is a step towards addressing the legitimate and important integrity concerns about the program. I commend the bill to the House.