



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

**MIGRATION LEGISLATION AMENDMENT
(WORKER PROTECTION) BILL 2008**

Second Reading

SPEECH

Thursday, 27 November 2008

BY AUTHORITY OF THE SENATE

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Questioner
Speaker Polley, Sen Helen

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Senator POLLEY (Tasmania) (12.57 pm)—*The incorporated speech read as follows—*

I rise today to speak on the Migration Legislation Amendment (Workers Protection) Bill of 2008. I have taken an interest in this legislation and this area since I was heavily involved as the Deputy Chair of the Joint Committee on Migration into the inquiry into 457 temporary visas conducted last year.

That inquiry, “Temporary Visas, Permanent Benefits,” served as a wakeup call to a number of us about the 457 visa scheme. While we maintain that the highest priority must be placed on providing Australians with job opportunities and training, the simple truth is that the labour shortage and the skills crisis meant that for a number of businesses it was necessary to get hold of labour as soon as possible. The 457 program should never overshadow the need to develop the training and skills of working Australians.

That is where the 457 visa program comes in. By providing temporary skilled migration, it allows Australia to continue its economic development without being handicapped by a lack of skilled labour. It was designed to address areas of skills shortages within Australia. However, as the skills crisis has deepened, the needs of the labour market demand has changed. The scheme has begun pulling in a larger proportion of people in trade level occupations, as well as increasing numbers of workers from non English speaking countries. These particularly include the Philippines, China and India.

It is now recognised that workers in occupations below the professional level and from non English speaking backgrounds are at much higher risk of exploitation, particularly in the areas where we have traditionally seen industrial relations problems.

During the inquiry we travelled all across Australia and heard some horror stories about mismanagement of employees, exploitation and quite frankly disgusting treatment of a number of foreign nationals brought here to work under the 457 scheme.

We heard from unions about workers too scared to talk to the Department about their mistreatment, or even more appallingly forbidden to talk. Even worse we heard about how some of the workers, lacking in basic English skills, were completely unable to function in Australia.

We heard that some migrants who came here on the 457 program were being exploited in slave like conditions and weren't being paid the minimum agreed wages. We heard the sad case of Pedro Balading from the Philippines. Mr Balading came to the Northern Territory expecting to work on a farm. Instead his job became fence posting and one day

he was thrown from the vehicle he was riding in and died from his injuries. Not only was he lied to about his job and duties, but he then faced the indignity of his wages being garnished for his living expenses.

There was also the case of Mohammed Nayem who came here from Singapore who was forced to work 50 hour weeks, paid for 38 hours a week and then had \$100 forcibly deducted from each pay packet as rent for his room – a converted office that he shared with five other men.

Australia didn't turn out to be the land of opportunity for them.

I was truly shocked at the level of abuse of the scheme that was occurring. These abuses convinced me at the time that the Scheme, required serious reform if it was to continue.

I congratulate the Minister for this reform to address these concerns.

While the 457 Visa scheme is a wonderful idea, the sad truth is that the previous Liberal/Coalition Government failed to implement a number of simple oversight measures in the original legislation that even their own members should have been able to see were necessary. In that respect it had all the hallmarks of a Howard Government labour scheme – unfair and poorly thought out. A number of the recommendations we put forward in our report into the scheme were simple common sense ideas that really should have been present in the original scheme.

That they were not is a sad indictment on the motivations of the Howard Government.

I commend this legislation, and Minister Evans, for addressing a number of the concerns that we raised in that report. This bill will introduce a range of provisions designed to better protect temporary overseas workers.

These include:

- Improved monitoring powers;
- The introduction of civil penalties for sponsors who breach obligations;
- Clarifying sponsor obligations and ensuring that they are enforceable under the Act;
- Ensuring that there is greater information sharing amongst Government agencies.

It is vitally important that these reforms are passed in 2008. We have consistently demonstrated our commitment to improving the integrity of the 457 visa program over

a number of years and here is tangible proof of that commitment.

The integrity of the 457 visa program has been undermined by its rapid growth and changing role, but it is only now – by the Rudd Labor Government - that its problems are being addressed.

For those in the Chamber who may be unfamiliar with this program, the 457 visa program is designed to allow overseas workers to enter Australia for a period of four years and to work in skilled occupations.

The scheme has increased four-fold in the last four years with around 110,570 people currently on the scheme in Australia.

In June of last year, the previous Government introduced a Bill that was belatedly aimed at addressing some of the problems that we had noticed in the 457 program. However that Bill was never debated and not passed prior to the previous Election. The Minister at the time, Kevin Andrews put forward these changes too late, and in a heavy handed way which meant that everyone involved in the scheme was caught up in extra red tape.

The Rudd Labor Government recognises that the ground here is shifting and that the role of the temporary skilled migration programme is changing. In order for Australia to remain competitive in the global labour market it is essential that we offer a robust, streamlined and transparent temporary migration program.

That is why we have put forward this bill. That is why we have already introduced a number of reforms aimed at improving the 457 scheme.

It includes a number of important extra provisions.

The bill applies to all temporary worker visas. It doesn't matter if you are an occupational trainee or a medical practitioner you will be covered. This measure was brought down in part to stop employers simply moving employees between visa classes to avoid the bill's provisions.

The bill also now applies to visas that are issued under labour agreements. This is another common sense solution to stop employers simply moving their employees onto a different agreement.

The new bill also includes a number of provisions to make the system more flexible for employers.

The Government has improved sanction powers under the bill. It provides for two new sanctions to employers who violate their obligations. These are civil penalty proceedings and infringement notices, which can be provided in lieu of civil penalty proceedings.

If a sponsor fails to meet their obligations under the Act, the Minister now has the power to seek an order in the Federal Court or Federal Magistrates Court to ensure they pay a civil penalty. This is currently \$6600 for an individual and \$33,000 for corporations.

It is also now made explicit that a failure to satisfy a sponsorship obligation may result in the department

imposing ALL of the sanctions on the sponsor. This is designed to act as further deterrence for employers.

One of the major issues that we found in the Migration Committee investigation was the lack of proper information sharing between Government agencies. Often it was more than a case of the right hand not knowing what the left hand was doing, and it led to serious breakdowns in communication which disadvantaged workers.

We have introduced new inspector powers which can be used to monitor employer's compliance with their obligations. They are modelled on the powers given to inspectors in the Workplace Relations Act of 1996. They allow officers of the Department of Education, Employment and Workplace Relations to carry out the following functions.

Inspectors have the power to, at any time they feel necessary, enter without force any place the inspector has reasonable cause to believe holds anything relevant to their case.

These powers allow them to:

- Inspect the premises
- Interview any person
- Require the production of documents
- And copy these documents as required.

It is to be hoped that these changes will prevent such sad cases as the one we read about in recent months in The Age. Industrial Relations Commissioner Barbara Deegan described how foreign middleman can demand excessive fees to gain or renew the visas, and then encourage Australian employers to exploit the workers by demanding 'unlimited hours' for minimum wage.

In addition to these changes, the bill will allow the Commissioner of Taxation to disclose tax information if the information relates to a visa holder, former visa holder, approved sponsor or former sponsor. This is at the discretion of the Minister for Immigration and will allow the Department to confirm details with the Tax Office with regard to salary and other allowances payable to visa holders.

Of course we are aware that it is important that measures to provide oversight to 457 visa holders must be implemented quickly. That is why existing business sponsors will be subject to the sponsorship obligations from the date the bill commences. All existing undertakings will be replaced by the new provisions of the bill.

This is necessary, not only to safeguard workers as I stated earlier, but also to maintain the integrity of the program. Without an abrupt cut off date, a situation would be created where some workers in a workplace were subject to the new monitoring and inspection powers and others were not. This is obviously not an ideal situation for anyone.

We have decided that this bill will commence within a period of 9 months from Royal Assent. This is important. The 9 month period will allow the recommendations of various

review committees to be taken into account when drafting the necessary regulations and procedures.

This 9 month period will also be beneficial in educating all existing 457 sponsors and visa holders as to the changes that are being proposed.

As I stated at the outset of my speech, my previous involvement with the Migration Committee has given me some background on the issue of the 457 Visa program. I am extremely pleased that Minister Evans has introduced this bill and acted to end the inequities that were present in the scheme.

The 457 Scheme is something that serves a worthwhile purpose, however it is so important that it is used properly. The Rudd Government realises that the first priority must be to equip our own workforce to meet the skills of the labour market.

That is why in the 2008 Budget the Treasurer announced that the Rudd Government is making a \$19.3 billion investment in education and training to ensure that we continue to provide employment and training opportunities for Australians. However we realise that investing in the education and training of Australians will not meet employers immediate skills needs.

That is why it is imperative that we restore public confidence in the 457 Visa programme. It is in everyone's interests to have a robust and transparent scheme in place. A loss of public confidence in the 457 scheme can translate into a loss of popular support for the scheme and will act as a barrier to employers to take up the economic opportunities that the 457 visa scheme offers.

The challenge for this Government is to prove to the Australian people that the 457 visa program has integrity and that it is not undermining Australian wages and conditions.

That means that it is used to cover up legitimate skills shortages and not as simply an avenue for cheap unskilled labour.

That means that those who come here under the scheme receive every opportunity to report poor treatment instead of being condemned to slave like conditions.

That means that we as a Government ensure their conditions are monitored, and that they are being fairly treated.

I commend this bill to the Senate.