



australian
nursing federation

Submission to the Joint Standing Committee on
Migration on the inquiry into eligibility
requirements and monitoring, enforcement
and reporting arrangements for
temporary business visas

February 2007

Jill Iliffe
Federal Secretary

Gerardine Kearney
Assistant Federal Secretary

Australian Nursing Federation
PO Box 4239 Kingston ACT 2604
Ph: 02-6232 6533
Fax: 02-6232 6610
Email: anfcanberra@anf.org.au
Website: www.anf.org.au

1. Introduction

1.1 The Australian Nursing Federation (ANF) is the national union for nurses in Australia with branches in each state and territory. The ANF is also the largest professional nursing organisation in Australia. The ANF's core business is the industrial and professional representation of nurses and nursing in Australia.

1.2 The ANF's 150,000 members are employed in a wide range of enterprises in urban, rural and remote locations in the public, private and aged care sectors, including hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, offshore territories and industries.

1.3 The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veterans' affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.

1.4 The ANF maintains strong industrial and professional links with nursing organisations across the world and is an affiliated member of the International Council of Nurses, the Commonwealth Nurses Federation and the South Pacific Nurses Forum as well as having strong and formal alliances with several individual nations, such as East Timor and Papua New Guinea.

1.5 The ANF notes that registered nurses currently make up the largest percentage (6%) of 457 Visas granted in Australia in 2005-2006.¹ While 2,550 visas were granted in 2005-2006 it is not clear how many visa holders remain in Australia from approved grants in previous years.

1.6 The ANF recognises that Australia is facing a skills shortage, including a nursing shortage, and that an appropriately organised migration system for internationally qualified nurses might provide some assistance in alleviating the current and ongoing shortage situation. However importation of skills from other countries is not an effective or desirable first instance response, nor is it sustainable in the long term. Rather international recruitment should only be used as the last step in a series of strategies aimed at addressing skills shortages. Even then, international recruitment is only supported where it is assured that such recruitment will not compromise the skill levels and workforce supply of other countries OR of Australia.

1.7 The ANF recommends that the Federal Government explore several alternative avenues prior to recruiting nurses from other countries. In particular, in the first instance, by continuing to increase the number of fully funded undergraduate nursing and TAFE places. The ANF estimates that another 1000 undergraduate nursing places per year are needed to fill the current and predicted future shortfalls.

2. Qualifications and Licensing

2.1 With respect to nurses being employed in Australia on temporary work visas the issues of recognition of international nurses' educational qualifications and the associated issues of licensing, registration and enrolment need to be given due consideration.

2.2 Nursing in Australia is a licensed profession. There are two levels of licensed nurse in Australia: registered nurses, who undertake a minimum of three years undergraduate preparation in the higher education sector at Bachelor degree level; and enrolled nurses, who generally undertake their education in the vocational sector at Certificate IV or Diploma level. Of the total number of regulated nurses, 80% are registered nurses and 20% are enrolled nurses². There is also in Australia an unlicensed third level nursing support worker (assistant in nursing or personal care assistant) who is educated in the vocational education sector at Certificate III level and who works predominantly in the aged care sector.

2.3 The public sector remains the primary employer of registered and enrolled nurses. In 2004 (currently the most recent year in which figures are available for the nursing workforce), 65.5% of nurses were employed in the public sector, with 34.5% of nurses employed in the private sector³. It is difficult to estimate the number of unlicensed workers as no thorough workforce analysis has been undertaken across the aged and community sectors where they predominantly work.

2.4 The regulation of Australia's health professionals, such as nurses, is necessary to ensure the safety and protection of the public since in the provision of nursing services there is the potential to do harm.

2.5 To work as a nurse in Australia, overseas nurses must meet immigration requirements, pass an English language test and meet Australian standards of nursing practice. These are the same standards; no more, no less, than those required of nurses educated in Australia. The standards are specified in the National competency standards for the registered and enrolled nurse (Australian Nursing and Midwifery Council). They are core competency standards, which all registered and enrolled nurses, local and international, must be able to demonstrate. The standards have been developed, reviewed and adjusted from time to time by the nurse regulatory authorities in consultation with the nursing profession and are the foundation of modern nursing practice in Australia, which provides assurance to the public of a consistent, safe and effective standard of nursing practice.

2.6 Any relaxation of the legislation regulating nurses and nursing services will inevitably have a negative impact on standards of patient care and will be detrimental to the ability of health services to provide quality care, damaging the delivery of an important public and social service.

2.7 There are currently adequate, accessible, fair and transparent processes in place in Australia to enable nurses, registered and enrolled internationally, to apply for registration or enrolment in Australia. The nursing profession in Australia, through the nurse regulatory authorities, has done considerable work to develop and refine these processes, which are under constant evaluation. These processes ensure that common standards apply to nursing services in this country and safeguard the public in the provision of nursing services.

2.8 There are significant advantages and added value for countries and for the nursing profession if nurses from Australia and nurses from other countries have the opportunity to travel and share their experiences and also to gain additional qualifications. There is already considerable movement between countries within the nursing profession.

2.9 Australia is one of the few countries whose registered nurses are all prepared to the same educational standard - the Bachelor degree level, a standard to which most other countries are now aspiring. Nursing services are essential to the health and well being of the Australian community and to the effective and efficient operation of Australia's health services. Any threat to the availability, high standard and national consistency of nursing education, is a threat to the viability of Australia's health system.

2.10 The ANF would not support in any way a less rigorous approach to registration in Australia in order to facilitate a gap fill approach to skills shortages.

3. Monitoring

3.1 The ANF has grave concerns regarding the manipulation or potential manipulation of internationally qualified nurses by migration agencies and employers using 457 visas. We understand that groups of nurses, qualified in their own countries but not eligible for automatic registration in Australia, are approached off-shore and encouraged to come to Australia under a non-nursing skilled migration category while being told they will be working as nurses or that they will be eligible to apply for registration once they are here. They are misinformed and severely disadvantaged as a result of ineffective monitoring, enforcement and reporting arrangements.

3.2 A specific case study is presented below as prepared by the NSW Nurses' Association (ANF NSW Branch) which provides an example as evidence of this problem and as an area where the ANF have been called to provide assistance for internationally qualified nurses.

Cytech Intersearch Pty Ltd employs internationally qualified nurses under the Temporary Business (Long Stay) Visa (Subclass 457) to work in NSW aged care facilities as Residential Care Officers (RCOs).

The Department of Immigration and Multicultural Affairs (DIMA) requires a minimum skill level for all employees from other countries. This minimum skill level *"must be of an equivalent skill level and nature"* to the Australian Standard Classification of Occupations' (ASCO) gazetted list of skilled occupations. ASCO defines the occupation and duties of an RCO as follows:

"Current occupation and duties: Provide a happy, caring secure background for students (children with Autism) within a residential setting with individual structural programme of leisure activities and social skills training; establish good working relationships with students and other professionals; assist students in developing social skills including washing, dressing, language skills, etc; accompany students to dentist/doctor/hairdresser or social activities eg swimming; promote a positive image of autism and the services at Hope Lodge School."

ASCO further defines the relevant training and trade qualification of the RCO as one who holds a: *"National Vocational Qualification Level 3 in Child Care Hampshire, Fairport Training, South Hampton United Kingdom."*

It is difficult to reconcile ASCO's definition of an RCO, that is, to provide care for a child with autism, with Cytech's placement of this category of worker in aged care facilities and nursing homes. RCOs in aged care facilities are effectively unskilled and unlicensed workers. It is disingenuous of DIMA to grant a 457 visa to internationally qualified nurses into the RCO classification within aged care facilities. Effectively they are being employed as assistants in nursing, a position which requires minimal or no qualifications and skill levels that are not commensurate with a registered nurse. Further Cytech has a labour hire agreement with the aged care facility where the RCOs are employed and has no day-to-day supervision of its employees.

When Cytech Intersearch Pty Ltd recruits internationally qualified nurses it does not mention the RCO classification in any of its advertising material. Rather, it refers to the classification: assistant in nursing. Not only is this not the occupation the visa has been granted for but this classification is not an occupation with a recognised skills shortage in Australia.

3.3 Internationally qualified nurses working as RCOs who seek registration or enrolment with the NSW Nurses and Midwives Board need to attend a seven week full-time course run by the College of Nursing (NSW College of Nursing). Cytech makes no allowance for these internationally qualified nurses to attend the course. Therefore these nurses are forced to use their annual leave and accumulated sick leave in order to qualify for registration here in Australia. There is no commitment from Cytech to allow internationally qualified nurses to attend this course to seek registration or enrolment.

3.4 The RCO classification is being manipulated by recruitment company Cytech Intersearch to fill assistant in nursing positions within aged care facilities. The position requires minimal skill and training. The position is not an occupation with a recognised skills shortage in Australia. Cytech's recruitment of internationally qualified nurses into RCO positions is misleading and deceptive.

3.5 DIMA must assume responsibility for the disadvantage the above situation brings to internationally qualified nurses as it approves the contracts of employment and placement of these nurses into assistant in nursing positions. Therefore, as an essential feature of this inquiry, the ANF strongly recommends that DIMA improve monitoring, enforcement and reporting arrangements for the issuing of 457 visas to nurses, including the requirement for potential skilled migrants to be fully and properly informed before they enter into the sorts of arrangements described above.

3.6 DIMA must supervise and inspect information provided to potential immigrants ensuring that the information is correct, that the position being made available is listed as a shortage priority and is indeed the position that the applicants believe they are being employed for. And further, that no disadvantage is experienced, either financially or otherwise once workers from other countries arrive as regards the need for further education or gaining of skills.

3.7 The ANF has been made aware of workers on 457 visas under similar circumstances to that mentioned above who have been told they must attend training once they arrive. They are then subjected to unpaid labour as mandatory 'clinical experience' in order to complete their training. The Victorian Branch of the ANF supplied an example of a Melbourne nursing home that had employed patient care assistants (PCAs), predominately from India and Nigeria, who were charged for 'education' that was delivered by the Director of Nursing in her home - subject to no scrutiny or standards. The PCAs then allegedly were required to do 260 hours of unpaid work before they were considered 'qualified' for a position that actually has no qualifications requirements in Australia. The so called clinical experience was not supervised by an educator and often exceeded safe working hours and shift lengths, a serious occupational health and safety issue for nurses and other care staff which also placed patients at risk. This amounts to nothing less than slave labour, an indictment on Australia as hosts to these workers.

3.8 It has also been brought to our attention that deductions from wages for administration costs, educational costs and other costs such as rental accommodation often exceed what is acceptable for Australians. These costs are deducted before pay and are often unexplained, or at least not fairly explained to the visa holders in the Australian context.

3.9 Employers and recruiting companies must be held accountable and be subject to strict inspections and monitoring by DIMA to ensure such violations do not occur. The current policy of a single inspection in any 12 months of sponsoring employers is clearly not enough. Neither is the current practice of relying on self reporting by sponsoring employers without adequate checks.

3.10 Stringent penalties must be enforced against those found breaking regulations. Inspections should occur on both an announced and unannounced basis and involve interviews with employees - those on visas and those not - and include inspection of payment and leave records.

4. Protection for workers

4.1 The ANF has been called upon to help 457 visa workers as mentioned above and it has become apparent that a culture of fear has been developed by some employers and recruitment agencies. Workers are fearful of recriminations should they seek support once they suspect or indeed realise that they are being maltreated or misinformed. Many have complained that they are threatened with deportation or losing their position if they report to any authority. Nurses approaching the ANF have done so often at the advice of fellow workers concerned for their colleagues' welfare.

4.2 A major outcome of this enquiry should be to ensure there are effective complaint mechanisms available for temporary visa holders. The complaints process should be free, easy to understand for non-English speakers and be confidential. Contact information must be readily available and prominently displayed in all work places with multi lingual advice on how to access DIMA, their rights in relation to salary, working hours, occupational health and safety, anti-discrimination, access to legal aid services, and union contacts.

4.3 It is also the opinion of the ANF that once a complaint has been verified a 457 visa holder should be given at least 3 months to find alternative employment before the deportation process is initiated.

5. Reporting

5.1 Currently the DIMA 2005-2006 report⁴ shows that in that period 2,550 457 visas were granted to registered nurses; 980 were granted to general medical practitioners and 730 to training medical practitioners, a total of 4,260. There is no reporting of total number of 457 visa holders currently working in Australia; that is a cumulative total from previous years less those that have left.

5.2 It was also reported that 5,690 visas were allocated to the health and community services sector. As nurses and doctors are the only health professionals accounted for in the report (total of 4,260) we are presented with a fact that creates a mysterious statistical vacuum that begs the question about the whereabouts or roles of the remaining 1,430 visa holders in the sector! The same can be said for the astonishing figure of 23,170 visa holders classified as 'other' under the occupational listings. Whilst we can make fairly accurate assumptions about their employment, it would be infinitely better to have the accurate data.

5.3 The ANF asks that DIMA establish regular and accurate reports and statistics on all aspects of the 457 visa program. Supplied information should include the individual positions for which visa nominations have been approved, the employers, the particular industry or sector and more detailed occupational groupings, as well as reported salaries being paid to all 457 visas holders.

6. 442 Visas

6.1 Although 442 visas are not part of this enquiry the ANF feels strongly that comments should be made regarding the blatant flouting of regulations and exploitation of some 442 visa holders, particularly nurses, by recruitment companies and employers.

6.2 The visa is meant to facilitate and accommodate education and training for overseas applicants through the Australian TAFE and tertiary education systems. The ANF's recent experience of nurses in Australia on such visas has highlighted incidents of exploitation, overcharging and intimidation.

6.3 It has been brought to our attention and indeed that of the media recently that registered nurses from China in particular are recruited on 442 visas on the understanding that they will be offered training in Australia that will enable them to work as registered nurses. They are then charged for a training course for a Certificate III level course; not a pre-registration course that is a requirement of the registration authorities and that would allow, if successful, registration as a nurse. At the very most they are able to work in a residential aged care facility as a carer - a job which actually does not require a qualification at all.

6.4 They are overcharged for the education they receive (double that paid by Australians) and have excessive deductions taken from their pay for so called administration costs, accommodation costs etc.

6.5 They are then subjected to a 'clinical placement' in a residential aged care facility, working all shifts, overtime, public holidays with no penalties, less than acceptable pay, few leave entitlements and certainly with no educational support or supervision.

6.6 These nurses would be eligible for registration as a nurse except that they do not meet the English language requirements, which is an essential requirement to be able to provide safe care and communicate with patients and colleagues both verbally and in writing and read and interpret care plans and diagnostic test results.

6.7 We are gravely concerned for these nurses and for the patients they are providing care to, as well as their colleagues. This is exploitation at its very worst and while we understand that DIMA is now aware of the high profile media case we urge the department to thoroughly investigate and drastically improve monitoring of other employers and recruitment agencies working with people on 442 visas. We ask for at least the same rigour we have asked for the 457 visa program and request a review of the entire 442 program. (It is noted that trainee doctors have been advised to stop applying for 442 visas and are now brought here under 457 visas. We question the reason for this and request that a review be made for nurses and other health care professionals.)

7. Conclusion

7.1 Nurses are a vital part of the Australian health system and make up over 50% of the health workforce. We know they are in short supply but recent reports suggest cautiously that the skills shortage crisis is marginally correcting through the allocation of additional undergraduate university places by the Federal Government. The correction is not sufficient to fully right the shortfall in the short to medium term.

7.2 The ANF is calling for a range of remedies, including more funded undergraduate nursing places, improved funding for nursing clinical education, funded re-entry and refresher courses, better working conditions and improved remuneration, and better workforce planning through an office of a chief nurse.

7.3 Importing labour on temporary work visas should be only a small part of a larger workforce sustainability framework. They should be monitored vigorously and regularly. Workers on temporary visas must be afforded all protections and conditions permanent employees enjoy, be paid the same salary an Australian worker would doing the same work, and be covered under legislated occupational health and safety regulations.

7.4 Our experience has proved that current monitoring, enforcement and reporting arrangements are inadequate resulting in outright exploitation of people who have been prepared to leave their homes to improve their personal circumstances through employment in Australia. We urge the standing committee to recommend thorough reviews and changes to remedy this situation.

References

1. Department of Immigration and Multicultural Affairs Visa Subclass 457 (Long Stay) State/Territory Summary Report (Id:RO672.1.0) 2006 Australian Government Canberra
2. Australian Institute of Health and Welfare 2006 Nursing and Midwifery labour force 2004 AIHW Canberra
3. Australian Institute of Health and Welfare 2006 Nursing and Midwifery labour force 2004 AIHW Canberra
4. Department of Immigration and Multicultural Affairs Visa Subclass 457 (Long Stay) State/Territory Summary Report (Id:RO672.1.0) 2006 Australian Government Canberra