

**ACTU Submission**  
**Productivity Commission draft report into**  
**the migrant intake in Australia**

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## INTRODUCTION

The ACTU welcomes the opportunity to respond to the draft report of the Productivity Commission into the migrant intake in Australia.

The ACTU is the peak body for Australian unions, made up of 46 affiliated unions. We represent almost 2 million working Australians and their families. The ACTU and affiliated unions are active participants in debates around the skilled migration program on behalf of our members.

The ACTU made a submission in response to the initial issues paper from the Productivity Commission and we continue to rely on that submission. In it, we rejected the central proposal under consideration by the Productivity Commission; a misguided proposal to use higher entry charges and capacity to pay as the primary basis for determining migrant entry into Australia.

We are pleased to see that the Productivity Commission has now itself also rejected that proposal. It was a proposal that would have effectively outsourced decisions on the migrant intake to the highest bidder and removed important national interest considerations, such as the need to support Australian jobs and address genuine skill shortages, as the basis for determining the migrant intake.

Our earlier submission also responded to some of the broad themes canvassed by the Productivity Commission issues paper, particularly around the balance and interaction between the temporary and permanent migration streams. We note that these issues have been covered at some length in the draft report.

In this submission, we respond to those draft findings, recommendations and information requests in the draft report that we have a particular interest in. In doing so, we reaffirm our support for a strong, diverse, and non-discriminatory immigration program and our submission is made in that spirit.

Our primary concern remains that there continues to be an over-reliance on a temporary visa program that is not operating in the best interests of workers, whether they be Australian citizens, permanent residents or temporary overseas workers. We welcome the fact the Commission has recognised a number of concerns we have raised.

We rely again on the recommendations in our original submission and we set them out again in this submission. We are pleased to see that elements of these recommendations are captured in the draft report and we call for them to be reflected fully in the final report.

While we acknowledge the efforts by the Productivity Commission to grapple with these important and complex issues, a stronger, more comprehensive response is required than that set out in the draft report. In our submission, the focus must be to address the negative impacts of the current temporary work program with measures that support Australian jobs, support Australian training opportunities, and support vulnerable migrant workers and end the exploitation. But not only that; there needs to be a fundamental reassessment and realignment of a skilled migration program that places such undue emphasis on temporary and employer-sponsored forms of migration where workers are at their most vulnerable.

## KEY POINTS AND RECOMMENDATIONS

We set out below key points and recommendations for inclusion in the final report by the Commission. They are based on matters raised through this review and the priority issues for the ACTU and affiliated unions and their members. Further detail on these responses is contained in our original submission to this review and also in our submission to the current Senate Inquiry into the Temporary Work Visa program.

### ***Migration policy must be based on the Australian national interest, not sold to the highest bidder***

The ACTU rejects proposals for using entry charges and capacity to pay as the primary basis for determining migrant entry into Australia. This would effectively remove important national interest considerations, such as the rights of Australians to access jobs and training opportunities and the need to address genuine skill shortages, as the basis for determining the migrant intake.

### ***Recalibrating the balance of the skilled migration program toward permanent, independent migration***

The current weighting of Australia's skilled migration program towards temporary and employer-sponsored pathways should be re-evaluated, with greater emphasis given to the permanent, independent stream where workers come to Australia independently, without the problems too often associated with temporary and employer-sponsored visas where workers are dependent on their employer for their future prospects in Australia.

### ***Better pathways to permanent residency***

Recognising the legitimate desire of many temporary work visa holders to obtain permanent residency, the focus should be on new pathways to permanent residency that reduce or remove the scope for exploitation that exists when temporary overseas workers are dependent on a single, sponsoring employer for their future prospects in Australia. This should include:

- Priority access for 457 visa holders to independent, permanent migration channels.
- Reducing from two years to 12 months the qualifying period that is required with a sponsoring employer to make the transition from a 457 visa to a permanent employer-sponsored resident visa.

### ***Supporting employment opportunities for Australian workers***

- Strengthen and expand labour market testing to cover all 457 visa occupations and improve the current evidentiary requirements.
- Ensure no weakening of labour market testing requirements through free trade agreements.
- Establish a cap or quota on the working holiday visa program, taking into account the labour market conditions for young Australians.

- Remodel the working holiday visa so that it operates as a genuine holiday visa with some work rights attached, and abolish the second year extension.
- The work rights of overseas student staying in Australia on a temporary 485 visa after they have finished their studies should be restricted to work in the industry or occupation that is relevant to the study they undertook and to occupations which are in shortage.
- Labour market testing obligations be extended to the 485 visa program to ensure that Australian university graduates have the primary right to jobs for which they are qualified.

### ***Training up the next generation***

- A requirement for employers sponsoring overseas workers under the 457 visa program to:
  - Train and employ Australian apprentices, trainees or graduates in the same occupations where they are using 457 visa workers (something they are not required to do at present);
  - Employ one apprentice for every four workers in trades occupations, and/or ensure 15% of their managerial and professional workforce are Australian university graduates with less than 12 months' paid work experience; and
  - Pay \$4000 into a training fund - being the same amount an employer would receive in government incentive payments if they took on an apprentice through to completion of the apprenticeship.

### ***Supporting vulnerable migrant workers***

- Provide whistle blower protections for Australian and temporary overseas workers who speak out to expose exploitation and rorting under the temporary work visa program
- Provide temporary overseas workers with fair access to public services and settlement support.
- Amend the *Fair Entitlements Guarantee Act 2012* to ensure temporary visa holders have equal access to their entitlements in cases where employers become insolvent.
- Immediate re-introduction of indexation for the Temporary Skilled Migration Income Threshold.

### ***Better information and data on the operation of the temporary work visa program***

- DIBP be responsible for providing publically available information on the operation of 457 visa labour market testing provisions and on the domestic training effort of sponsoring employers under the 457 visa program.

- DIBP to conduct a public assessment and review of the potential impact the additional labour supply from the 417 working holiday visa program has on employment opportunities, as well as wages and conditions, particularly on young Australians in lower-skilled parts of the labour market. The review should be conducted with the oversight of the tripartite Ministerial Advisory Council for Skilled Migration.
- DIBP to provide consolidated and publically available information on the working patterns of working holiday and student visa holders. If this information is not currently able to be produced, then DIBP should report to the Ministerial Advisory Council for Skilled Migration on how this data can be collected.

## RESPONSE TO DRAFT RECOMMENDATIONS

### DRAFT RECOMMENDATION 5.1

**The Australian Government should seek opportunities to improve the recognition of overseas qualifications obtained at high quality institutions through, including through bridging courses.**

We note that this recommendation followed on from evidence in the draft report that immigrants are more likely to be over-qualified for jobs compared to the Australian born population.

We support the recommendation, provided the qualifications are formally assessed by an independent body against the AQF occupational requirements and other relevant Australian endorsed standards. Unions support mandatory, independent skills assessments for all permanent and temporary visa holders to ensure qualifications gained overseas meet the contemporary requirements of Australian qualifications and licensing arrangements.

We note that this measure alone will not address the issue of migrants being unable to find jobs in the field for which they are qualified.

There is also a need to recognise and address the direct and indirect labour market discrimination that many migrants face in applying for jobs that match their skill level. The draft report refers to this problem on a number of occasions.

Other measures that are important include ensuring that the skills lists that are used for the purposes of temporary or permanent migration are confined to occupations which are in genuine shortage.

The design of some visa types also needs to be re-examined. For example, the temporary graduate 485 visa is designed for those who have finished their course of study and are looking to stay in Australia and gain practical work experience. However, there are no restrictions on the type of work a 485 visa holder can do. They can work in any occupation, regardless of their field of study or qualifications.

This is at odds with the apparent purpose of the visa to augment the study a person has completed with a period of practical work experience, and only serves to raise concerns about potential employment impacts in other lower skilled sections of the labour market. Our recommendation is that the work rights of overseas students staying in Australia on a temporary 485 visa after they finished their studies should be restricted to work in the industry or occupation that is relevant to the study they undertook, where that occupation is in shortage. We recommend further that labour market testing obligations be extended to the 485 visa program to ensure Australian university graduates have the first right to jobs for which they are qualified.

## **DRAFT RECOMMENDATION 6.1**

**The Australian Government should review the mix and extent of settlement services for immigrants (including humanitarian immigrants) with the aim of improving their labour market and social engagement outcomes. This should include consideration of the adequacy of the English language training hours and access to employment services.**

The ACTU supports this recommendation.

One of our concerns has been the lack of settlement and support services available to temporary visa holders, many of whom are in Australia for a considerable length of time, particularly 457 visa holders. We also understand that Safe Haven Enterprise Visas and Temporary Protection Visa Holders are not eligible for settlement support. If that is the case, it needs to be rectified.

English language training is critical and we note the evidence that the draft report that the number of training hours currently provided falls short of what is required.

## **DRAFT RECOMMENDATION 7.1**

**The Australian Government through its data integrating authorities should continue to link the Settlement Database with other government administrative datasets, such as data sets involving health and education services to support immigration policy development and expenditure on social services.**

The ACTU supports this recommendation.

## **DRAFT RECOMMENDATION 7.2**

**The Australian Government should follow the approach of Statistics Canada in establishing Research Data Centres to provide non-government researchers vetted access to unit record government administrative dataset and other confidential microdata files.**

The ACTU supports this recommendation, but questions the extent to which such researchers would need to be 'vetted' in order to access the data. Access should be provided not just to academic researchers, but researchers from unions and the variety of other organisations with an interest in migration policy.

As a general rule, in the interests of transparency and confidence in the operation of the migration program and in encouraging informed examination of government policy, as much information should be made available to as many people as possible

In relation to data, our original submission identified a range of specific data gaps with the temporary work visa program that need to be addressed, particularly in terms of the nature and extent of work performed by working holiday and student visa holders.



## DRAFT RECOMMENDATION 9.1

**The Australian Government should commission a public inquiry into the labour market and broader economy-wide effects of work rights for international students, temporary graduate visa holders and working holiday makers.**

The ACTU supports this recommendation.

At any one time, there are around half a million or more temporary overseas workers on student visas, working holiday visas and temporary graduate visas. Many are working in low and semi-skilled jobs. In our submission, it is untenable that these temporary visa holders can continue to form such a large and growing proportion of the Australian workforce, without any proper consideration of the labour market impact those work rights are having, particularly in terms of employment opportunities for young Australians, and poor treatment and exploitation of overseas workers.

The suggestion in the draft report that temporary immigration tends to be more responsive to the economic cycle has often not been borne out as temporary work visa numbers have continued to increase at times of softer labour market conditions and rising unemployment.

We refer the Commission back to evidence in our original submission of 457 visa numbers increasing while job advertisements were decreasing and the number of people out work was increasing (pp. 42-44). Our submission also pointed to the evidence of working holiday visa numbers increasing even in the face of rising unemployment (pp. 25-28). The Department of Immigration and Border Protection have acknowledged that working holiday visa numbers are a reflection of people coming here to find work they cannot find in their home country.

The critical point we reinforce here is that it should be the labour market conditions in Australia that are the determining factor for temporary work visa numbers in Australia, but often that is not the case. It is just as likely to be the labour market conditions in the home countries that are shaping these trends.

We endorse the Commission's view that there is scope for improvement in acquiring a better understanding of the labour market impacts of temporary migration, and improving the targeting of 457 visas to areas of genuine skill shortage. At present, standard 457 visas can be granted for any of 650 or more occupations under the Consolidated Skilled Occupations List, regardless of whether those occupations are in shortage.

We welcome the Commission's view that expanding the skills lists to include 'semi-skilled and 'unskilled occupations could crowd out more highly qualified immigrants and potentially displace lower-skilled Australians who have limited opportunities in the labour market. Skills lists should be used to support skilled migration only.

## **DRAFT RECOMMENDATION 9.2**

**The Australian Government should assess the effectiveness of changes implemented as a result of the recommendations made by the Independent Review into Integrity in the Subclass 457 Programme (the Azarias Review) after sufficient time for those changes to take effect.**

As a general principle, the ACTU supports the need for periodic review of the effectiveness of any changes that have been introduced. However, to take a step back, we believe that many of the Azarias review recommendations fall short of what is required to deal with problems under the 457 visa program. The Panel was heavily influenced by its terms of reference that were very much focused on finding ways to deregulate the program. In coming to its conclusions and recommendations, it relied heavily on the submissions it received from employers and their complaints and assertions about the cost and regulatory burden of just about every element of the program.

Little or no attempt was made in the report to test those assertions or to consider whether current protections and regulatory measures are in fact necessary to protect the interests of Australian and overseas workers - even if employers see them as a burden.

## **DRAFT RECOMMENDATION 9.3**

**The Fair Work Ombudsman should commission the development of a smart phone app that would provide temporary immigrant workers with information on their work rights and responsibilities, and with links for lodging complaints about abuses or exploitation.**

This recommendation is supported insofar as it is another potential way to provide temporary migrant workers with information they need on their work rights and responsibilities. However, this recommendation cannot be a substitute for responses that address the root causes of exploitation of temporary overseas workers and the difficulties that migrant workers face in exercising their rights.

The ACTU supports the need for temporary visa workers to have information on their work rights and responsibilities, but this should not just be confined to general workplace information. They should be informed directly of their specific workplace pay and conditions. The onus should be on employers and sponsors to provide this information directly to workers in writing before they start employment. The onus should not have to be on the workers to get an 'app' to do this. This recommendation also presupposes that all temporary visa workers have their own smartphones and are in a position to access such apps.

## **DRAFT RECOMMENDATION 9.4**

**The Australian Government should implement recommendation 4.24 of the 2012 joint study by the Australian Productivity Commission and the New Zealand Productivity Commission on *Strengthening trans-Tasman economic relations*. In particular, it should address the issues faced by a small but growing number of non-Protected Special Category Visa holders living long term in Australia, including their access to certain welfare supports and voting rights. This requires policy changes by the Australian Government, including the development of a pathway to achieve permanent residency and/or citizenship.**

The ACTU supports this recommendation.

#### **DRAFT RECOMMENDATION 10.1**

**Following the implementation of the current simplification of skilled visa subclasses the Australian Government should continue to collect information on the labour market outcomes of permanent skilled immigrants through the independent points-tested and employer-nominated visa subclasses, including onshore and offshore applicants.**

**The Australian Government should use this information to assess the effectiveness of the various skilled immigration visa subclasses and should adjust the selection criteria to choose the immigrants who make the largest economic contributions. This could include tightening the criteria for certain visa subclasses in relation to:**

- **English-language proficiency**
- **academic results**
- **qualifications in occupations that are in a state of labour shortage.**

The ACTU supports a strong focus on the core criteria of skills, qualifications, work experience, and English language proficiency for the independent, points-tested visa subclass. This clearly puts the focus on those factors that increase the chances of migrants moving into productive employment, and giving Australia the best possible applicants to meet identified skill needs. These should be the primary factors determining the success or otherwise of applications for permanent migration. For the employer-nominated visa subclasses, additional focus needs to be placed on whether there is a genuine skill shortage for the position being filled. There could be a case for strengthening these requirements to ensure the best results.

The notion of choosing migrants who make “the largest economic contributions”, while having some obvious attraction, needs to be treated with some caution, and should not be assessed too narrowly. For example, a worker in the employer-nominated visa subclasses may be assessed as providing a significant economic contribution for their individual, sponsoring employer, but a permanent, independent migrant who has settled in Australia, works for various employers over a period of years, and does some volunteer work in the community may be providing more of a longer-term benefit to Australian society.

As the draft report notes, the overarching objective of immigration policy is to improve the overall wellbeing of the Australian community and that can have not only economic, but social and environmental dimensions. Some impacts, including positive impacts, can be difficult to monetise, including the impact on social cohesion.

The assessment of economic contribution should also factor in the contribution of their children. As the draft report notes, on average the children of Australia achieve higher educational outcomes than the children of Australian-born parents.

## **DRAFT RECOMMENDATION 10.2**

**The Australian Government should review the Business Innovation and Investment Program to assess whether it is meeting its objectives.**

To complete this review, the Australian Government will require more detailed information on the characteristics and impacts of immigrants through this program. The Australian Government should collect and publish information on indicators including:

- turnover
- employment
- wages paid to employees
- location
- innovation
- links with international markets.

The ACTU support this recommendation. Information should also be collected on the record of compliance with IR, OHS, and Workers' Compensation laws of businesses under the program. Any breaches should be made public.

We share the concern expressed in the draft report that many businesses under the program are small retail and hospitality businesses, with a limited record of innovation or productivity improvement.

## **DRAFT RECOMMENDATION 11.1**

**The Australian Government should retain separate processes for determining temporary and permanent immigration. In doing so, it should:**

- ensure that the impacts of both temporary and permanent immigrants are considered in policy decisions
- improve monitoring of temporary immigrants' labour market participation
- ensure that the design of immigration pathways supports the broader objectives of immigration policy

The ACTU accepts there is room for separate temporary and permanent immigration programs but the balance is currently 'out of whack' when there is a regulated program of 128 500 permanent skilled migrants against a virtually uncapped program of more than 1.3 million temporary work visa holders. The statement often made by the Department of Immigration that Australia runs a 'managed migration' program appears increasingly hollow in this light. While it may be true for the permanent migration program, it is clearly not for the temporary migration program. The two streams cannot be viewed in isolation from each other.

In our submission, the size of the temporary migration program must be subject to similar scrutiny and oversight as the permanent migration program, including provision for numbers to be capped where labour market conditions require it. It is not clear to us what the case is, if any, for retaining the differential policy treatment of permanent and temporary intakes, whereby quotas are used for the permanent migration streams while the temporary program is left virtually uncapped.

Clearly, the pathway from temporary to permanent residency is well-established. Our original submission highlighted the extent to which temporary visa holders – whether they be 457 visa holders, working holiday visa holders, student visa holders etc. – move through to permanent residency.

The draft report presents this trend in a largely positive light, citing the benefits of the so-called ‘try before you buy’ approach to migration policy. Undoubtedly, there can be benefits to this approach in attracting migrants who have already demonstrated their skill and abilities, but this needs to be weighed against the many problems associated with employer-sponsorship and dependence on a sponsoring employer that are played out on a regular basis.

The fact that a large number of temporary migrants have the goal of permanent residency is perfectly understandable on their part and we recognise that achieving permanent residency helps put these workers on a much more secure footing. However, it is undeniable that this lure of permanent residency has played a part in many of the cases of exploitation of temporary visa workers in Australia. As noted above, this has been a key point made by the two major reviews of the 457 visa program in recent times; the 2008 Deegan Report and the 2014 Azarias report.

In our submission, there are a number of ways this should be tackled.

First, there needs to be a serious debate as to why Australia now has a skilled migration program that relies so heavily on temporary and/or employer-sponsored migration, which is largely uncapped. As discussed above, our view is that the program should be recalibrated with a stronger focus on permanent, independent migration.

Second, robust labour market testing is critical so that employer-sponsored migration (whether permanent or temporary) occurs only when employers have shown they have thoroughly tested the labour market and not been able to find a suitable Australian worker for the job. Where necessary, caps should be placed on temporary forms of migration such as working holiday visas where labour market conditions require it.

Third, the government should explore and introduce better pathways for temporary workers to move towards permanent residency that do not involve such dependence on a single sponsoring employer and the development of a bonded labour type situation.

We note the 457 visa review panel considered this issue in its 2014 report to Government. One of its recommendations was to retain the current requirement for a 457 visa holder to work for at least two years to be able to transition to employer-sponsored residency but allow for mobility between employers by reducing the qualifying period required with the sponsoring employer to one year out of the two years in total.

We support this proposal but it could go further with the qualifying period itself reduced to one year and no requirement for that to be with the one employer. It is important that any such transition to permanent residency is underpinned by a rigorous process of labour market testing to ensure that the labour market conditions used to justify the granting of the original temporary visa are still valid.

The ACTU also supports the idea of giving 457 visa workers priority access to independent permanent migration as a way to reduce the problems caused by dependence on a sponsoring employer. The suggestion by the Panel to increase the points earned for time worked in Australia could be one way to do that.

#### **DRAFT RECOMMENDATION 12.1**

**The Australian Government should not use price as the principal mechanism for allocating permanent visas.**

The ACTU strongly support this recommendation. It is consistent with the position the ACTU advocated in its original submission.

We support the conclusions reached by the Commission that the merit-based immigration system used by Australia to allocate a significant number of permanent immigration places has served the interests of the broader community well. The selling of visas to those who can pay without meeting other criteria would essentially place short-term revenue-raising objectives ahead of medium to longer term economic considerations. We agree that public confidence in Australia's immigration system could also be undermined by such an approach.

#### **DRAFT RECOMMENDATION 13.1**

**The Australian Government should articulate the objective of its visa charging system and publish information in the form of:**

- **a retrospective report covering the past 10 years of visa charges, the number of applications and the characteristics of immigrants by visa subclass**
- **biennial reports on changes in visa charges and the underlying visa charging methodology, changes in other visa terms and conditions, the number of applications and the characteristics of immigrants by visa subclass**

The ACTU supports a system of modest and reasonable charges for different visa types. This is appropriate to allow for some recovery of costs. It should also provide an opportunity to direct extra resources into enforcement and compliance efforts, as well as support services.

## RESPONSE TO DRAFT FINDINGS

### DRAFT FINDING 4.1

**Decisions about the level of immigration are the responsibility of the Australian Government. They involve balancing a complex set of economic, social and environmental policy objectives. There is no comprehensive empirical basis for setting an aggregate level of immigration over time that would improve the wellbeing of the Australian community. Improving incumbents' wellbeing is likely to be consistent with a range of immigration rates, which is determined (among other things) by the efficiency of the provision of infrastructure, the efficiency of the labour market, technology, settlement services and external factors.**

The ACTU agrees there is no precise figure for an optimum level of immigration, and that decisions on the migration intake involve matters of 'on balance' judgement based on economic, social and environmental factors.

### DRAFT FINDING 5.1

**At an aggregate level, preliminary analysis suggests that there is no discernible effect of immigration on wages, employment and participation of incumbent workers. While there is some preliminary evidence to suggest that immigration may be a contributing factor to adverse outcomes in the youth labour market, this evidence is not conclusive and requires further examination.**

The ACTU agrees there are differential impacts of immigration on the 'incumbent' population, both positive and negative. On balance, immigration has been a major force for good for Australian society and for that reason Australian unions are long-standing and ongoing supporters of a strong immigration program.

However, it is important to note that much of the evidence in the draft report of the positive (or at least negligible) impact of immigration is at the aggregate level. As the draft report notes, where there are negative impacts such as higher unemployment or slower wage growth they are likely to impact on specific groups, especially those working in lower skilled sections of the labour market where there are higher concentrations of immigrant workers who are likely to be close substitutes. The negative impact therefore is often on the most vulnerable and this cannot be dismissed by simply saying those impacts are offset by positive benefits on other (higher) skilled groups.

The policy responses should be designed squarely with the impact on the most vulnerable in mind.

We note the preliminary evidence on adverse outcomes on the youth labour market. This has been a key concern for unions in relation to the size and growth of the temporary visa program across student visas, work and holiday visas, and temporary graduate visas that operate very much in the lower-skilled end of the labour market and the youth labour market. This has occurred without any assessment of the impact these visa types are having on local employment opportunities. We welcome further examination of this important topic.

## **DRAFT FINDING 6.1**

**There is widespread acceptance by the Australian community of multiculturalism. Successful multiculturalism helps Australia benefit from a diverse immigration intake and assists in maintaining social cohesion by developing respect and trust between the different ethnic groups that make up the Australian community.**

The ACTU strongly support this finding. As we have said throughout, Australian unions support a strong, diverse and non-discriminatory immigration program. We recognise and embrace the many benefits that migration has brought to Australia's economic, social and cultural life. We are particularly proud of the fact that thousands of our members across the country are migrants or come from migrant backgrounds.

## **DRAFT FINDING 7.1**

**International and Australian evidence suggests that the overall net fiscal impact of immigration tends to be small but often positive, and depends on the composition of the migrant intake. Selecting immigrants who are relatively young, healthy, skilled and proficient in English is likely to lead to a net positive fiscal outcome as these immigrants tend to generate a higher lifetime tax revenue and have a lower propensity to consume government-funded services.**

The ACTU accepts this finding. We support a permanent skilled program that is designed to attract the 'best and the brightest' into areas of genuine skill need and to boost Australia's human capital over the medium to longer term. The ACTU recognises the policy imperatives driving this emphasis on skilled migration

At the same time, we support a continuing strong role for family reunion as well as humanitarian places as part of a well-balanced migration program. These streams fulfil important social purposes, and can also make an important contribution to the labour and skill needs of the Australian economy in their own right.

## **DRAFT FINDING 10.1**

**Former international students who graduated in oversupplied fields (including business, accounting and information technology) have relatively poor labour market outcomes. It is likely that this contributes to the relatively poor performance of onshore independent points-tested immigrants.**

This finding reinforces the need for the skills lists that are used for permanent and temporary migration purposes to be confined to those occupations where there is a genuine skills shortage and positions cannot be filled by Australian citizens and permanent residents.

It also points again to the problems with the 485 graduate visa, as outlined in response to draft recommendation 5.1, where overseas graduates end up working in low-skilled jobs unrelated to their field of study.



## DRAFT FINDING 10.2

**The Australian community benefits from having a skilled immigration intake with a diverse range of skills and other human capital characteristics. Maintaining a range of visa subclasses with different requirements for visa grants provides pathways for a diverse skilled immigration intake.**

The ACTU supports a diverse immigration intake with a variety of visa types across both permanent and temporary streams, although our clear stated preference as already outlined is for permanent migration, where workers come to Australia independently.

We understand and support the emphasis on encouraging skilled migrants, but there must always be a strong role for family reunion and humanitarian arrivals as part of the overall migrant intake.

Where visa subclasses are not operating in the way they were intended or are having other adverse consequences, they must be subject to review and modification. The working holiday visa is a prime example. Our view is that the visa should be remodelled so that it operates as originally intended; as a genuine work and holiday visa, where work is incidental. Likewise, the second year working holiday visa extension has been misused as employers use it to target and entice overseas backpackers with Australian workers barely given a look-in based on the job advertisements available from a cursory search of the internet.

## DRAFT FINDING 10.3

**The economic benefits of the Significant Investor Visa and Premium Investor Visa streams accrue mainly to the visa holders and to fund managers. The benefits to Australian businesses seeking investment and the economic benefits to the broader Australian community are likely to be very small or non-existent. Overall the case for retaining the Significant Investor Visa and Premium Investor Visa streams is weak.**

The ACTU supports this finding.

## DRAFT FINDING 12.1

**The adoption of a price-based immigration system is not supported by evidence. Such a system could:**

- **attract less desirable immigrants compared to the current system**
- **favour immigrants with an existing capacity to pay over those who would make the greatest economic contribution to Australia.**

The ACTU supports this finding and made the same or similar arguments in our submission. Furthermore, our concern is that such a system would remove important national interest considerations, such as the rights of Australians to access jobs and training opportunities and the need to address genuine skill shortages, as the basis for determining the migrant intake.

This would undermine community confidence in and support for a strong skilled migration program.

## RESPONSE TO INFORMATION REQUESTS

### INFORMATION REQUEST 5.1

**The Commission seeks evidence and information on whether investment in skills by incumbents and firms has been negatively affected by immigration and, if so, the size of the effect.**

One of the issues in providing evidence of the effect on skills is that no information is collected on the domestic training effort of those employers who rely on temporary migrant labour. For example, it remains a glaring hole in the governance and transparency of the 457 visa program that there continues to be no information available on, say, how many apprentices are being trained by sponsors who are employing 457 visa workers or whether the number of apprentices being trained by these sponsors is increasing or decreasing over time.

However, we agree with comments from Fairfax economic commentator Ross Gittins that suggest the key flaw with the 457 visa program (as well as the availability of temporary overseas labour on other visa types) is the negative impact it can have on employer's commitment to training:

*"To me the main drawback is not so much that employers may not try hard enough to find local workers to fill jobs, or that the availability of this external supply may limit to some extent the rise in skilled wages, but that it reduces employers' incentive to go to the bother of training young workers."*<sup>1</sup>

For example, this was a key issue highlighted by the 2010 report of the National Resources Sector Employment Taskforce. The NRSET report<sup>2</sup> found that ready access to temporary migration, along with the capacity to offer high wages and 'poach', had allowed resources companies to meet their skill needs with little thought to investment in skills development.

The NRSET report cited NCVER research<sup>3</sup> that the resource sector trained just 3.6% of Australia's apprentices, despite employing 5.6% of the nation's tradespeople. In response to this, the recommendation from NRSET, supported by Government, was that the resources sector needed to significantly increase the number of apprentices it employs, given that it currently employs considerably fewer than would be expected given its share of trade employment.

As we note above, it is not possible to determine what individual sponsors of 457 visa workers are doing to train Australians because this data is not even collected. However, the macro-evidence that is available suggests the use and availability of 457 visa labour can and has had a negative impact on the national training effort, particularly in terms of apprenticeship training.

This problem emerged most markedly during the very period where 457 visa numbers were growing most rapidly. For example, in Western Australia, amid the resources boom and continuing talk of skill shortages, there was no growth at all in apprenticeship and traineeship commencements in 2011.<sup>4</sup> Tellingly, over the same period, 457 visa numbers in the trades in Western Australia grew exponentially, as table 6 below shows.

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<sup>1</sup> Gittins, R., 'Kiwis show the way as workers keep greying', Sydney Morning Herald, 21-22 February 2015, pp6-7 (Business).

<sup>2</sup> Resourcing the Future: National Resources Sector Employment Taskforce Report, July 2010

<sup>3</sup> in Resourcing the Future: National Resources Sector Employment Taskforce, Technical Paper, pp. 37-38

<sup>4</sup> 2011 December quarter, Apprentices and Trainees, Australian vocational education and training statistics, NCVER, 2012, p. 4

**Table 1: 457 visa numbers in the trades in Western Australia 2010-2012**  
**Program year 2010 – 2011 at 30 June 2011**

<b>Nominated Occupation</b>	<b>2009-10</b>	<b>2010-11</b>	<b>Change from 09 - 10</b>
Technicians and Trades Workers	1600	3140	96.2
<b>Sponsor Industry</b>	<b>2009-10</b>	<b>2010-11</b>	<b>Change from 09 - 10</b>
Construction	1220	2420	99.2%
Electricity, Gas, Water and Waste Services	160	200	25.2
Mining	1580	2200	39.3

**Program year 2011 – 2012 at 30 June 2012**

<b>Nominated Occupation</b>	<b>2010-11</b>	<b>2011-12</b>	<b>Change from 10 - 11</b>
Technicians and Trades Workers	3140	6380	103.3
<b>Sponsor Industry</b>	<b>2010-11</b>	<b>2011-12</b>	<b>Change from 10 - 11</b>
Construction	2420	4100	<b>68.9</b>
Electricity, Gas, Water and Waste Services	200	350	<b>71.6</b>
Mining	2200	3630	<b>64.9</b>

Source: Compiled from various DIAC Subclass 457 State/Territory Summary reports

A similar picture emerged at a national level. For example, nationally, NCVER figures show the number of people commencing apprenticeships in trade occupations fell by 5.9% in 2011 and had been on the decline since September 2010,<sup>5</sup> yet visa grants for trades and technicians increased by 65% in 2010-11 and more than doubled in 2011-12.<sup>6</sup>

This is not to suggest that the availability of temporary overseas labour is the sole contributing factor to a deteriorating record on the skills formation front. The historical infrastructure for skills formation in Australia has been steadily dismantled over the last two decades. On the one hand we have seen a proliferation of private training colleges as a contestable training market has been set up, and public training providers have lost funding and resources. On the other hand, many of the large public utilities or enterprises which once provided the core of the skilled blue-collar workforce have been privatised and have radically decreased their training commitment. The demise of the large in-house training facilities, particularly in former public utilities like Telecom, Qantas, various Electricity Commissions and Water Boards, has left a serious vacuum when it comes to blue-collar skills formation.

There has been long-term funding neglect of the VET sector in particular, and in the 2014 budget the Government cut a total of \$2 billion from skills programs.

The point we make here is that the Government should be using all the levers it can to encourage greater commitment and investment from employers to training their own workforce and developing the skills that their business then benefits from.

<sup>5</sup> Australian vocational education and training statistics, Apprentices and Trainees, Annual 2011, NCVER, 2012, p. 5; NCVER, News and Events, Fewer Trainees start, apprentices continue to slow, 18 May 2012); NCVER, News and Events, Apprentice and trainee December quarter 2011 statistics released, 5 June 2012

<sup>6</sup> Annual subclass 457 State/Territory Summary Reports 2010-11 and 2011-12

To address these issues under the 457 visa program and other visa types, unions support stronger training obligations and benchmarks tied to the use of skilled migration, so that employers who have a genuine need to sponsor and bring in overseas workers to fill skill shortages are also training the future workforce, reducing their need to rely on temporary overseas workers in future.

Unless there a sharper focus on training in the specific skills and occupations of 457 visa workers allegedly in shortage, the 'shortages' will never end and employers will simply churn through an endless supply of 457 visa workers.

This is not consistent with the objectives of the 457 visa program as a temporary skilled visa program to alleviate temporary skilled shortages.

This was a concept well-articulated in the 2008 Deegan report, as set out below, but is still yet to be acted upon:

*Employers seeking to benefit by bringing overseas workers to Australia should be required to make some tangible commitment to the training of Australians in the skills sought. The commitment could be commensurate with the level of overseas labour employed but should also have a real connection to training in the appropriate area of skill. Large employers could be required to hire a percentage of apprentices or new graduates. This, at least, might ensure that Australian graduates were not passed over for employment opportunities because they lacked relevant work experience and because it is more cost effective to employ experienced employees from outside Australia. Small employers could participate in industry-wide training schemes or contribute to scholarship or training funds in appropriate areas.*

*The menu of training options devised should be such that sponsors of temporary skilled labour could demonstrate that their use of that labour would not contribute to the de-skilling of Australians in the skill area being sourced.<sup>7</sup>*

## **INFORMATION REQUEST 5.2**

### **The Commission is interested in information on policies that are likely to be effective in attracting highly skilled immigrants to live and work in Australia**

The draft report identifies a range of factors that can influence these decisions, including cost, likely employment opportunities, wage differentials, access to government services, family reunion opportunities, safety and security, and cultural affinity.

One issue we wish to highlight is the impact that poor treatment of migrant workers can have on Australia's international reputation and, over time, its ability to attract migrant into various visa programs.

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<sup>7</sup> Visa subclass 457 integrity review, Final Report, October 2008, p.42.

### **INFORMATION REQUEST 6.1**

***How can the Adult Migrant English Program be better tailored to meet the individual needs of immigrants for English-language training? Are there lower cost approaches to increasing the access of recent immigrant groups (such as those on a family visa) to English-language classes, including conversation classes?***

In relation to employer-sponsored visas, an employer contribution to English language training could be incorporated into the sponsorship obligations.

### **INFORMATION REQUEST 9.2**

***The Commission seeks feedback on the merit of caps on temporary 457 visa numbers for specific occupations. It is particularly interested in participants' views on whether the recommendations from the Independent Review into Integrity in the Subclass 457 Programme (the Azarias Review) – and which have been supported by the Australian Government – are likely to lead to the more accurate identification of genuine labour market shortages for occupations on the Consolidated Sponsored Occupations List.***

The ACTU supports the option of caps for particular visa types or specific occupations, where occupations are in over-supply or where there is over-use of visas in certain regions or occupations.

We also support the development of a more rigorous occupations list that contains only those skilled occupations that are in genuine shortage, consistent with the recommendations of the Azarias review, and greater transparency in the way such a list is developed and targeted. We await further work by the Ministerial Advisory Council for Skilled Migration on this front.

A better targeted skills list should not be a substitute for a rigorous labour market testing obligation for each employer who wishes to access the 457 visa program.

### **INFORMATION REQUEST 10.1**

***The Commission seeks information on the potential impacts of tightening the points test for the onshore independent visa subclass of the skilled immigration program, including granting more points for:***

- superior English-language proficiency
- better academic results
- qualification in under-supplied fields.

The ACTU has broadly supported a points-based approach for entry into the independent, permanent migration stream. We recognise the benefits of this approach in providing objectivity in the processing of applications, increasing transparency for applicants, and providing government with a degree of control over the migration pathway through the capacity to recalibrate the number of points assigned to different criteria.

The overall aim of the point test should be to ensure Australia gets the skilled migrants required to meet our medium to long term skill needs as identified by the Skilled Occupations List.

In constructing the points test it is important that no single factor becomes a determining factor and creates perverse incentives and outcomes, as has been the case in the past. At the same time, it is important that the points test is not overloaded with too many factors.

We support a strong focus on the core criteria of skills, qualifications, work experience, and English language proficiency, with a view to those fields or occupations are under-supplied. This clearly puts the focus on those factors that increase the chances of migrants moving into productive employment, and giving Australia the best possible applicants to meet identified skill needs. These should be the primary factors determining the success or otherwise of applications for permanent migration.

### ***INFORMATION REQUEST 11.1***

***The Commission seeks feedback on the use of the Consolidated Sponsored Occupations List in the immigration pathway from temporary to permanent employer-sponsored skilled immigration. Is the list sufficient to allow both temporary skilled (subclass 457) visas and employer-nominated permanent visas to meet their stated objectives?***

The priority in terms of the CSOL is to ensure that it contains only those occupations that are in genuine skill shortage. Presently, it is simply a list of over 650 occupations regardless of whether they are in shortage.

### ***INFORMATION REQUEST 11.2***

***The Commission is seeking information on the English-language requirements for the Temporary Residence Transition stream of the employer-nominated (subclass 186) visa, including:***

- ***the benefits and costs of having a lower English-language requirement than other skilled immigration streams ('vocational' rather than 'competent')***
- ***the benefits and costs of the exemption from English-language testing for immigrants who have undertaken five years education with all tuition in English.***

The ACTU and affiliated unions support the importance of strong English language standards for overseas workers under all parts of the migration program.

Threshold English language requirements are critical in a number of ways:

- In ensuring good OHS in the workplace.
- In reducing the potential for exploitation.
- In understanding rights and responsibilities at work.
- In enabling effective performance at work.
- In enabling overseas workers to pass on their skills to fellow workers.
- In improving employability and mobility.
- In enabling participation in the community in which temporary work visa holders live and work.

A common characteristic of many of the serious cases of exploitation under the temporary work visa program are the poor English language skills of the workers involved, and the vulnerable situation this left them in. This has been illustrated in a number of recent cases.

For example, in the case of a cook employed on a 457 visa in conditions found to be akin to slavery, the judge found:

*“a man who was functionally illiterate, spoke virtually no English and had no contacts in the Australian community, [who] was brought from India to work 12 hours per day, seven days per week in the [employer’s] restaurant. Over 16 months, [the cook] was not paid, beyond the small foreign exchange transfers sent to his wife [\$6,958], and received no leave. He slept in a storeroom in the restaurant, washing with a bucket.”*<sup>8</sup>

In a case of young international students being paid as little as \$8 hour, it was also noted that they had poor English skills.<sup>9</sup>

A group of Filipino workers at the centre of the Chia Tung case in regional NSW who were paid just \$9 an hour after thousands of dollars were deducted unlawfully from their wages also spoke no English.<sup>10</sup>

We also bring to the Commission’s attention the stark fact that all but one of the 12 reported work-related deaths of 457 visa workers occurred before 2009 when lower English language standards were in place. All except one of those deaths were workers from countries where English is not the first language.

The absence of strong English language can have a very serious and practical impact on not only the health and welfare of the overseas workers themselves, but also on their co-workers, clients, customers or patients as the case may be.

For example, in one case an international nursing student, one month into his employment, fed an elderly patient a cup of dishwashing liquid instead of medication because of his inability to read the label.

After being terminated from his employment, the regulatory authority ordered him to complete the test (IELTS) to prove his English skills. He tried and failed six times.<sup>11</sup>

For all these reasons, the ACTU supports the current minimum English language requirement of IELTS 5 (basic vocational English) across all four language areas. This is already a bare minimum standard. We do not support concessions being available that would lower this requirement or allow it to be waived.

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<sup>8</sup> RAM v D&D Indian Fine Food Pty Ltd & Anor [2015] FCCA 389 (27 March 2015), reported in Workplace Express, 30 March 2015

<sup>9</sup> Toscano, N., “Coffee franchise fined for under-paying casual staff”, The Age, p. 10, 2 February 2015

<sup>10</sup> Hannan, E., “Imported welders, electricians go months without wages, Australian Financial Review, 20 April 2015, p. 6.

<sup>11</sup> <http://www.news.com.au/national/nsw-act-nurse-washed-up-patient-was-fed-det>

It is worth noting the IELTS 5 standard is described as ‘*partial command of the language, coping with overall meaning in most situations, though makes many mistakes. They are able to handle basic communication in their own field.*’ Below that you have IELTS 4 ‘*a limited user with frequent problems in misunderstanding and expression*’.

If anything, the question should be why the higher standard of IELTS 6 required for the permanent General Skilled Migration stream does not also apply to the 457 visa program.

In addition, we note that for skilled professions such as nursing and midwifery, the English language standard that is set by the registration authority must be met. In the case of nursery and midwifery, this requirement is an IELTS score of 7.0. There must not be any concessions on the English language standards required for these skilled professions.

Unions are all too aware that English language requirements are often targeted by employers keen for deregulation and ‘increased flexibility’ under the 457 visa program. However, there is no clear rationale advanced for why exactly English language standards should be lowered, and it appears only to be a way to promote easier access to an even larger pool of less skilled overseas workers.

Restaurant and Catering Australia have gone so far as to state that English language requirements should simply be removed altogether as ‘kitchen staff did not need to speak English’.<sup>12</sup> This would leave those employees tied more than ever to their sponsoring employer, with very limited capacity to find alternative employment if the need arose, as the example above from the restaurant industry shows all too well.

### **INFORMATION REQUEST 13.1**

***The Commission seeks participants’ views on the potential impacts of the following alternative visa charging models in conjunction with retaining the qualitative criteria under the current system:***

- **Option 1: A market-based price for each visa subclass**
- **Option 2: A fiscally-reflective charge by visa subclass**
- **Option 3: An additional charge in exchange for relaxing specific selection criteria**
- **Option 4: A uniform levy across visa classes**
- **Option 5: A new visa subclass with a limited number of places and a very high charge, with only health, character and security checks**

None of these options are particularly attractive.

For example, we do not support the idea in option 3 of being able to pay higher charges as a way of opting out of specific selection criteria. Either they are requirements that should be met or they are not. Having the capacity for some applicants to pay to avoid requirements that others have to meet is not a good basis for immigration policy.

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<sup>12</sup> Bitá, N., Call for visas to serve up chefs, *The Australian*, 7 April 2014, p. 2.



Similarly, option 5 is not supported. The Commission has rejected this concept as a basis for determining the overall migrant intake; it is not any more acceptable as a basis for allowing the migration of a select few.

In our submission, the development of alternative visa charging models is down the list of priorities in assessing changes required to current migration policy.

## Miscellaneous comments

### Free trade agreements and labour market testing

The draft report makes several references to the impact of free trade agreements on temporary entry provisions and labour market testing provisions (pp 20, 69).

These references may create the impression it is only selected business people or high level executives who are exempted from labour market testing obligations as a result of these agreements. In fact, the impact of most of these agreements, including the recent China Australia Free Trade Agreement, is to remove labour market testing for a whole range of skilled occupations, including nurses, engineers, electricians, plumbers, carpenters, bricklayers, tilers, mechanics and chefs. Despite a great deal of obfuscation from the Government on this issue, the Department of Immigration and Border Protection confirmed this point in evidence before the JSCOT hearing on 7 September 2015.<sup>13</sup>

**Mr KELVIN THOMSON:** *Mr Wilden, you referred in your evidence again this morning to engineers, nurses and category 3 trades. Are Chinese tradespersons at category 3, engineers and nurses currently subject to labour market testing conditions and requirements?*

**Mr Wilden:** *If they were to come in currently and they were not exempt, they would be required to be subjected to labour market testing—that is, the sponsors would be.*

**Mr KELVIN THOMSON:** *And if the China FTA comes into force, will they be subject to those labour market testing conditions then?*

**Mr Wilden:** *No, they would be exempted.*

**Mr KELVIN THOMSON:** *So the situation for engineers, nurses and others in category 3 will change?*

**Mr Wilden:** *Correct.*

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<sup>13</sup> Hansard transcript, p. 30, 7 September 2015..

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