

**ACTU Submission**  
**Productivity Commission**  
**Inquiry into the migrant intake**  
**into Australia**

12 June 2015

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## INTRODUCTION

The ACTU welcomes the opportunity to make a submission to this Productivity Commission Inquiry into the migrant intake into 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.

At the recent ACTU Congress, Australian unions reaffirmed their support for a strong, diverse and non-discriminatory skilled migration program. We paid tribute to the invaluable contribution that migrants have made and continue to make to Australia's social, cultural and economic life.

At the same time, unions are deeply concerned about the over-reliance on a growing temporary work visa program that now makes up around 10% of the total Australian labour force.

At a time when unemployment remain stubbornly above 6% and youth unemployment is more than double that, the Australian community needs to have confidence that such a large and growing temporary work visa program is not having adverse impacts on employment and training opportunities for Australians, particularly young people.

Equally, the community needs to be assured that employers and others are not exploiting vulnerable temporary overseas workers who are unaware of their rights or not in a position where they feel able to exercise those rights.

Unfortunately, the evidence available from our affiliated unions and other sources is that both Australian and overseas workers are being disadvantaged and exploited on a regular basis under the current policy and program settings that govern temporary work visas.

In this submission, we first set out again our broad position on skilled migration. We then provide our preliminary response to the central proposal under consideration in the issues paper; the scope to use alternative methods for determining immigrant intakes.

In response to this proposal, we wish to emphasise at the outset that Australian immigration policy should be based squarely on the Australian national interest. This must include support for the primary right of Australian workers to Australian jobs, and for all workers – whether Australian citizens, permanent residents or temporary residents - to be treated with dignity and respect and in accordance with Australian standards.

On that basis, we reject proposals outlined in this paper that would put aside these national interest considerations and effectively outsource decisions on the size and composition of the migrant intake to Australia to the highest bidder.

We then respond to some of the broad themes canvassed in the Productivity Commission issues paper ('the issues paper'). These include most notably a range of issues concerning the interaction and balance between temporary and permanent migration streams. Other issues include the varying public services and workplace rights available to temporary and permanent migrants, and the push to expand the skilled migration program into lower-skilled occupations

We look forward to providing a further submission as appropriate when the Productivity Commission releases its draft report into these matters.

## OTHER REVIEW PROCESSES AND ACTU SUBMISSIONS

The Issues Paper refers to other reviews currently being undertaken by other Australian Government bodies and departments. These include the current review of the Skilled Migration and Temporary Activity Visa Program by the Department of Immigration and Border Protection (DIBP), and the ongoing Senate Inquiry into the impact of Australia's temporary work visa programs and on the temporary work visa holders. There was also a review of the 457 visa program in 2014 conducted by a Government-appointed external panel ('the Azarias Review').

There is some overlap between the various inquiries and reviews.

The ACTU has made a comprehensive submission to the current Senate Inquiry, as well as two further submissions to the current DIBP review, and a submission to the Azarias review.<sup>1</sup> We refer the Commission to those submissions for further detailed consideration of issues relevant to this Inquiry, particularly in terms of the nature and dimensions of the growing temporary work visa program and the implications this has for both Australian and overseas workers, and invite the Commission to consider this submission in conjunction with those other pieces of work. We continue to rely on and advocate the full suite of recommendations contained in our submission to the Senate Inquiry, but we recognise that some of those matters may not fall within the remit of this Productivity Commission inquiry.

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<sup>1</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/temporary\\_work\\_visa/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Submissions) (see ACTU Submission No. 48)  
<http://www.actu.org.au/our-work/submissions/actu-submission-to-the-review-of-skilled-migration-and-400-series-visa-programs> (ACTU submission 30 January 2015)  
<http://www.actu.org.au/our-work/submissions/actu-submission-to-the-review-of-skilled-migration-and-400-series-visa-programs-2014> (ACTU submission 17 October 2014)  
<http://www.actu.org.au/media/291310/ACTU%20Submission%20to%20the%20457%20review%202014%20-%2030%20April%202014.pdf> (ACTU submission 30 April 2014)

## KEY POINTS AND RECOMMENDATIONS

We set out below key points and recommendation for consideration by the Commission, based on the matters raised in the issues paper and the priority issues for the ACTU and affiliated unions. Further detail on these responses is contained in the submission that follows and also in our submission to the current Senate Inquiry.

### **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 as the 'mainstay' of the skilled migration program.

### **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 residency.

## 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.

## 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 roting 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. The submission outlines the type of information that should be collected.
- 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 visa holders, as outlined in the submission. 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.
- DIBP to provide consolidated and publically available information on the working patterns of student visa holders, as outlined in the submission. 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 from the visa holder and/or their employers.

## OVERVIEW OF OUR POSITION ON SKILLED MIGRATION

The ACTU and our affiliated unions are longstanding supporters of a strong, diverse and non-discriminatory immigration program.

Immigration is an integral part of the Australian story. Migrants have made and continue to make an invaluable contribution to Australia's social, cultural and economic life. Unions are particularly proud of the fact that thousands of our members across the country are migrants or come from migrant backgrounds, and, indeed, union officials too have similarly diverse backgrounds.

The ACTU and affiliated unions have had a long and significant interest particularly in those parts of the skilled migration program where temporary visa holders with work rights are involved.

Unions have often represented qualified Australian workers whose primary rights to skilled jobs have been ignored by employers preferring to use temporary overseas workers, as well as representing temporary visa workers whose livelihoods have been threatened by employers and other agents who have taken unfair advantage of them.

It has often been the temporary 457 visa program that has captured the attention in these cases, but many of the same issues apply across a range of temporary visa types, including working holiday visas and student visas. Our submission to the current Senate Inquiry details many of the cases of exploitation of temporary overseas workers that have been reported. These cases have been going on far too often and for far too long. They point to systematic and entrenched flaws with the temporary work visa program.

Unions recognise that skilled migration will continue to be a part of the response to our future national skill needs. Our clear preference is that this occurs primarily through permanent migration where workers enter Australia independently, with a greater stake in Australia's long-term future and without the 'bonded labour' type problems that can emerge with temporary and/or employer-sponsored forms of migration.

We recognise that there may be a role for some level of employer-sponsored and temporary migration to meet critical skill needs. However, there needs to be a proper, rigorous process for managing this and ensuring Australian workers are not missing out on jobs and training opportunities, and that overseas workers are not being exploited.



The skilled migration program should not be a substitute for properly investing in and training the Australian workforce. Instead, it should be viewed as supplementary to national skills policy and the supply of skilled workers delivered through domestic education and training and by increasing the labour force participation of those who continue to be under-represented in the workforce.

The first priority must always be to maximise jobs and training opportunities for Australians – that is, citizens and permanent residents of Australia, regardless of their background and country of origin – and ensure they have the first opportunity to access Australian jobs.

At the same time, when there is a genuine need for overseas workers, those workers must be treated well, receive their full and proper entitlements, be safe in the workplace, and have fair access to public services – and if this does not happen, they must be able to seek a remedy just as Australian workers can do, including by accessing the benefits of union membership and representation.

## ALTERNATIVE METHODS OF DETERMINING IMMIGRANT INTAKES

The Productivity Commission has been charged with investigating alternative methods of determining immigrant intakes and, in particular, the proposal to use entry charges at the primary basis for determining migrant entry into Australia.

Our submission notes that the issues paper identifies very broadly some of the options for how such an alternative scheme might work and what it would look like.

We do not intend in this submission to respond to each and every one of those design options. The onus should be on the proponents of such a scheme to do that detailed policy design work.

We would however make some general observations and highlight some particular concerns with the proposal as it is currently put forward.

The ACTU does not support any proposal for Australian immigration policy to be determined simplistically on the basis of capacity to pay and which effectively removes 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 create a situation where only those rich enough to migrate are allowed entry, regardless of fulfilling current considerations, including filling skill shortages. Those willing to pay the price could it seems bypass requirements for employers to hire qualified Australians before hiring overseas workers.

As the issues paper points to, charging for entry would also conflict with basic notions of fairness and equity whereby, for example, family reunion prospects would be restricted to those who could pay whatever inflated price that is set.

The issues paper asks if such a scheme would assist in building support for immigration. This appears to be linked to the terms of reference which require the Commission to take into account, among other things, 'opportunities for Australian citizens to be altruistic towards foreigners'. We are not clear on what this even means. Is it meant to suggest that Australians will somehow be more accepting of migrants (only) if they know the migrants have paid a large sum of money to come to Australia?

In our submission, ongoing community confidence in and support for a strong skilled migration program rests far more on assuring Australians that elements of the program are not being misused to the detriment of either Australian workers or overseas workers. This is why we argue that requirements such as rigorous labour market testing are critical so that Australians workers – whether young people looking for their first job or older workers looking to get back into the workforce or change careers - can be assured they will have priority access to Australian jobs before overseas workers are employed.

We are particularly troubled by proposals that would allow parties other than the immigrant to purchase permits on behalf of the immigrants, including for example labour hire firms or prospective employers. On the face of it, this would open such a scheme up to the same problems already experienced by many migrants and potential migrants who have been signed up to loans from a variety of employers and other agents in return for various promised visa outcomes. The result effectively has been to place such migrants in an extremely vulnerable situation of debt bondage, akin to slavery in many cases, as they are beholden to their employer or agent and subject to large and regular salary deductions as they pay off the loan. Our Senate Inquiry submission provides examples of these practices.

Those employers prepared to pay the price on behalf of overseas workers would also be presented with another loophole to contract out of fundamental obligations like a requirement to test the local labour market before employing overseas workers.

Another concerning aspect of the proposals is the idea that payment of the required charge would 'purchase' only very limited entitlements and access to social support services. Unions do not support migration policy settings that are based on migrant workers being treated as second-class citizens.

A system of modest and reasonable charges for different visa types is clearly already in place. 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. However, the proposal in the issues paper appears to go far beyond this.

In our submission, it is not terribly sophisticated policy to change our migration requirements to a system where entry is determined solely or primarily on an individual's wealth. Migration policy is more complex than that and should not be reduced to a single factor like a price.

We recommend the Commission reject these proposals in their entirety.

## THE INTERACTION AND BALANCE BETWEEN TEMPORARY AND PERMANENT MIGRATION

The issues paper makes the observation that the Australian immigration system has become increasingly characterised by temporary immigration. Over the past decade, the paper notes, temporary immigration has overtaken permanent migration as the main contributor to Net Overseas Migration (NOM).

The paper is right to highlight this issue. The growing size of the temporary visa workforce and the increasing trend towards employer-sponsored, rather than permanent independent, migration are major shifts in how the skilled migration program has traditionally operated. To date, these shifts have been largely neglected in the public policy debate and been subject to little proper scrutiny. In our submission, there needs to be far more discussion and debate of these issues. This is a debate the Government needs to engage in, not only with interested participants in this and other inquiries, but with the broader community.

Below we provide some further detail on the nature and dimension of these changes, their implications, and our recommended policy responses.

### Overview of the temporary visa workforce in Australia

#### Quick facts

- The latest figures as of 31 December 2014 show there were 1.864 million temporary visa holders in Australia. Up to 1.3 million of these visa holders have work rights. This equates to around 10% of the total Australian labour force of over 12.4 million.
- The various types of temporary visa holders with work rights includes:
  - 623 440 New Zealand visa holders
  - 303 170 student visa holders
  - 167 910 temporary 457 visa holders
  - 160 940 working holiday maker visa holders
  - 19 510 temporary graduate visa holders
- Unlike the permanent migration program, there is virtually no cap on numbers for any of these various temporary visa types - even when unemployment rises - and, except for the 457 visa program, there is no labour market testing or restrictions on the type of occupations the visa holders can work in (i.e. they can work in low-skilled occupations).
- Increasingly, workers on these other temporary visa types are seeing this as a route to a 457 visa and, ultimately, permanent residency:
  - Over 50 per cent of applications for 457 visas now come from people already in the country, many already working for the employer sponsoring them.
  - 67 per cent of the onshore visa grants, and 34 per cent of all 457 visa grants, were made to persons on Working Holiday visas, student visas or Temporary Graduate visas.

As the most recent figures from (DIBP in table 1 show, there were more than 1.8 million temporary residents in Australia, including New Zealanders, as at 31 December 2014. <sup>2</sup>

With the main exception of visitor visa holders (whose numbers increase dramatically over the summer holiday period that is captured by the December quarter figures), most of these visa holders are able to work in Australia - i.e. up to 1.3 million or more temporary visa holders have work rights. This equates to around 10% of the total Australian labour force of nearly 12.5 million.

By comparison, the current annual planned intake of skilled migrants under the permanent migrant program is 128 550. <sup>3</sup>

Even if the large number of New Zealanders are taken out of the calculations, this still leaves somewhere in the order of 700 000 to 800 000 temporary overseas workers in Australia at any one time. At the same time, there are close to 800 000 Australians out of work.

A recent OECD report also showed that a further 62 700 people whose temporary visas had expired or been cancelled were living in Australia.<sup>4</sup> This is consistent with the findings of the 2011 Howell review into 'illegal' work in Australia that there were at least 50 000 and possibly in excess of 100 000 overseas nationals working in Australia without valid work rights.<sup>5</sup>

**Table 1 Temporary visa holders in Australia at 31 December 2014 by visa category**

Visa Category	Total number of visa holders
Visitor visa holders	468 480
Student visa holders	303 170
Temporary skilled (457) visa holders	167 910
Working holiday maker visa holders	160 940
Bridging visa holders	89 980
Other temporary visa holders	31 300
Temporary graduate (485) visa holders	19 510
New Zealand (subclass 444) visa holders	623 440
<b>TOTAL</b>	<b>1 864 730</b>

**Source:** Temporary entrants and New Zealand citizens in Australia as at 31 December 2014, Department of Immigration and Border Protection, Australian Government

<sup>2</sup> Temporary entrants and New Zealand citizens in Australia as at 31 December 2014, Department of Immigration and Border Protection, Australian Government.

<sup>3</sup> <https://www.immi.gov.au/media/statistics/statistical-info/visa-grants/migrant.htm>

<sup>4</sup> Whyte, S., "Indian citizens head immigration queue for Australia", Sydney Morning Herald online, 6 December 2014

<sup>5</sup> Howells, S., *Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007*, Commonwealth of Australia, 2011.

It is important to note that, unlike the permanent migration program, the number of temporary visa holders is not capped in any way to take account of the state of the Australian labour market, with the exception of the small-scale Work and Holiday (462) visa program. Under current settings, the numbers can continue increasing, even as unemployment and youth unemployment rises.

With the exception of some occupations under the 457 visa program, there is no labour market testing or restrictions on the type of occupations the temporary visa holders can work in i.e. they can work in lower-skilled parts of the labour market.

The suggestion that Australian immigration policy is based on 'managed migration' 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.

In answer then to the question that is posed in the issues paper, 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 immigrant streams while the temporary program is left uncapped.

The number of temporary overseas workers has been increasing for some time in total and across a number of visa types. For example, the DIBP reports on temporary entrants show:

- There are over 230 000 more temporary residents in Australia now than there were three years ago, an increase of 14.3%.
- Over a period of 7 years from 2007-14, the numbers increased by around 600 000 – almost 50%.
- The number of working holiday makers currently in Australia is 160 940. This is an increase of around 60% since mid-2010, when there were just on 100 000.

A further important issue to note is that there is now effectively a 'pipeline' of various temporary visa types feeding overseas workers into the 457 visa program and then onto permanent residency. This is evident in the increasing trend for 457 visa applications to originate from persons already 'onshore' in Australia on other visa types. Almost 50% of visa applications and visa grants under the 457 visa program now come from people already in the country, with many already likely to be working for the employer sponsoring them.

The report of the 457 review panel<sup>6</sup> found that in the 11 months to 31 May 2014, 67 per cent of the onshore visa grants, and 34 per cent of all 457 visa grants were made to persons on Working Holiday visas, student visas or Temporary Graduate 485 visas. The table below reproduced from the panel report shows the large rises over the past decade in both the number and the proportion of 457 visas granted onshore to former students and working holiday makers, and, more recently, temporary graduate visa holders. Interestingly, visitor visa holders also feature prominently in terms of the last visa held by current 457 visa holders.

**Table 2 Subclass 457 Primary visa granted by client location between 1 July and 31 May 2014 by last visa held (visa category)**

Financial Year of Visa Grant	457 Visa	Student Visa	Temp Grad Visa	Temp Resident Visa	Working Holiday Maker Visa	Visitor Visa	Other Visas	Not-Known	Onshore Total	Offshore Total
2001-02	3 824	499		150	2 090	4 139	6	205	10 913	5 787
2002-03	4 742	510		292	2 255	3 981	7	346	12 133	6 540
2003-04	5 029	596		366	2 466	3 866	10	161	12 494	7 607
2004-05	5 243	836		330	2 585	3 657	2	99	12 752	11 649
2005-06	6 092	1 377		1 035	2 768	3 846	10	104	15 232	20 997
2006-07	8 114	1 785		979	2 547	4 087	14	37	17 563	25 555
2007-08	10 121	2 341		915	4 059	4 676	14	27	22 153	33 643
2008-09	10 065	2 490	1	647	3 993	3 745	7	17	20 965	27 411
2009-10	6 042	1 984	26	302	3 620	3 174	90	32	15 270	18 491
2010-11	5 915	2 900	176	250	5 711	3 988	186	68	19 194	27 463
2011-12	6 880	5 953	642	383	8 734	4 762	249	117	27 720	38 180
2012-13	6 532	9 512	2 243	304	9 523	4 012	198	199	32 523	33 758
2013 to 31 May 2014	4 813	7 355	2 454	465	6 228	2 399	145	168	24 027	22 624

Source: Department of Immigration and Border Protection, 2014 (BE7451.11)  
 Note 1: Figures are subject to variation  
 Note 2: Exclude visa granted under a Labour Agreement and Independent Executives  
 Note 3: Unknown represents the number of subclass 457 visa granted where the system shows the application is onshore and there is an unmatched previous visa grant  
 Note 4: Data prior 1 July 2001 is in summarised format and the link to previous visa grant is not available

Many of these 457 visa workers then go onto employer-sponsored permanent residency. Figures in the Panel report show that in the 11 months to 31 May 2014, 61% of employer-nominated PR visas went to former 457 visa holders, who as the table above shows often started on other temporary visa types. In an increasing number of cases, student visa holders, temporary graduate visa holders, and working holiday visa holders go directly to an employer-sponsored PR visa. Table 3 from the Panel report below shows these trends over the past decade.

<sup>6</sup> Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Programme, An Independent Review into Integrity in the subclass 457 visa Programme, September 2014

**Table 3 Migration programme outcome 2004-2005 to 2013-2014 – Employer Nominated only by last substantive**

Location	Change of Status	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
Offshore	Total	2 596	3 223	3 591	4 926	5 228	5 265	5 284	8 726	11 362	7 472
Onshore	No visa indicated	1 375	1 059	573	432	710	734	932	1 205	2 987	2 417
	Other	1 023	871	820	842	1 097	937	844	773	743	968
	SC - 417	143	121	114	135	248	493	771	1 014	972	801
	SC - 457	6 910	8 764	10 674	16 550	29 485	32 597	33 850	30 366	25 294	27 782
	SC - 485					6	135	306	859	2 276	3 734
	Student	301	425	479	632	1 049	687	2 190	3 443	3 906	2 369
	Visitor	676	763	334	245	203	139	168	168	200	271
	Onshore Total	10 428	12 003	12 994	18 836	32 798	35 722	39 061	37 828	36 378	38 342
Employer Nominated Total	13 024	15 226	16 585	23 762	38 026	40 987	44 345	46 554	47 740	45 814	
Note: Last substantive is applicable only to persons onshore at time of Employer Nominated Permanent Resident Visa grant											

A further point to be raised here that we will return to later in the submission is that there is little, if any, further information available on the profile of temporary visa holders, with the exception of information on 457 visa workers. The total number of workers on temporary visas such as students and working holiday makers is presented above, but there is nothing readily accessible on the occupations, industries or locations those workers work in, the hours they work, and the duration of their employment. Given the size of the temporary visa workforce and its potential impact on employment opportunities for Australian citizens and permanent residents, this data gap needs to be rectified.

### **The shift away from permanent, independent migration**

The size of the temporary visa workforce must also be viewed in the context of the changing balance of the overall skilled migration program away from permanent migration.

Permanent migration has very much been the basis for the success story of immigration in Australia over a number of decades. As is well known, the Australian labour market absorbed large numbers of immigrants from the end of the Second World War onward, and this formed the basis for a major expansion in the manufacturing sector as well as large-scale construction projects, such as the Snowy Mountains hydro-electricity scheme.<sup>7</sup> The distinctive feature of this program of immigration, in contrast to the European experience of

<sup>7</sup> Jock Collins 1988, *Migrant hands in a distant land: Australia's post-war immigration*, Leich-hardt: Pluto Press



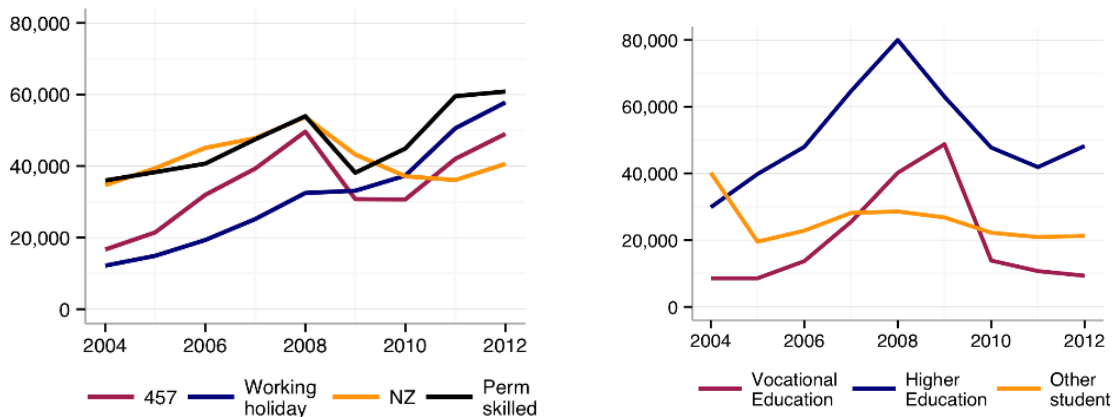
'guest workers', was permanent settlement.<sup>8</sup> In other words, these immigrants became Australian citizens and their families were raised in Australia.

As a consequence, the occupational trajectories of second-generation immigrants have shown marked differences to those of their parents, with the scenario of the children of factory workers becoming professionals not being uncommon. In terms of the macro-economy, immigration to Australia since the 1940s has generally been regarded as positive because it increases aggregate demand and it lowers the age profile of the workforce.

However, as the issues paper notes, and as the Department itself has noted in a recent discussion paper<sup>9</sup>, in more recent years the focus has shifted markedly, with 'demand-driven' employer-sponsored migration increasingly holding sway under successive governments of both persuasions. The bulk of Australia's migrant workforce now comes from employer-sponsored and temporary migration, with a large component of 'guest workers' now in the Australian labour market in the form of visitors on temporary visas with work rights.

As we outlined above, this has included specific skills-based visas (457s), working holiday visas, student visas, and New Zealand citizen visas with full working rights (though limited social security entitlements). The growth of these categories since the early 2000s has been dramatic: the first two categories each now almost match permanent skilled arrivals in terms of their magnitude and together far exceed permanent arrivals (see Figure 1 left panel). The rise in student visas (see right panel) has been remarkable, as was the sudden drop when various restrictions were imposed to prevent rorting and the use of these visas as a backdoor into permanent residency.

Figure 1: Immigration arrivals with work rights attached



Source: ABS.Stat <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3412.02013-14?OpenDocument>

<sup>8</sup> Stephen Castles and Godula Kosack 1985, *Immigrant workers and class structure in Western Europe*, Second edition, New York: Oxford University Press

<sup>9</sup> Discussion paper: Reviewing the Skilled Migration and 400 Series Visa Programmes, Department of Immigration and Border Protection, Australian Government, September 2014, p. 7.

In our submission, these are trends that effectively outsource decisions about our national migration intake to employers and their short-term needs, over the national interest and a long-term vision for Australia's economy and society. As the ACTU has submitted to the current Senate Inquiry, this shift not be blindly accepted as some inevitable, inexorable trend that must continue. Instead, it should be subject to critical questioning and debate within the Australian community.

Unions continue to have concerns with a skilled migration program that relies excessively on temporary and employer-sponsored migration. This is a concern that applies particularly to the temporary, employer-sponsored 457 visa program, but it applies also to the permanent, employer-sponsored programs; the Employer Nomination Scheme (ENS) and the Regional Sponsored Migration Scheme (RSMS). This concern plays out in different ways.

At the individual level, employer-sponsored visas where workers are dependent on their employer for their ongoing visa status increase the risk for exploitation as workers are less prepared to speak out if they are underpaid, denied their entitlements, or otherwise treated poorly. For example, this is one of the continuing objections that unions have to the permanent RSMS visa because it virtually bonds the visa holder to the same employer for two years. If the visa holder leaves the employer within 2 years, the Department can cancel the visa. Regardless of how often the Department exercises its discretion to cancel the visa, the fact that it has the power to do so leaves a cloud hanging over those visa holders.

The now well-worn pathway from a temporary 457 visa to a permanent employer-sponsored visa <sup>10</sup> creates the same kind of problems in that temporary overseas workers with the goal of employer-sponsored permanent residency have their future prospects tied to a single employer. Under visa rule changes effective from 1 July 2012, 457 visa workers must stay with their 457 sponsor for a minimum period of 2 years before becoming eligible for an employer-sponsored permanent residency visa with that employer.

Again, this makes these workers much more susceptible to exploitation and far less prepared to report problems of poor treatment in the workplace for fear of jeopardising that goal. This is a core, inherent problem with the temporary work visa program that was identified back during the Deegan review in 2008 <sup>11</sup> and was also acknowledged in the 2014 report by the 457 review panel.

By contrast, the DIBP, in a recent discussion paper as part of their ongoing skilled migration review, appears to see employer-sponsorship only in a positive light, citing the benefits for the visa holder of guaranteed employment and arguing that it serves to protect the rights of employees and decreases the likelihood of exploitation. There is no recognition of the many problems associated with employer-sponsorship and dependence on a sponsoring employer that are played out on a regular basis. This includes a number of recent reported cases of

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<sup>10</sup> Figures in the recent report of the 457 visa review panel show that in the 11 months to 31 May 2014, 61% of employer-nominated visas went to former 457 visa holders.

<sup>11</sup> Visa Subclass 457 Integrity Review, Final Report, October 2008.

visa holders and visa applicants being forced to pay their sponsors large sums of money in return for promises of future employment and sponsorship.

At a broader level, the concern referred to above is that the trend to 'demand-driven' employer-sponsored programs effectively outsources decisions over an ever-increasing part of the migration intake to employers.

The risk here is that the migration program will increasingly be responding to what the DIBP discussion paper itself describes as employers' 'immediate business needs', rather than being structured in a rational and coherent way that allows for longer-term skill needs of the Australian workforce and economy to be addressed.

The increasing shift to a more 'demand driven' skilled migration program, appears to rest on an assumption that the short term interests of employers are consistent with, and reflect, the long term interests of the Australian economy and of the migrant workers themselves. This is not necessarily the case. As Professor Sue Richardson has observed, "*it is in the employers' interests to have more of a given skill available at all times: they do not consider the personal and social costs of oversupply of specific skills.*"<sup>12</sup>

The OECD has also emphasised the risks associated with an excessive reliance on employer preferences:

*A regulated labour migration regime would, in the first instance, need to incorporate a means to identify labour needs which are not being met in the domestic labour market and ensure that there are sufficient entry possibilities to satisfy those needs. In theory, employers could be considered the group of reference for determining this, but historically, requests by employers have not been considered a fully reliable guide in this regard, at least not without some verification by public authorities to ensure that the requests represent actual labour needs that cannot be filled from domestic sources.*<sup>13</sup>

This demonstrates again the need for all forms of employer-sponsored migration to be underpinned by rigorous labour market testing, monitored and enforced by the Department with tripartite oversight.

Recent research on the best ways to attract 'high skilled migrants' also provides support for the idea that points-based or supply-based systems (similar to the permanent, independent migration stream of the skilled migration program in Australia) are more effective than employer demand-driven systems (such as the temporary 457 visa program).<sup>14</sup>

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<sup>12</sup> As cited in Phil Lewis, *The Labour Market, Skills Demand and Skills Formation*, Occasional Paper 6/2008, Skills Australia and The Academy of the Social Sciences in Australia, Canberra 2008, 4.

<sup>13</sup> OECD, *International Migration Outlook 2009*, 134.

<sup>14</sup> See <http://www.voxeu.org/article/attracting-high-skilled-migrants>

The growing trend towards employer-sponsored, rather than independent, migration represents a major shift in how the migration program has traditionally operated, and it has occurred without any real debate. The ACTU position continues to be that the current weighting of Australia's skilled migration program towards employer-sponsored pathways should be re-evaluated, with greater emphasis given to the permanent, independent stream as the 'mainstay' of the skilled migration program.

Our preference for permanent over temporary migration recognises that permanent migrants provide a more stable source of skilled workers with a greater stake in Australia's future and in integrating into all aspects of Australian community life. With permanent residency, migrants have a secure visa status. This makes them less susceptible (though not immune) to exploitation and less likely to generate negative impacts on other Australian workers in terms of wages, employment conditions and job and training opportunities.

Our preference for independent over employer-sponsored migration recognises the risks outlined above that are inherent in employer-sponsored and other temporary visas where workers are dependent on their employer for their ongoing prospects in Australia, and, in many cases, their goal of permanent residency.

## **Policy implications and responses**

In the sections above, we have provided an overview of the size and nature of the temporary visa workforce as a whole and its different component parts, their growth over time, and the fact that it is virtually uncapped without any regard for labour market conditions in Australia.

This material also shows the extent to which overseas workers move from visa to visa, in order to extend their stay and often in pursuit of their end goal of permanent residency in Australia.

This movement between temporary visa types, and also permanent visas, is a critical point for the Commission to consider in its deliberations. In our submission, it leads to many of the problems under the program as employers and agents take advantage of often vulnerable workers who are focused on their desire for permanent residency and doing what is required to get to the next step – whether that be to find work as a 417 visa holder, to get access to the second year working holiday visa extension,<sup>15</sup> to get a 457 visa, to get PR sponsorship. We refer the Commission to the ACTU submission to the current Senate Inquiry for further details of the extent of exploitation experienced by temporary work visa holders and a number of specific case studies.

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<sup>15</sup> 417 visa holders are able to apply for a second year working holiday visa if they undertake 88 days specified work in a designated regional area during the course of the first year of their initial visa in industries such as agriculture, forestry and fishing. Incredibly, the policy from DIBP until very recently has been that this 88 days work could be either paid or unpaid.

This movement between temporary visa types also means that employers have ready access to a large alternative source of labour comprising overseas workers who are already on-shore in Australia on one temporary visa type or another. This rebuts the oft-made assertion that employers will always employ Australians first because of the time and effort involved in recruiting workers from overseas.

The ACTU position on these issues is shaped by two key priorities, where work rights are involved.

One is to ensure that the visa holders themselves are treated well and afforded all their relevant rights at work, and, two, that the work rights of visa holders do not impact adversely on the training and employment opportunities available for Australian citizens and residents.

Given the problems created by this reliance on temporary visa work holders, many of whom are moving between different visa types, we emphasise the importance of a strong compliance and enforcement regime, as well as good education on workplace rights and responsibilities, to support and protect the position of vulnerable temporary overseas workers. More detailed recommendations on measures to protect against exploitation and improve compliance, enforcement and education can be found in our submission to the current Senate Inquiry. For the purposes of this inquiry, we focus on the measures outlined below.

### **Realigning the skilled migration program in favour of permanent migration**

First, we make the point that this Inquiry, along with the other reviews and inquiries currently underway, provides the opportunity to start a more fundamental rethink and reassessment of the whole balance of the skilled migration program. At one level, this could involve better pathways to permanent residency so that a worker on a temporary work visa is not so dependent on their current employer for their future prospects in Australia. We discuss this issue further below.

However, it should also in our view involve a recalibration of the whole skilled migration program, with greater priority given to permanent, independent migration.

The cases of exploitation under the temporary work visa program that continue to come to light have been happening far too often and for far too long for them to be dismissed as a few isolated cases in an otherwise well-functioning program. They point to the systematic, inherent problem of relying so heavily on a temporary work visa program where vulnerable workers are dependent on their employer for their ongoing visa status, and, in many cases, their desire for permanent residency. It is time now for a fundamental reassessment of a skilled migration program that places such emphasis on temporary and employer-sponsored forms of migration without due recognition of the inherent flaws and dangers in doing so.

This needs to be done in the interests of all workers - Australian citizens and permanent residents, and temporary overseas workers. This is also important for the Australian community as a whole and for Australia's international reputation as a fair and safe place for overseas nationals to work. In reference to a point raised in the issues paper, if anything is going to change the relative attractiveness of Australia as an immigration destination, then poor treatment of migrant workers is certainly one factor that will have an influence on that assessment. It is equally important for those employers who are doing the right thing in employing and training Australians, and where they do have a genuine requirement to use overseas workers, treating those workers well and in accordance with their legal entitlements.

We do not expect or advocate that a reassessment of this sort will mean a total abandonment of the temporary work visa system. We acknowledge the legitimate place that visa types such as the 457 skilled visa, the student visa, and the working holiday visa, have within the skilled migration program. However, there is a pressing need to ensure that the temporary work visa program, to the extent that it is required in conjunction with a strong permanent migration program, operates in the interests of all workers.

In support of this position, the ACTU advocates and recommends a number of further measures to ensure greater oversight, transparency and rigour is exercised in relation to the temporary work visa program. These measures outlined below may differ from visa type to visa type.

### **Temporary 457 visa – Labour market testing and strong training benchmarks**

For example, in relation to the 457 visa program, the ACTU supports measures to strengthen and expand labour market testing to cover all 457 visa occupations and ensure there is no weakening of safeguards under free trade agreements that Australia enters into.

This includes more rigorous evidentiary requirements for labour market testing to be incorporated into legislation and associated program guidelines to ensure the intent of the legislation is achieved and Australian employment opportunities are protected. This should include:

- A mandatory requirement for all jobs to be advertised as part of labour market testing obligations.
- The introduction of minimum requirements for mandatory job ads, similar to the UK Resident Labour Market Test.
- A requirement that jobs be advertised for a minimum of four weeks.
- A requirement that labour market testing has been conducted no more than 4 months before the nomination of a 457 visa worker.

- A ban on job advertisements that seek only overseas workers and/or that indicate the job will be filled by workers on a specified visa subclass.
- A crackdown on job ads that set unrealistic and unwarranted skills and experience requirements for positions, with the effect of excluding otherwise suitable Australian applicants.
- The Minister to use the provision at s140GBA (5) (b) (iii) of the *Migration Act 1958* to specify other types of evidence that should be provided as part of labour market testing, including evidence of relocation assistance offered to successful applicants, and evidence of specific measures to assist those disadvantaged or under-represented in the workforce, such as indigenous workers, the unemployed and recently retrenched workers, and older workers.

Our strong view is that labour market testing should apply to all occupations under the 457 visa program. Existing exemptions on the basis of skill level and occupation should be removed. Where Governments nevertheless intend to make exemptions from labour market testing, unions and other stakeholders should be consulted before any decisions are made on such exemptions, including consultation through the tripartite Ministerial Advisory Council on Skilled Migration (MACSM). Any proposal for exemption should be accompanied by an explanation as to how the exemption would be consistent with the central purposes of the 457 visa scheme as set out in s140AA of the Migration Act.

We also hold the strong view that the Australian Government should not enter into any free trade agreements that trade away the right of the Australian Government and the Australian community to require that labour market testing occur and Australian workers are given first right to Australian jobs. Where Australian Governments nevertheless continue to make commitments on the 'movement of natural persons' in free trade agreements that provide exemptions from domestic labour market testing laws, those commitments should not be extended to the category of 'contractual service suppliers' given the expansive meaning given to that term across professional, technical and trade occupations.

Undoubtedly, the Commission will be presented with, or otherwise be aware of, arguments against labour market testing that are routinely offered by employer representatives. This will likely include assertions that the obligation is too onerous and imposes a burden on employers, that employers will always look to employ Australians first, and that the 457 visa program simply responds to labour market changes. We refer the Commission to appendix 1 for our assessment of why such arguments should be rejected. We also refer the Commission to our Senate Inquiry submission for more detailed analysis of the issues and our recommendations in relation to labour market testing.

The ACTU also supports stronger, more robust domestic training obligations on employers who wish to access the 457 visa program. This is critical to ensure that employers who have a genuine need to sponsor and overseas workers to fill skill shortages are also training the future workforce, thereby reducing their need to rely on temporary overseas workers in future. It stands to reason also that the training must be directed at the specific occupations that are allegedly in short supply i.e. the occupations in which 457 visa workers are being approved on the basis that no qualified Australian workers are available.

In our submission to the current Senate Inquiry, we have recommended the following obligations which we commend also to the Productivity Commission:

- A requirement on sponsoring employers to be training and employing apprentices/trainees/graduates in the same occupations where they are using 457 visa workers.
- Where four or more 457 visa workers are sponsored by the employer in trade and technical occupations, apprentices must represent at least 25% of the sponsor's trade workforce.
- Smaller employers with fewer than four 457 visa workers and who are not able to commit to directly training an apprentice should be required to train an apprentice through an industry group scheme on a ratio of one to one for the time they seek to engage a 457 visa worker.
- Where employers are sponsoring 457 visa workers in professional and managerial occupations, recent Australian higher education graduates with less than 12 months paid work experience should represent at least 15% of the sponsor's managerial and professional workforce.
- Requiring sponsors of 457 visa workers to make payments into a dedicated training fund that is linked to broader training objectives. This concept is similar to that recommended by the Azarias review, but must be based on a more meaningful contribution. A contribution of \$4000, which is based on the standard government incentive payment an employer would have received if they had employed an apprentice through to completion, is a recommended benchmark contribution amount.

Again, we refer the Commission to our Senate Inquiry submission for further analysis of issues relating to the impact of temporary work visa programs on training and skills development.

Annual caps or quotas on the temporary work visa program, or components of it, should also be used where labour market conditions require it, in the same way that the permanent migration program is regulated.



This is an approach we have recommended specifically in relation to the 417 working holiday visa.

### **417 working holiday visa – caps and other measures**

While the 457 visa program has often been considered synonymous with the temporary visa program, other temporary visa types such as the 417 working holiday visa are now receiving greater attention, as their numbers continue to grow and particularly as more and more cases of mistreatment and exploitation come to light, as evidenced by the recent 4 Corners program.

The Working Holiday (subclass 417) visa is a one year visa available to 18-30 year olds who wish to holiday and work in Australia. There is also a much less widely used Work and Holiday visa (subclass 462). We focus here primarily on the 417 visa.

The impression promoted by DIBP, reinforced again its current review of the skilled migration program, is that the working holiday visa is primarily about travel and cultural exchange supplemented by some incidental short-term work. The former Minister Scott Morrison clearly adopted the same view of it, stating “*The WHM program is not a work visa and undertaking work is an optional part of a WHM’s stay*”.<sup>16</sup>

This fails in our view to recognise the reality of how these visas are used in practice, and viewed by those who use them.

For many young people, particularly for those from recession-hit countries with high youth unemployment, it is likely that finding work is the primary purpose of their visit to Australia. In fact, DIBP appear to concede this point, despite its stated position that the 417 visa is not a work visa, when it attributed a recent slight tapering off of working holiday visa grants from the record numbers in 2012-13 to improving economic conditions in some partner countries<sup>17</sup> - an acknowledgement that working holiday visa numbers are a reflection of people coming here to find work they cannot find in their home country.

Unions report that labour hire agencies using this visa are now so well organised they are recruiting in the countries of origin of the working holiday makers and have workers lined up with permanent full time work before they even enter Australia. The figures provided earlier also show the extent to which working holiday makers make the transition to other visas, including, ultimately, permanent residency.

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<sup>16</sup> <http://www.abc.net.au/news/2013-11-26/actu-working-holiday-visa-re-think/5117852>

<sup>17</sup> in Working Holiday Maker visa programme report, Department of Immigration and Border Protection, Australian Government, 30 June 2014, p. 7.

Working holiday visa holders can lawfully work in Australia from the date of their arrival to the date of their departure non-stop and full-time. The visa currently applies to any type of work, and is not subject to any sponsorship or skill requirements, such as labour market testing, and the visa numbers are uncapped.

The sole work restriction is that the visa holder can only work in Australia for up to six months with each employer. This is known as visa condition 8457. It would appear that very low priority is given to monitoring and enforcing compliance with this condition. Despite more than one million working holiday visas being granted in the past 7 years, not one single employer to our knowledge has been prosecuted for employing working holiday makers beyond this six month period.

In 2013-14, a total of 229 378 working holiday 417 visas were granted to young people from overseas (along with a further 10 214 subclass 462 Work and Holiday visas). As a point of comparison, at the same time youth unemployment is currently 13.6%, with almost 285 000 young Australians aged 15-24 looking for work.

The working holiday visa program has grown substantially over the past decade.

The total number of working visa holders in Australia – currently 160 940 – is now equivalent to around 7.7% of the total Australian labour force aged 15-24. These figures have more than doubled since mid-2007 when working holiday visa holders numbered 74, 450 and represented 3.7% of the Australian workforce aged 15-24. There are over 50 000 more working holiday visas granted each year now than there were four years ago.<sup>18</sup>

Since mid 2010, the number of working holiday visas have increased from around 100 000 to 160 000. As a point of comparison, youth unemployment has gone from 11.6% to as high as 14.1% during that same period.

In presenting numbers such as this, our submission is not that young overseas travelers be denied the chance to work in Australia under a visa of this type. Nor do we seek to argue that the abolition of the working holiday maker program would immediately solve youth unemployment. However, it is concerning that a visa program of this size continues to operate without any public assessment and review of the potential impact this additional and growing labour supply has on employment opportunities and employment conditions for Australian citizens and permanent residents, particularly on young Australians in lower-skilled parts of the labour market.

The ACTU is recommending that the working rights attached to this visa be reviewed and remodelled so that it operates as a genuine holiday visa with some work rights attached, rather than a visa which in practice allows visa holders to work for the entire duration of their stay in Australia.

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<sup>18</sup> Working Holiday Maker visa programme report, Department of Immigration and Border Protection, Australian Government, 30 June 2014, p. 17.

As noted above, governments should also have the option of imposing quotas or capping working holiday visa numbers where labour market conditions require it, as they do in other countries such as Canada.<sup>19</sup> Given the current state of the labour market, unions recommend that now is such a time for a cap to be imposed in order to put a limit on further growth in the working holiday program, and that an annual quota be determined based on advice from the tripartite Ministerial Advisory Council for Skilled Migration and taking into account the labour market conditions for young Australians. We note that section 85 of the *Migration Act 1958* already gives the Minister the power to cap or limit the number of visas which can be granted each year in a particular sub-class.

The critical point is that it should be the labour market conditions in Australia that are the determining factor for working holiday visa numbers in Australia, not the labour market in the partner countries, as appears to be more the case at present.

In examining the working holiday visa, a very important feature to note is that visa holders are able to apply for a second year visa if they undertake 88 days specified work in a designated regional area during the course of the first year of their initial visa in industries such as agriculture, forestry and fishing. Incredibly, the policy from DIBP until very recently has been that this 88 days' work can be either paid or unpaid.

DIBP reports<sup>20</sup> show there were 45 950 second year visas granted in 2013-14, an 18.2% increase on the previous financial year. This means that around one in four Working Holiday visa holders are now being granted a second year visa. The vast majority (90%) are doing work in agriculture to acquire eligibility for the second year visa, with smaller numbers doing work in construction and mining.

The number of second working holiday visa grants has grown rapidly since the program commenced in late 2005. There were just 2 962 second year visa grants in 2005-06, compared with 45 950 grants in 2013-14. From 2010-11 to 2013-14 the number doubled. The second working holiday visa now constitutes 20% of the overall working holiday program by 30 June 2014. This compares with just a 3.3% share of overall working holiday visa holders in Australia as at 30 June 2006.

These trends illustrate the strong desire of working holiday makers to gain ongoing work and prolong their stay in Australia. This has created its own set of problems and is tied to cases of exploitation and mistreatment of overseas workers under this visa that we have detailed in our submission to the Senate Inquiry. Reports that unions receive are that employers are basing their whole business model around using the labour of working holiday makers, either for free in some cases or by paying them well below Australian award standards. The recent Four Corners program has shed further light on the extent of the exploitation. A scan through job sites such as *Gumtree* uncovers numerous examples of job advertisements directly

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<sup>19</sup> See for example, <http://www.cic.gc.ca/english/work/iec/>

<sup>20</sup> Working Holiday Maker visa programme report, Australian Government, Department of Immigration and Border Protection, 30 June 2014, p. 17.

targeted at overseas workers, enticing them with the lure of a second working holiday visa, with Australian workers not even being considered in some cases.<sup>21</sup>

Our recommendation on this point is first that there be an explicit ban on job ads that advertise only for working holiday visa holders or that use the inducement of a second working holiday visa.

However, ultimately, our recommendation is that the second year working holiday visa should be abandoned altogether. It serves no useful purpose in our view and has only led to problems of abuse and exploitation of unwitting and/or desperate backpackers.

We have also recommended the establishment of a licensing system for labour hire agencies that are so heavily involved with this visa program. A potential model is the Gangmasters Licensing Authority that operates in the UK with the broad support of a coalition of unions, supermarkets and industry operators to improve rights at work, reduce tax evasion, and weed out the worst labour hire companies.<sup>22</sup> However, further to this, we note that at the recent ACTU Congress, unions resolved that labour hire companies should not be allowed to engage any temporary overseas workers, given the problems caused by this practice.

### **More and better data on the operation of the temporary work visa program**

To support the measures above, the ACTU also puts forward additional recommendations for greater transparency across the temporary work visa program and better information and data on how it is operating.

For example, in relation to labour market testing under the 457 visa program there is little information available on how the provisions have operated since they started in late 2013. In the interests of transparency and community confidence in the 457 visa program, we recommend therefore that DIBP make information and data on the operation of the labour market testing provisions publically available on at least a quarterly basis. The type of information that should be provided is detailed at appendix 2. Provision of such information and discussion of labour market testing should be a standing agenda item for the Ministerial Advisory Council on Skilled Migration.

In relation to training obligations under the 457 visa, there needs to be concrete data on the domestic training effort by sponsoring employers in the occupations where 457 visa workers are being sought. It remains a glaring hole in the governance and transparency of the 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. Without this information, it is simply not possible to verify if there is in fact any training dividend at all from the 457 visa program.

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<sup>21</sup> See for example <http://au.indeed.com/m/viewjob?jk=ef4d6d979b9942b4&from=ja>

<sup>22</sup> See <http://touchstoneblog.org.uk/2013/04/a-weak-gla-will-strengthen-rogue-gangmasters/>

Taking the example of 457 visa sponsors in the trades occupations, examples of the type of baseline data that should be gathered by DIBP and made available include:

- The number of employers currently sponsoring skilled tradespersons (ANZSCO level 3) on 457 visas.
- The number of apprentices and trainees employed directly by these 457 sponsors, in total and by sponsor industry and state/territory.
- The trades in which those apprentices are being trained, including the number of apprentices in the same trade classifications in which the 457 visa workers are employed.
- Whether the apprentice and trainee numbers in each category have increased, decreased, or have not changed since approval of the employer as a sponsor.
- Details of any other substantive action taken by the sponsor to increase apprentice and trainee training in each category (other than directly employing apprentices) eg. participation in group training schemes as the host employer, cadetships, and the results of such action.

This is information that should be captured so the public can know what efforts are being made by employers of 457 visa labour to employ apprentices and give Australians every opportunity to fill these jobs in future. This information could be included on the public register of all 457 visa sponsoring employers that we recommend be established.

In relation to the working holiday visa, we have made the point above that this visa program continues to operate without any public assessment and review of the potential impact this additional and growing labour supply has on employment opportunities and employment conditions for Australian citizens and permanent residents, particularly on young Australians in lower-skilled parts of the labour market.

In this submission, we repeat our call for the DIBP to conduct such an assessment with oversight from the tripartite Ministerial Advisory Council for Skilled Migration.

More and better data on the working holiday visa program is required to assist stakeholders and policy-makers with such an assessment. To this end, the DIBP should also provide consolidated and publically available information on the working patterns of working holiday visa holders. This should include the number of working holiday visa holders that do exercise their work rights, the duration of their employment, the number of employers they work for during their stay, their rates of pay, and the locations, industries, and occupations they work in.

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.

There is a similar paucity of information on the student visa program, which involves anywhere from 300 000 to 400 000 visa holders at any given time who have the right to work up to 40 hours per fortnight in any part of the labour market. We reiterate our call for the DIBP to provide consolidated and publically available information on the working patterns of student visa holders. This should include the number of student visa holders that do exercise their work rights, the hours they work each week, the duration of their employment, the number of employers they work for, their rates of pay, and the locations, industries, and occupations they work in. It should also include an assessment of the impact of student visa work rights on employment opportunities for Australian residents, particularly in unskilled and semi-skilled positions.

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 from the visa holder and/or their employers.

### **Pathways to permanent residency**

In the sections above, we have highlighted the extent to which temporary visa holders – whether that be 457 visa holders, working holiday visa holders, student visa holders etc. – move through to permanent residency. The fact that a large number of temporary migrants have this goal 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 two 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. 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.

Second, the review should explore options 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 with the sponsoring employer to one year. 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.

Developing pathways to permanent residency that are less prone to workers being exploited is, in our submission, far preferable to the idea that has been floated of having hard time limits on temporary visas with no avenue at all to permanent residency. Our concern is that this only serves to further entrench people on temporary visas as second class guest workers bonded to their employer with no other options. However, it should be clear that while permanent residency may be the ultimate outcome in some cases, facilitating that pathway is not the purpose of temporary visas like 457s.

## ENTITLEMENTS TO GOVERNMENT SERVICES AND PAYMENTS ACROSS IMMIGRATION STREAMS

The issues paper raises the question of whether current entitlements to government services and payments are appropriate across Australia's immigration streams.

This is a key issue reported to the ACTU and unions in our discussions with migrant community groups – the fact that even when temporary visa holders are treated well in the workplace and receive their full and proper entitlements, they can be often be treated as second-class citizens in terms of access to public services and government payments.

One ongoing example of direct legal discrimination that we highlight for the Commission concerns equal access to statutory entitlements for workers in cases of business insolvency. At present, only Australian citizens and permanent residents and citizens of New Zealand on special category visas are eligible for entitlement payments under the *Fair Entitlements Guarantee Act 2012* in the event that their employer becomes insolvent and has not made appropriate provision for their workers. Temporary overseas workers under the 457 visa program do not share this entitlement. There is no valid or publically stated reason we are aware of to explain why eligibility is not extended at least to workers under the 457 visa program, if not all temporary work visa holders.

We note with approval that the Senate Legal and Constitutional Affairs Committee, in its June 2013 report into the 457 visa program, recommended that access to this scheme be extended to 457 visa holders and the Government Senators in their dissenting report also supported such an extension.<sup>23</sup> However, the current Government did not accept this recommendation in their response to that report.

In its submission to the Government's 2014 review of the 457 visa program, the ACTU also recommended a legislative amendment to address this issue but the review panel did not take up this recommendation in its final report to Government.

We again urge this inquiry to recommend an amendment to the *Fair Entitlements Guarantee Act* to ensure 457 visa workers have equal access to their entitlements in cases where employers become insolvent.

More broadly, there is the issue of access to public services, such as health, education and settlement services. For example, temporary work visa holders pay tax in Australia but are not entitled to Medicare. 457 visa holders are required to make provisions for their own health insurance. In relation to education, we understand that temporary visa holders in some jurisdictions are required to pay a fee for their children to attend a state school. In some jurisdictions, this fee can be as much as \$14 000, although the information on the respective Department of Education websites is not always entirely clear on what

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<sup>23</sup> The Senate: Legal and Constitutional Affairs References Committee, Framework and Operation of subclass 457 visas, enterprise migration agreements and regional migration agreements, June 2013, pp.122-123.



arrangements and exemptions apply. We understand that temporary visa holders also do not have access to the same settlement services as permanent arrivals to Australia. Unemployment benefits are also not available to temporary work visa holders for at least two years.

This is an issue that requires further investigation. We recommend that federal and state governments conduct a stocktake of public services and programs, including access to health, education, and settlement support, that are available to temporary work visa holders and their families and compare this to the services available to Australian citizens and permanent residents. Instances of differential access should be removed, unless governments can make a compelling public case to retain such differential access.

In the case of 457 visa holders, the reduced or restricted access to such entitlements and services is compounded by the fact that the Government has failed to index the legal wage floor for the 457 visa program – the Temporary Skilled Migration Income Threshold (TSMIT) – since it came to office.

The TSMIT was introduced as part of the previous Government's 2009 integrity reforms. The TSMIT is currently \$53 900 per annum. From 2009-2013 it was indexed annually against average weekly ordinary time earnings for full-time employees, but the current Government has chosen to not increase it since coming to office. The panel that reviewed the 457 visa program in 2014 then recommended that it be frozen at its current level for a further two years, a recommendation the Government has accepted.

The TSMIT is designed to ensure all Subclass 457 visa holders have sufficient income to independently provide for themselves in Australia (as well as ensuring the 457 visa program does not extend into the very lowest-paid sections of the labour market). It helps ensure that subclass 457 visa holders do not impose undue costs on the Australian community or find themselves in circumstances which may put pressure on them to breach their visa conditions. This is particularly important given these workers do not have access to a range of government support available to Australian citizens and permanent residents, such as Medicare.

It is essential in our view that the TSMIT be retained at its current level with annual indexation. Employers must not be able to sponsor overseas workers who will be paid less than the TSMIT. Unions reject ongoing calls from employer groups like Restaurant and Catering Australia for the TSMIT to be lowered to enable lower skilled occupations to be filled through the 457 visa program.<sup>24</sup>

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<sup>24</sup> Bitá, N., Call for visas to serve up chefs, *The Australian*, 7 April 2014, p.2.

### **Preference for Australian workers in redundancy situations**

We point to one case where in our view preferential treatment for Australian citizens and permanent residents is justified. Over the years there have been a number of examples of Australian citizens and permanent residents being made redundant while 457 visa holders doing the same work in the same workplace have remained in employment.

The legislation now provides at least some recognition that this is an issue, with the requirement for any recent redundancies and retrenchments to be factored into the labour market testing process under the Migration Act.

In our submission, there should also be an express position reflected in legislation and program requirements that Australian workers have preference to retain their jobs in redundancy situations over temporary visa workers.

The clear logic to this is that the 457 visa program is designed to provide temporary overseas workers to fill skill shortages when the employer cannot find sufficient workers from the domestic labour market; if workers are having to be made redundant the employer is clearly no longer finding it difficult to find enough workers to perform the work and therefore the 457 visa workers are no longer required and they should be the first to go, with all entitlements owing to them.

## THE PUSH TO EXPAND THE SKILLED MIGRATION PROGRAM INTO LOWER-SKILLED OCCUPATIONS

The issues paper alludes to the perennial debate about expanding the skilled migration program further into low-skilled occupations.

In our submission, this Inquiry should categorically rule out what is an ongoing employer-driven push to expand the skilled migration program into lower-skilled occupations. In recent years, we have seen growing pressure from employers on this front. For example, the trucking industry has called for truck drivers to be included on the occupation list for the 457 visa program. The tourism and hospitality sector has been vocal in pushing for access to be opened to temporary overseas workers to fill positions across a range of occupations such as waiters, baristas, beauty therapists, housekeepers, concierges, charter and tour bus drivers, and gaming workers. Personal care workers in the aged care industry are another example where employers are pushing the boundaries.

The overall skilled migration program is, as the name suggests, about meeting the need to attract migrants in skilled occupations in the trades and the professions that cannot be met domestically. This recognises that workers employed in lower-skilled occupations are generally able to develop these skills within a shorter period of time or through on-the-job training, and therefore it is reasonable to expect that employers will obtain Australian workers from the local labour market. Bringing in lower-skilled workers from overseas also creates greater potential for exploitation by unscrupulous employers because these workers are likely to have more limited bargaining power and often have lower English language skills.

Unions therefore strongly oppose any proposal for the skilled migration program to provide an open door for employers to bring in more semi-skilled or unskilled workers. For the reasons discussed above, current skilled occupation lists have been confined largely to skilled occupations and access to lower-skilled workers has until now been restricted to several discrete pathways, including labour agreements and, potentially, Enterprise Migration Agreements in the resources sector, as well as the Pacific Island Workers Scheme. Large numbers of student visa holders and working holiday makers can also work unrestricted in lower-skilled occupations. As it is, unions have a number of concerns with how these existing pathways currently operate, and do not support any further pathways for semi-skilled opportunities being opened up.

Further opening up migration pathways for semi-skilled and unskilled workers sends all the wrong messages to employers and the community generally and should be rejected by the Commission. In this respect, we note and welcome the clear statement from the 457 visa review panel that access to the 457 visa program should continue to be confined to skilled occupations, and attempts by employers to open it up to lower-skilled workers were rejected.

## APPENDIX 1

**The arguments to remove labour market testing and why they should be rejected (an extract from the April 2014 ACTU submission to the 457 visa review panel).**

### ***The labour market testing laws are too onerous and a burden on employers***

This has been the stock-standard response of those who oppose labour market testing. However, it is never made clear by those making this argument exactly what the massive burden is in expecting that employers will have first made attempts to recruit locally and that they can provide evidence of those local recruitment efforts. In fact, if an employer was genuine about sourcing Australian workers first, you would expect this was already occurring as a matter of course.

In our submission, the current regulatory framework for labour market testing could hardly be described as onerous. There are few mandatory requirements placed on employers. Furthermore, the Government has, regrettably, already sought to water down the requirements that are in place. The majority of 457 visa occupations are not even covered by the labour market testing laws by virtue of various exemptions in place.

It should also be remembered that the 457 visa program is not, and should not, be designed to provide an unfettered right for employers to take on temporary overseas workers. Even during periods when the program has been very poorly regulated, access to the 457 visa program has always, at least in theory, been subject to certain conditions and obligations, including an overriding tenet of the program that it is there only to fill skill shortages that cannot first be filled by Australian workers. In that sense, the labour market testing laws simply give practical (and long overdue) effect to what has always been an understood principle underpinning the program endorsed by both sides of politics.

Even if the Panel concluded that the labour market testing laws imposed some burden on employers, this would have to be weighed against the need to meet a fundamental tenet of the program to protect employment opportunities of Australians.

### ***Employers will always look to employ Australians first***

Another argument often heard against labour market testing is that employers will of course always look to employ Australians first, particularly considering that it is more expensive to bring in a 457 visa worker from overseas than a local worker of the same skills and experience. Why then would an employer employ from overseas except as a last resort, the argument goes.

This was an argument used by the now Prime Minister during the 2013 election campaign when he said:

*... because an employer has got to bring the person to the country and look after them initially it's far more expensive to employ a 457 visa holder than it is to employ a local. It's never advantageous, where there are available locals, to use a 457 visa holder instead.* <sup>25</sup>

In our submission, it is simply naïve to assume and blindly accept this argument that all employers will always want to employ locally first, including because it is more expensive to hire a 457 worker from overseas. It plays to what is a common misperception that employers, having exhausted all local options, are then having to comb the world to find a suitable overseas worker, when in fact the overseas worker is often on their doorstep and may already be in their employ.

For this reason, it is not only naïve but factually incorrect to continue asserting that it is considerably more expensive to engage workers from overseas. In fact, with close to half of all 457 visa grants being granted onshore to workers already in Australia, and many already working for the 457 sponsor on other visa types (eg. a working holiday 417 visa), the extra costs to hire the overseas worker over an Australian citizen or permanent resident are often negligible.

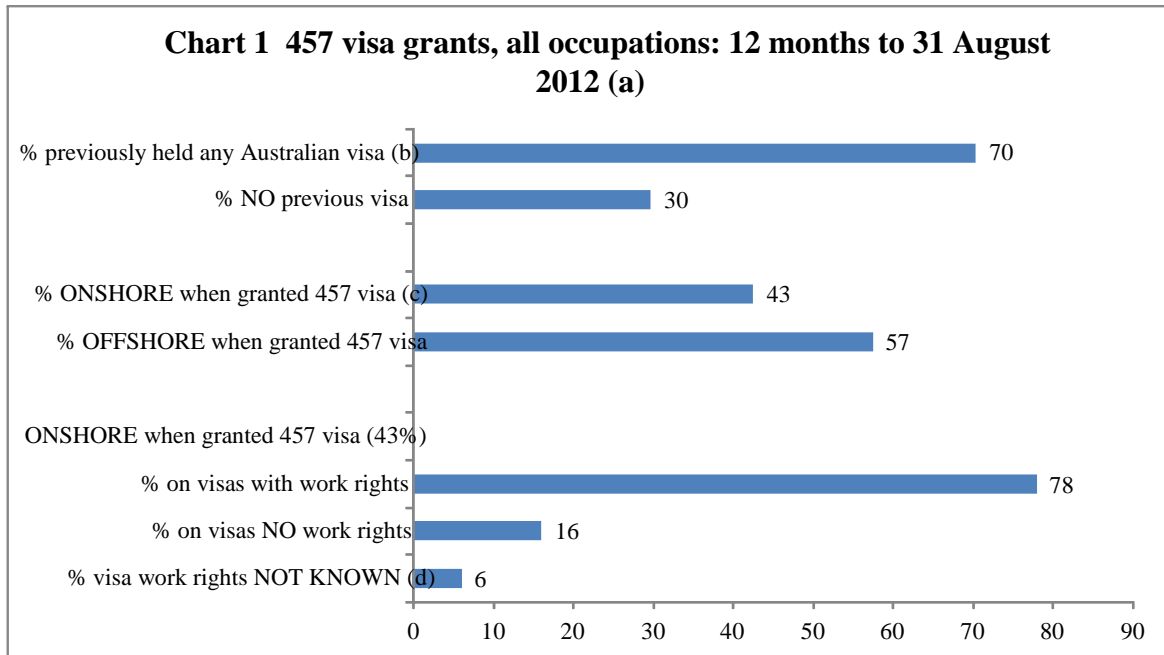
As data from DIAC reproduced below in chart 1 shows, in the 12 months to 31 August 2012:

- 70% of all 457 visa grants went to foreign nationals who had previously held an Australian visa, many of whom would have worked for or established a relationship with their 457 sponsor;
- 43% of all 457 visa grants went to foreign nationals in Australia at the time of their visa grant, again many already working for the 457 sponsor.<sup>26</sup>

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<sup>25</sup> Tony Abbott, transcript of press conference, 19 August 2013.

<sup>26</sup> DIAC unpublished data.

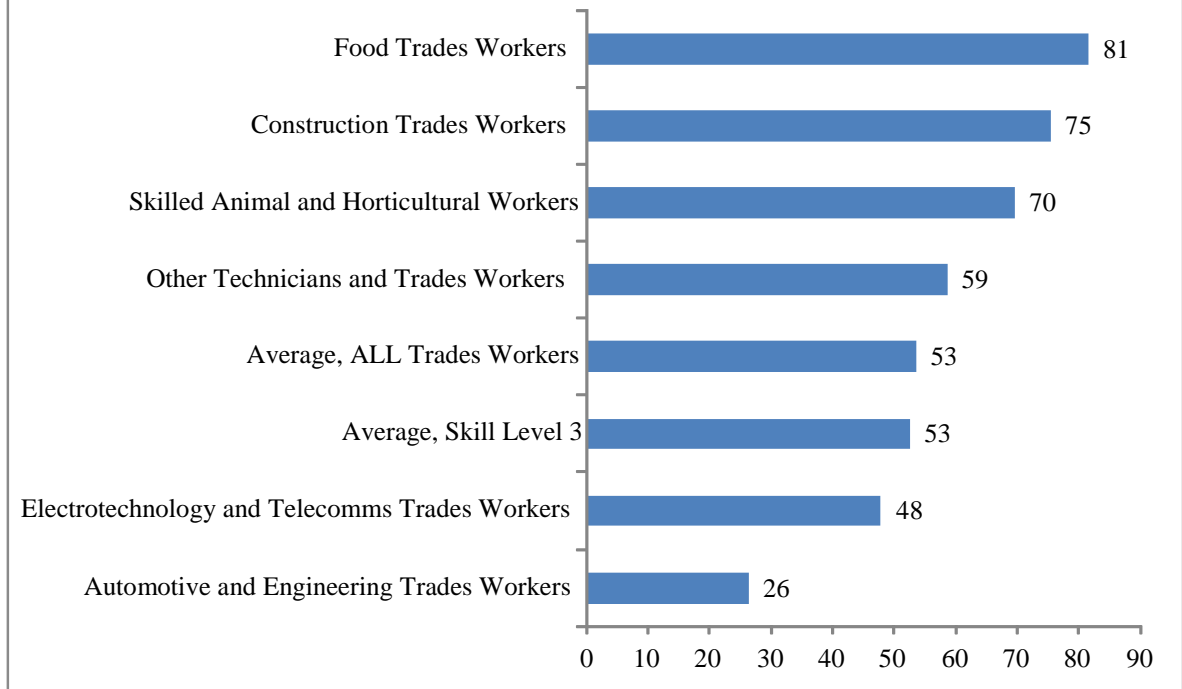


Source: DIBP published and unpublished data

- (a) More recent data requested, but DIBP has not provided.
- (b) High proportion will have established relationship with Australian-based employers.
- (c) High proportion will be employed by 457 sponsor at time of 457 visa nomination.
- (d) Includes some with work rights (eg 485 visas) and some with no work rights.

These trends are even starker in some occupational trade groups. For example, as chart two shows, in food trades and construction trades over 75% of all 457 visas go to foreign nationals already in Australia at the time of the visa grant, many already working for their 457 sponsor on other temporary visas, particularly student visas and working holiday visas.

**Chart 2 Onshore 457 primary visas as % of all 457 primary visas granted, by occupation trade group: 2012 (a)**



Source: DIAC unpublished data.

(a) Reference period is 12 months to 31 August 2012.

More recent figures show this trend to onshore visa grants increasing. In 2012-13, almost half of all visa grants were being granted onshore. Out of a total of 68 480 primary visa grants in 2012-13, 33 440 or 48.8% were granted on-shore. While off-shore visa grants were 12.2 % lower compared with the previous year, onshore grants were 17.8% higher.<sup>27</sup>

The latest figures show more than half of all visa grants are now granted onshore. Out of a total of 27 330 primary visa grants in 2013-14 to December 2013, 13 300 were granted offshore, while 14 030 were granted onshore (51.3%).<sup>28</sup>

DIAC (now DIBP) has acknowledged that the availability of a large pool of temporary visa holders in Australia, many seeking 457 visas, has changed the environment. As a senior DIAC official told a Senate Inquiry into 457 visas on 27 May 2013:

*“Most of the Deegan reforms were implemented in 2008-09. Since then, we have had a change in the environment – economic changes, changes in terms of the number of visa holders and those under other temporary visas in the country who have an opportunity to apply for a 457 visa. At the time when we had the 2008-09*

<sup>27</sup> DIAC Subclass 457 State Territory summary report, 2012-13 to 30 June 2013, p. 1

<sup>28</sup> DIAC Subclass 457 State Territory summary report, 2013-14 to 31 December 2013, p. 1

*changes implemented, we did not have this many temporary visa holders on other visas in the country. Our temporary visa program report, which was just released, shows that we have a very large number of temporary visa holders on other visas in the country and they are all eligible to apply for 457 visas if they find an employer who will sponsor them. This is where we have seen the largest growth, when the labour market is softening, in the onshore applications.”<sup>29</sup>*

On the latest figures as at 31 December 2013, there are now over 1.1 million temporary visa holders in Australia, the vast majority with work rights attached to their visa. Including New Zealand visa holders, the total number of temporary entrants is over 1.8 million. These numbers include not only the almost 200 000 subclass 457 visa workers and their spouses, but a range of other visa types which are becoming increasingly prevalent.<sup>30</sup>

For example, the number of working holiday visa holders is on the increase. The number of working holiday makers in Australia on 31 December 2013 was 178 980, the highest number on record and an increase of over 16 000, or 10.2%, compared with just 12 months ago. The number of working holiday makers has increased by 50% since 2010. Many working holiday makers from countries hit by recession are now here primarily to work, not holiday.

The increasingly easy access to temporary visa workers already in Australia demonstrates why rigorous labour market testing laws are even more important to protect Australian employment opportunities. In such cases, the employment of the overseas worker will appeal to some employers as the easy option, particularly where the worker is already employed in the workplace as if often the case and is keen to obtain an employer-sponsored permanent residence visa. It is especially important that labour market testing requirements are applied and enforced effectively in those circumstances.

The oft-stated argument that employers will always seek to employ Australians first is also not borne out by survey evidence in a report by the Migration Council of Australia in 2013. The findings in that report include:

- 15% of sponsoring employers surveyed said they did not find it difficult to hire or employ workers from the local labour market, yet they still employed workers under the 457 visa program – this finding suggests that some employers may be admitting they are not complying with a fundamental tenet of the 457 program that 457 visa workers should be engaged only where there is a genuine skill shortage that cannot be filled locally.

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<sup>29</sup> Mr Kruno Kukoc, DIAC, Hansard p.71, 27 May 2013,

<sup>30</sup> Temporary entrants and New Zealand Citizens in Australia as at 31 December 2013, Department of Immigration and Border Protection, Australian Government, p.3



- Only 1.1% of employers said they would 'increase salary' for the job if they cannot find someone who matches their preferred job specifications, while 33.5% said they would seek overseas workers - this indicates to us that many employers are not willing to pay genuine market rates to attract and retain employees and prefer to take the easy option of obtaining 457 visa workers.
- 26% of 457 visa employers said they found their 457 visa workers because the workers themselves approach the employer - this means that those employers incurred none of the search and recruitment costs that many claim make 457 visa workers more expensive than Australian workers.
- Around 20% of employers surveyed cited the benefits of sponsoring 457 visa workers being 'increased loyalty' and 'great control of employees' - this points to concerns that unions have continually raised about some employers favouring the use of 457 visa workers over Australian citizens and permanent residents because it gives them a more compliant workforce.<sup>31</sup>

We also refer the Panel to the report of the Senate Committee for Education, Employment and Workplace Relations<sup>32</sup>, inquiring into proposed Greens' legislation to govern EMAs, which found further evidence some companies in the resources sector were turning away qualified Australian workers and hiring overseas workers. This is also the direct experience of many individual workers who have made their own submissions to this review.

Finally, we note that even with labour market testing in place and a requirement under the law, it is still the case some employers will be looking for ways to circumvent the spirit and intent of the legislation.

For example, in the days that followed the introduction of the new laws, migration experts were already pointing out there were ways around labour market testing as advertisements can be written in an incomprehensible manner, making it difficult for people to respond in the first place.<sup>33</sup>

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<sup>31</sup> Migration Council of Australia, *More than temporary: Australia's 457 visa program*, pp. 76-78, 80.

<sup>32</sup> The Senate Education, Employment and Workplace Relations Legislation Committee, *Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012*, March 2013.  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=eet\\_ctte/completed\\_inquiries/2010-13/enterprise\\_migration\\_agreements/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=eet_ctte/completed_inquiries/2010-13/enterprise_migration_agreements/report/index.htm)

<sup>33</sup> <http://www.australiaforum.com/information/jobs/457-visa-labour-market-testing-expected-to-be-introduced-in-november.html>

This reflects the experience with labour market testing in the US and Canada where there have been reports of employers going through the motions of posting jobs while ignoring skilled locals who applied. In one reported case in the US, migration lawyers were captured on film coaching companies on how to advertise locally but find no one. One stated:

*“Our goal is clearly not to find a qualified and interested US worker and, you know, that in a sense that sounds funny but it's what we're trying to do here.”*<sup>34</sup>

### ***The program is responsive to labour market changes***

A further, related argument used against labour market testing is that the 457 visa program is demand-driven and therefore simply responds to changes in labour demand. Essentially, the argument is that the program can manage itself without labour market testing being required because 457 visa numbers go up when the labour market tightens and skill shortages increase, and then go down when unemployment rises and skill shortages ease. This was a line of argument repeated by the new Minister soon after assuming office:

*“The programme is flexible and responds to the economic cycle in line with employer demand.”*<sup>35</sup>

However, the evidence shows the program hasn't operated in the way that its proponents have claimed, with 457 visa numbers continuing to grow in recent years while the labour market has softened and jobs have been lost i.e. the program numbers have been going in the opposite direction to the general labour market.

For example, the close relationship between 457 visa applications and the ANZ Bank Job Ads series was previously cited as evidence that the 457 visa program was truly responsive to changes in labour demand. However, the relationship collapsed from 2011-12 onwards with 457 visa numbers going in the opposite direction to job advertising and other labour market indicators.<sup>36</sup>

For example, in the financial year 2011-12, the number of 457 primary visa applications lodged was 33.4% higher than the same period the previous program year and the number of 457 visa holders jumped 26.4% from 72 050 to 91 050. Yet, at the same time, total job advertisements fell 9% over the year, and the number of people out of work increased by almost 40 000 as unemployment went from 4.9% up to 5.2%.

In 2012-13, job ads fell 19% over the year and as at June 2013 were close to 30% below their most recent peak at the end of 2010 and just 8% higher than the lowest level reached during the Global Financial Crisis. Unemployment increased again reaching 5.7% by June 2013 with a further 77 000 people out of work compared to the same period 12 months

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<sup>34</sup> <http://www.abc.net.au/7.30/content/2013/s3786315.htm>

<sup>35</sup> Scott Morrison, Address to the Migration Institute of Australia National Conference, Canberra, 21 October 2013.

<sup>36</sup> Annual subclass 457 State/Territory Summary Reports 2011-12 and 2012-13; ANZ Job Ads Series July 2012 and July 2013; ABS Labour Force, cat. 6202.0, seasonally adjusted.

before. Meanwhile, over the same period 457 visa applications increased by 13.5% and the number of 457 visa holders increased 18.6% from 91 050 to 107 970.

In our submission, this provides clear evidence the program wasn't working as intended or as its proponents claimed, and why labour market testing needed to be introduced.

A similar picture of 457 visa numbers outstripping general employment growth emerges at an industry level. For example, in the construction industry, in the 12 months to February 2013, while Australian construction industry employment grew by only 1.1%<sup>37</sup>, the number of 457 visa holders working in the industry actually increased by 25% (or 2,020 workers) to 14,080.<sup>38</sup>

The 457 visa trends for the accommodation and food services sector are also instructive, particularly for the occupation of cooks. Even now as the growth of 457 visa grants have eventually begun to fall in overall terms, the number of visas granted for cooks and the broader accommodation and food services sector continue to increase. The latest DIBP figures from 31 December 2013 show:

- The largest occupation for primary 457 visa grants in 2013-14 to 31 December 2013 was cooks. Cooks represented 5.7% of all visa grants, up from 4% for the same period the year before.
- 1,550 457 visas were granted for cooks in the six months to December 2013, an increase of 7.2% on the same period the year before.
- As at 31 December 2013, there were 5, 460 457 visa holders in Australia working as cooks.
- Total visa grants for accommodation and food services (of which cooks make up close to half) increased by 10.5% in the six months to December 2013 while they decreased in all other sectors and by 23.9% overall.

The continued prominence of cooks as the top occupation for 457 visa grants follows exponential growth in previous years. Visa grants for cooks in 2012-13 increased 94.8% and a whopping 189% in 2011-12.<sup>39</sup>

Similarly large growth occurred across the accommodation and food services sector as a whole, with 457 visa grants increasing by 137% in 2011-12 and a further 85% in 2012-13.<sup>40</sup>

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<sup>37</sup> ABS Labour Force Survey detailed quarterly, February 2013 (trend basis)

<sup>38</sup> DIAC Subclass 457 State/Territory reports.

<sup>39</sup> Annual subclass 457 State/Territory Summary Reports 2011-12 and 2012-13; Subclass 457 quarterly report: quarter ending at 31 December 2013.

<sup>40</sup> Annual subclass 457 State/Territory Summary Reports 2011-12 and 2012-13.

Meanwhile, various labour market data for cooks and the accommodation and food services sector show:<sup>41</sup>

- An occupational unemployment rate for cooks of 3.5 per cent, compared with 3.3 per cent for all Trades.
- Negative employment growth of 4.7 per cent over the five years to November 2013, compared with an increase of 2.4 per cent for all Trades.
- A decline in advertised vacancies of 5.3 per cent over the year to November 2013.
- A decline in median full-time weekly earnings of 1.7 per cent, to \$400 less per week than the benchmark for all Trades (\$680 a week compared with \$1080)
- The Australian Government Job Outlook site indicating only moderate employment growth for cooks in coming years.
- During the period of massive growth in 457 visa grants, employment in the accommodation and food services sector overall fell nearly 14 000 or 1.8% from May 2011 to May 2012 and grew just 4.3% (in comparison to visa growth of 85%) from May 2012 to May 2013. Total employment fell again by 4.1% from May 2013 to November 2013 as total visa grants in the sector continued to increase.

These broader trends match the anecdotal experience of our affiliated unions who report that they have unemployed members on their 'out of work' registers while 457 visa numbers in the same occupations have continued to grow. There continue to be cases reported such as that at Werribee in outer Melbourne in 2013 where 457 visa workers were literally flown in over the top of local unemployed skilled workers to work on a City West Water project.

Against all this evidence, labour market testing is a sensible, appropriate, and necessary measure to ensure that, before temporary migrant workers can be employed, there is evidence that employers have made all reasonable efforts to employ Australian workers and that Australian workers are not being displaced. Our experience when consulting with labour agreement proponents under the 457 visa program suggests that when presented with some form of external scrutiny, an employer's professed need for 457 labour is often not pressed any further.

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<sup>41</sup> unpublished ABS data, sourced from the Australian Workforce and Productivity Agency and online vacancy data from the Department of Employment; Australian Government Job Outlook site <http://joboutlook.gov.au/occupation.aspx?search=alpha&tab=prospects&cluster=&code=8511>; ABS Labour Force, cat. No. 6291.0.55.003, Detailed, Quarterly, February 2014, Table 4.

## APPENDIX 2

### Proposed minimum quarterly reporting requirements for DIBP on the operation of the labour market testing provisions

The number of 457 visa applications the Department has received during the reporting period.

The number of these applications that were subject to the labour market testing provisions.

The number of applications that were deemed exempt from the labour market testing requirement.

A breakdown of the reasons why those applications were deemed exempt eg. international trade obligations (including a further breakdown by the relevant free trade obligation eg Thai citizen, Korean citizen, Chilean citizen), skill and occupation-level exemptions, other exemptions.

How many applications in total were rejected or discontinued? How many were granted? How many are still to be determined?

How many applications were rejected because they failed to satisfy the labour market testing requirements?

How does the overall rejection rate compare to the rejection rate in the period before the labour market testing provisions came into operation?

Of those applications where it was determined that the labour market testing requirements had been met, what were the most frequently reported explanations (top 5?) for how a sponsor determined that there were no suitable qualified and experienced Australian citizens available to fill the position? What type of evidence of local recruitment efforts was provided?

Of those applications where it was determined that the labour market testing requirements had not been met, on what basis did the Department make that determination? What type of evidence of local recruitment efforts did it receive from the applicant?

#### Notes

The information above should be provided in total numbers as well as a breakdown for ANZSCO skill level 3 occupations, for nursing occupations, and for engineering occupations (i.e. the main broad occupational groups that are covered by labour market testing), and by state, industry, age, and offshore or onshore status.

The above information should be presented in a way whereby it can be compared with the results of previous quarters, with a total cumulative result since labour market testing came into operation in November 2013, and with the results before labour market testing provisions came into operation in November 2013.

The information should be made freely available on the department website.

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