

Skilled Migration

Background

The 2009 Congress policy for temporary overseas workers was developed against the background of a number of years of union advocacy to highlight and rectify the problems caused by the temporary 457 visa program. This culminated in the Deegan review of 2008 and the consequent changes to the 457 visa program through the 2009 Worker Protection Act.

Since the last Congress, the operation of the 457 visa program has continued to be a top priority for unions, but there have also been a number of developments through the skilled migration program as a whole, including the independent and employer-sponsored streams of the permanent migration program and new initiatives such as Enterprise Migration Agreements.

Unions have given the Government credit for aspects of its skilled migration reforms in recent years, particularly to help tighten up the 457 visa program. However, there appears to be a view within Government and DIAC that this policy area is now settled and problems have largely gone away. To the contrary, we believe there are a number of outstanding issues of concern that are addressed in the draft Congress policy. This factsheet highlights just a few of these.

The overriding concern of unions is that the Government's rhetoric in support of Australian jobs and training opportunities is still not matched by actual policy and program settings. This is most obvious in the continued absence of any genuine labour market testing requirements on employers wishing to sponsor overseas workers for 457 visas, and now also for employer-sponsored permanent visas, and the failure to establish an online public jobs board that would advertise all vacancies on major resources projects and help match available workers with available jobs.

The March 2012 'reforms' to the employer-sponsored Permanent Residency visa programs represent a new low point in migration policy. Under these reforms, the Government is allowing employers to sponsor temporary overseas workers for Permanent Residency visas without any obligation to offer the jobs first to Australian workers, no obligation to train Australian apprentices, and in the case of the Regional Sponsored Migration Scheme (RSMS) – no obligation to any local training at all.

Changing balance of the permanent skilled migration program

In 2010-11, there were 113,725 places filled under the permanent skilled migration program.

Of these, the General Skilled Migration stream where migrants enter independently provided 61,459 places. The other major component was the permanent employer-sponsored visa program with 44,345 places, or 39% of the total permanent migration skill stream in 2010-11. This continued an increasing trend towards employer-sponsored visas. In 2005-06, by comparison, employer-sponsored visas made up just 15% of the skilled stream.

Temporary 457 visa program

The 457 visa is a 'demand-driven' program which means that numbers are uncapped. Under the current 457 visa rules employers can bring in unlimited numbers of temporary overseas workers without reference to the local labour market situation or any enforceable obligation to offer jobs to Australian workers first.

The latest figures from DIAC show the continuing growth in the 457 visa program:

- The total number of 457 visa workers in Australia at 31 March 2012 was at an all-time high of 88,590, an increase of 22% in comparison with 12 months ago.
- The number of 457 visa primary applications granted from July 2011 to end March 2012 was 50,960; 49.2% higher than the same period the year before. If this trend continues to the end of 2011-12, 457 visa numbers for this year will be greater than they were during the pre-GFC Mining Boom Mark I.
- The number of 457 visa grants for trades and technician workers more than doubled (122% increase) in the calendar year to 31 March 2012, jumping to 11,810 from 5,320 the previous year.
- The number of 457 visa grants in trades occupations (ANZSCO Skill Level 3) is up 140% on the same period last year, and there are now 13,300 such 457 visa workers in Australia at end-March 2012.

While the 457 visa numbers continue to increase, included in the skilled trades area, there are continuing signs of softness in the labour market. For example, the latest ABS figures show that employment in the construction industry is actually falling, and MBA quarterly national survey data show that building and construction employers report much less difficulty in finding labour than 12 months ago. Job losses are becoming more prevalent in the manufacturing sector due to the impact of the high dollar.

The latest DEEWR Vacancy report shows that over the year to March 2012, the Internet Vacancy index has fallen by 7.2%, and is 41.0% below the pre-GFC, March 2008 peak. Over the year to March 2012, the Skilled IVI has fallen by 6.3%, with the strongest

declines being recorded in Construction Trades (down by 24.1%). Vacancies also fell for construction and mining labourers.

Another concerning fact is that the Government places no obligations on sponsoring employers to be offering apprenticeships and traineeships in areas of skill shortages, and collects no data on the numbers of apprentices and trainees employed by sponsors of 457 visa workers. This means the Government has no idea if employers using overseas labour are making any effort to train Australian apprentices in those occupations. This is despite the fact the Government has been sitting on a CFMEU research proposal for 12 months that would allow this data to be gathered.

Unions are continuing to uncover cases of fraud and exploitation under the 457 visa program. Two recent examples are outlined below:

The lure of Permanent Residency

The 2008 Deegan report into the 457 visa program highlighted the great potential for exploitation and undermining of Australian wages and conditions that exists when temporary overseas workers have permanent residency as their goal.

A recent example of this was British 457 visa workers on a construction site knocking back a backdated EBA pay increase from their employer because they were 'happy' with their current situation. This decision was linked clearly to their overwhelming desire to get Permanent Residency sponsorship from their employer. In pursuing this goal, they were being denied their proper entitlements and making themselves more attractive to unscrupulous employers looking to cut costs. This then has the effect of undermining the position of existing Australian workers and job seekers.

This is also a breach of the 457 sponsor's obligation to pay 457 visa workers the same as Australian workers.

Misuse of visas

Unions are aware that some employers are nominating the occupation of Program or Project Administrators for 457 visas but actually employing the visa holders in lower skilled occupations. This includes employing such 457 visa holders in semi-skilled occupations such as scaffolders for onsite construction work; very different work to what employers claimed they would be doing on their visa forms.

This represents a breach of the sponsor's obligation to employ the visa holder only in the occupation for which the visa is granted, and exposes the sponsor to charges of providing fraudulent or misleading information to DIAC. As a result of representations by the CFMEU, DIAC is currently investigating this practice – but still approving visas in record numbers. Program and project administrators have been the top nominated occupations for 457 visa grants this year, more than doubling compared to the same period the year before.

Enterprise Migration Agreements (EMAs)

The public guidelines for EMAs in the resources sector fall short in a number of important respects, including:

- There is no guarantee Australian workers will have enforceable first rights to all jobs on EMA projects, given that labour market testing is not required for any position, whether skilled or semi-skilled, and a Jobs Board has yet to be introduced;
- No preference for local workers in redundancy situations if a surplus of workers emerges in particular classifications during the life on an EMA project; and
- A lack of transparency, with no requirement to disclose the number or occupations of workers available under a particular EMA.

The first proposed EMA is for the Roy Hill project in WA. The proposal is for around 1,500 457 visa positions over the three year life of the project, with the majority of these visas being sought in semi-skilled occupations.

The number of overseas workers being requested is more than the total number of 457 visa holders in skilled and semi-skilled occupations currently employed in the entire WA construction industry as at November 2011.

Extending the migration program into semi-skilled, lower paid occupations

A common thread running through many of the Government's recent policy initiatives such as EMAs, RMAs and expanded labour agreements is the desire, pushed by eager employers, to expand the migration program to provide easier access to semi-skilled workers from overseas that are not available under the standard 457 visa program.

The latest proposal is for a template labour agreement for the tourism and hospitality industry. If introduced, this would open up access to temporary overseas workers to fill positions in occupations such as waiters, baristas, beauty therapists, housekeepers, and casino workers.

Many workers in these occupations are paid well below average and median wage levels across the community, and well below the current salary threshold for the 457 visa program of just under \$50,000.

The ACTU has called on the Government to shelve this proposal and refocus the attention of the sector on improving wages and conditions of the current workforce, providing greater access to training opportunities, and greater efforts to attract and retain workers from disadvantaged and under-represented groups.

The push to expand 457 visas into semi-skilled occupations is highly dangerous, is gathering momentum, and the federal Government seems oblivious to the risks involved. This push must be strongly resisted.

Compliance monitoring of employers' 457 and other temporary visa workers

The Government has seriously dropped the ball in this area. In regard to 457 employers, DIAC is actually doing less monitoring of employers now than several years ago.

Between 2008-09 and 2010-11 there was a 50% reduction in the number of 457 visa sponsors monitored and site-visited. Only 814 of the more than 18,500 sponsors of 457 visa workers received a site visit.

DIAC has only 61 inspectors to monitor 18,000 employers. As a result, 'risk management' has become the new black in compliance monitoring. While \$10m extra went into faster 457 visa processing in 2011-12, no additional money was allocated to compliance monitoring.

In all other temporary visa areas other than 457 visas, such as working holiday and overseas student visas, DIAC accepts virtually no responsibility for monitoring observance with work rights conditions and worker protections.