ACTU SUBMISSION
Review of skilled migration and 400 series visa programs

30 January 2015

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INTRODUCTION

The ACTU welcomes the opportunity to make a further submission to the review of skilled migration and 400 series visa programs.

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 made a preliminary submission in October 2014 where we set out the key principles and considerations that should underpin this review and some of the major threshold policy issues the review should deal with. We continue to rely on that submission.

In this further submission we respond to the December 2014 *Proposal Paper: Simplification of the skilled migration and temporary activity visa programs*.

The submission first sets out again our overall position on skilled migration. We then provide a general response to the Proposal Paper as a whole, as well as more detailed comments on specific proposals put forward in the Proposal Paper.

Our key concern is that the paper has failed to address some of the fundamental issues that should be considered by such a major review of the skilled migration program. The growing size of the uncapped temporary visa workforce in Australia and its impacts on the Australian job market, especially young people is just one such key issue that is ignored in the paper.

Instead, the paper has focused narrowly on creating new visa types, such as the proposed new short-term mobility visa, that would only reduce protections and safeguards for Australian and overseas workers, and increase even further the size of the temporary visa workforce in Australia. At September 2014, there were 1.112 million temporary visa holders in Australia, an increase of over 28,000 or 2.6% in just one year, and most had work rights.[1] Furthermore, the paper fails to make the case for why this and other new visas are needed at this time.

[1] DIBP, Temporary entrants in Australia on 30 September 2014. Excludes NZ citizens.

The Paper claims that one of the 'Guiding principles' for the review is that 'Skilled migration must support and complement the Australian labour market'. The ACTU believes this should be the fundamental guiding principle of Australia's skilled migration program, but the review scarcely pays even lip service to this principle.

If the Paper was serious about this 'guiding principle', it would explain in detail how its proposed deregulation of work visas will benefit the large numbers of Australian workers without jobs, the thousands of young Australians unable to secure a trade apprenticeship, and the thousands of young Australian university graduates entering a depressed graduate job market over the next few years. The data ignored by the Paper is disturbing, and includes:

- The labour force underutilisation rate for 15-24 year olds in Australia has increased from 24.9% in November 2011 to 31.9% in November 2014 – meaning nearly one in three young persons in the work force were either unemployed or looking to work more hours.[2]

- In Apprenticeships, 17,000 fewer young people under 24 started an apprenticeship in the first quarter of 2014 than the same time in 2013, and the 2015 outlook is similar.

- Only 68.1% of new bachelor degree graduates seeking full-time work were in full-time jobs in 2014, down from 76.1% in 2012[4] – and the number of new graduates is projected to grow by 20-30% over the next few years.

Any proposals to remove or undermine labour market testing requirements in work visa programs should be comprehensively rejected. Now, more than ever, with unemployment at the highest levels in a decade, and forecast by the Government itself to rise over the next few years, the onus, and indeed the legal obligation, should be on employers to seek to fill vacant positions with Australian citizens or permanent residents before they seek to employ workers from overseas.

[2] ABS 6202.0, The Labour Force, December 2014, trend data.
[3] ACCI, 'Another alarming drop in apprenticeships', media release 28 August 2014.
[4] Gradstats, Employment and salary outcomes of recent higher education graduates, December 2014.

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.

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 of exploitation that can emerge with temporary and/or employer-sponsored migration.

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

We are deeply concerned at the growing number of free trade agreements the Australian Government has entered into which prohibit such a process from applying to employers seeking to bring in nationals of parties to those agreements.

The skilled migration program should not be a substitute for properly investing in and training the Australian workforce. Instead, it should be 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.

GENERAL RESPONSE TO THE PROPOSAL PAPER

In the initial discussion paper that started the review, this review was billed by the Department as the biggest of its type in 25-30 years and one which would result in a far-reaching transformation of the skilled migration program.

In our submission, a review of such ambition would necessarily involve a 'root and branch' assessment of the key features of the skilled migration program.

In our view, this should have included a critical and evidence-based evaluation of key issues such as the growing size and largely uncapped nature of the current temporary visa holder workforce in Australia, and the ongoing and increasing shift towards employer-sponsored migration, away from permanent, independent migration. These are trends that shape – and are re-shaping - the whole basis and direction of the skilled migration program and its impact on the Australian community. It should also have included the growing use of free trade agreements to remove the safeguards in temporary visa programs.

The Proposal Paper has failed to engage with these sorts of threshold issues. In that respect, it is very much a missed opportunity.

Instead, the Proposal Paper has focused much more narrowly on how it can create a more 'simplified' visa framework with the addition of new visa subclasses and the replacement of others. In doing so, it appears to have been driven more by the Government's deregulatory agenda and the wishes of particular employers in particular sectors wanting to attract overseas workers, rather than a wider view of what is in the public interest.

In fact, it now appears that the overarching rationale for the review is 'identifying, attracting and retaining workers'. All the focus appears to be on the need to 'accommodate global labour mobility', on 'accommodating the unique features of various industries including seasonal, contract and casual labour', and addressing concerns about the burden on visa applicants, sponsors, and businesses. Very little attention, if any, is paid to the interests or rights of Australian workers in this debate.

Labour market testing

Of particular concern are the proposals in the paper, primarily the proposed new short-term mobility visa, that seek to remove key current safeguards such as labour market testing (LMT), as well as English language and skill requirements from certain visa types.

In coming up with these proposals, the interests of Australian workers appear to have been a secondary consideration, despite the review having as one of its principles the need to ensure the primacy of Australian workers.

The proposals to remove LMT – the legal requirement on employers to prove that they have sought to employ Australian workers and demonstrated that none are available before engaging temporary overseas workers – are particularly objectionable at a time when unemployment, and youth unemployment, are at their highest levels in a decade.

Unemployment is currently 6.1%. Youth unemployment is more than double that at 13.1%.[5]

Yet the main proposals being put forward are for new visa types where LMT requirements would not apply i.e. employers would not have any obligation to demonstrate they have first made genuine efforts to find Australian workers to fill these positions and have not been able to find a suitable Australian worker for the job.

As we stated in our preliminary submission, evidence that a genuine and rigorous system of LMT is in operation is fundamental to ensure ongoing community support and acceptance for continuing migration levels. This is particularly the case during periods of relatively high unemployment.

[5] ABS, Labour Force December 2014, Australia, cat. 6202.0.

Whether it is young people looking for their first job or older workers looking to get back into the workforce or change careers, they deserve an assurance they will have priority access to local jobs before overseas workers are employed. This basic principle should apply to all Australian workers, regardless of the type of work they do or the sector they work in.

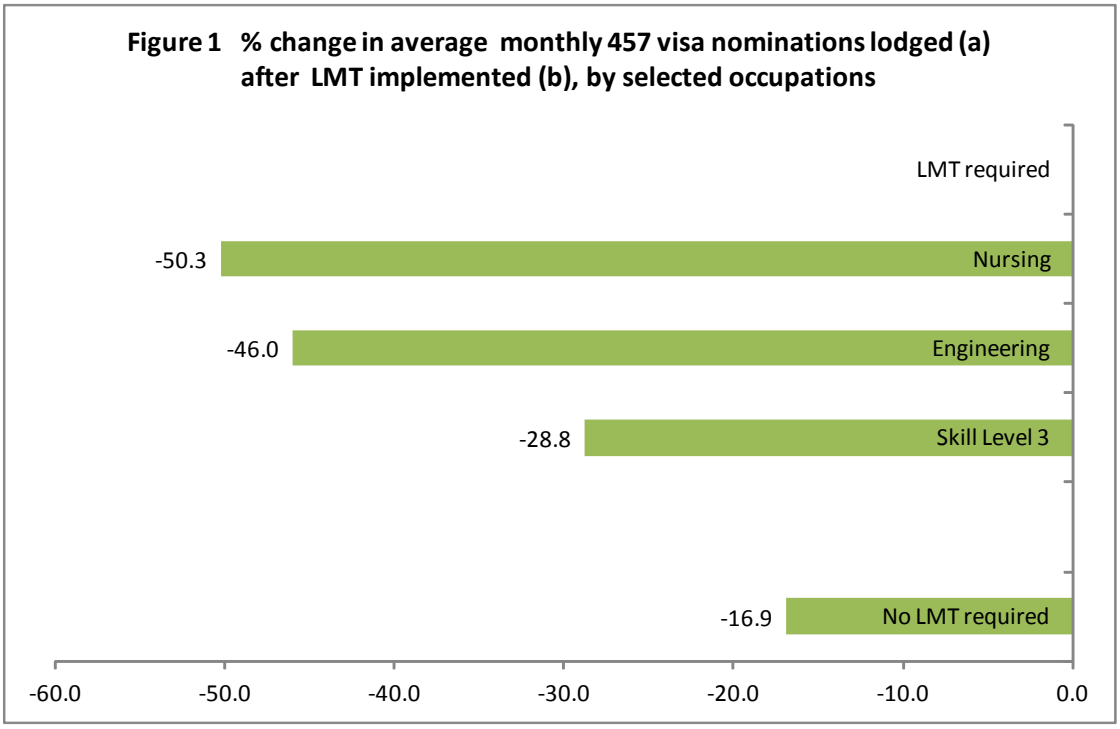
The critical importance of labour market testing is highlighted again by recent examples of local job advertisements on sites such as Gumtree that do not even make the pretence of considering Australian workers, but instead advertise directly for 457 visa workers. [6]

There is strong evidence that LMT is working, but unfortunately this has been ignored to date by the Government. LMT was introduced by the previous government and came into operation on 23 November 2013 to cover Nursing, Engineering and Skill level 3 occupations – representing just 27% of all 457 nominations by business sponsors.

Data on the operation of LMT to 30 September 2014 shows that it is having a significant effect. There has been a much larger decline in 457 visa nominations by employers in occupations covered by LMT, compared to average monthly numbers in occupations exempted from LMT. Non-LMT occupations have fallen by 17% whereas LMT occupations have fallen as follows: Nursing by 50%, Engineering by 46% and Skill level 3 occupations by 29% (see Figure 1).

[6] http://m.theage.com.au/victoria/unions-claim-discrimination-in-job-ads-seeking-migrants-on-temporary-visas-20150115-12r0ev.html

Figure 1 % change in average monthly 457 visa nominations lodged (a) after LMT implemented (b), by selected occupations



Source: DIBP unpublished data, June and November 2014, (BE7406 and BE7826).

(a) By 'Standard Business Sponsors' only. Excludes 457 sponsors not required to LMT, eg in 'labour agreements'.

(b) The period 23 November 2013 to 30 September 2014 (10.27 months) compared to the period 1 July 2012 to 22 November 2013 (16.73 months).

Based on these findings, if LMT had been applied to the other 73 percent of occupations not currently covered by LMT, then there would have been an estimated 6,500 additional jobs available to local workers over that period.[7]

Despite the Department having this data, the Proposal Paper provides none of it - nor does it provide any analysis of the operation of LMT since it came into operation in late 2013. Similarly, the Proposal Paper provides no evidence to support the case for removing LMT requirements. In the absence of any such evidence, the argument to remove it appears to rest entirely on employer convenience.

These proposals to abandon LMT should be rejected.

[7] CFMEU analysis reports, see 'Latest 457 visa data - local workers miss out on 6,500 jobs', media release 11 December 2014.

Response to the 457 visa review panel

We note that the proposed shape of any future visa framework is subject to the Government response to the report and recommendations of the 457 visa review panel.

The Government response is still yet to be made public and this review should not proceed further until it can be considered within the context of the Government's response on the 457 visa review.

Until the Government response to that review is known, it is difficult to provide a full and complete response to the Proposal Paper. However, the concern we have is that many of the recommendations from the review panel involve lowering or removing core standards and protections that underpin the 457 visa program. Key recommendations of concern include:

- Abolishing labour market testing.
- Lowering English language requirements to an average of IELTS 5 with scope for further concessions below that.
- Freezing the current income floor of $53 900 p.a. for two years and allowing for rates 10% below that, including in regional areas.
- Lowering the threshold at which the exemption from the requirement to pay market rates applies from $250 000 to $180 000 p.a.
- Introducing 'streamlined processing' of 457 visa applications for certain sponsors with the effect of removing important integrity requirements for skills assessments, payment of market rates, and evidence the position is genuine, for all occupations with base salaries above $ 96 000 p.a.
- Making it easier to approve labour agreements that allow for lower standards and protections than under the standard 457 visa program.

If the Government implements those recommendations, this will result in further negative impacts on Australian and overseas workers. They should be rejected.

The more sensible Panel recommendations that are worthy of support or further consideration include:

- An ongoing role for a tripartite ministerial advisory council to have oversight of the program.

- A clear statement that the 457 visa program should be confined to skilled occupations and not be extended into lower skilled areas of the labour market.

- The development of a more rigorous skilled occupations list to determine eligible occupations for the 457 visa program, overseen by the tripartite advisory body referred to above. This would reduce the 'red tape' of the current CSOL which is a long list of occupations not reflective of whether or not a genuine skill shortage exists. A more rigorous occupations list must operate in conjunction with labour market testing, not as a substitute for it as the Panel report suggested.

- A requirement for sponsoring employers to pay a sum for each 457 visa worker they employ into a national training fund that is then reinvested in training – however the current suggested contribution rates in the Panel report are woefully inadequate. The establishment of such a fund should not mean those employers relinquish responsibility to do their own training of Australian workers. For example, training obligations for 457 visa sponsors should include targeted requirements for the employment of Australian apprentices, trainees and graduates.

- Investigating pathways to permanent residency that reduce the problems caused by the 'bonded labour' element of the 457 visa program.

- That it be made unlawful for a sponsor to be paid by visa applicants for a migration outcome (i.e. the promise of Permanent Residency) and this be enforced by a robust penalty and conviction framework.

- Better information sharing with government agencies such as the ATO - although this is long overdue.

In its detailed submission to the 457 review panel, the ACTU also identified a number of other improvements to the program that were not were adopted in the Panel report. We urge the Government to consider these again. These include:

- A range of improvements to strengthen the effectiveness of the labour market testing provisions and extend their coverage.

- A transparent public register of all 457 visa sponsoring employers, as exists in the UK.

- Amending the Fair Entitlements Guarantee Act to ensure 457 visa workers have equal access to their entitlements in cases where employers become insolvent.

- Addressing well founded concerns with the effective enforcement of employment and immigration laws.

Better skills forecasting and analysis

To complement a system of labour market testing at the level of the individual sponsor, the ACTU supports the development of more robust and rigorous forecasting and analysis of skills demand at the national and regional level. For example, this would enable the development of skilled occupation lists that actually identify occupations that are in genuine shortage, as opposed to the current Consolidated Skilled Occupation List that applies to the 457 visa program and that has over 650 occupations on it regardless of whether they are in shortage or not.

At present, there is no structured mechanism for determining if the overall level of temporary migration, by occupation or industry sector, is responding to a genuine skilled labour supply deficiency, either across a region or across the nation as a whole. In this regard, we submit that the national, industry and regional labour demand analyses that were being undertaken by the Australian Workforce and Productivity Agency (AWPA) before it was abolished in 2014 should be reintroduced.

The AWPA Resource Sector Skills Needs Report of October 2013 and the Manufacturing Workforce Study of April 2014 are two good examples that provided robust and credible research on skilled labour demand. The Industry Skills Councils' (ISCs) annual Environmental Scans could also be better utilised as a credible source of industry intelligence on sector-specific skilled labour needs that require national training resource allocation to address the supply side of the equation.

Where the analysis indicates there is not a supply deficiency, the occupations should be taken off temporary migration skill supply.

To be clear, the development of more sophisticated forecasting and skills analysis capacities should be used to complement labour market testing; they are not a substitute for labour market testing. Even if it can be shown that an occupation is in skill shortage at a national or sectoral level, the onus should still always be on each individual employer to provide evidence of what they have done to fill a position with an Australian citizen or permanent resident.

Gaps in coverage under the skilled migration program: offshore resources

The Proposal paper also fails to consider a specific gap in coverage of the skilled migration and temporary activity visa program, identified initially in the Allseas Federal Court Judgement (Allseas Construction S.A. v Minister for Immigration and Citizenship [2012] FCA 529), namely the offshore resources sector.

In this respect, it is worth remembering the objectives of the Migration Maritime Task Force established following the Allseas Judgement, which were:

- To ensure that the right to work in the offshore resources industry by persons who are not Australian citizens is, to the maximum extent permitted by Australia's international obligations, regulated consistently in all areas over which the Australia Government has jurisdiction;

- To create legislative certainty in order to promote continuing investment in the offshore industry;

- To promote opportunities for Australians to work on Australian resource projects;

- To protect the rights of workers in the offshore resources industry;

- To maintain the integrity in existing, interrelated, border legislation.

Without the *Migration Amendment (Offshore Resources Activity) Act 2013 (ORA)* and an associated Regulation specifying the visa requirements, regulation of employment in the offshore resource sector of the economy will be at odds with regulation of all other sectors.

To address this situation, we recommend:

- The Government abandon its proposal to repeal the *Migration Amendment (Offshore Resources Activity) Act 2013* through the Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 currently before the Parliament

- the Government make a new Regulation under s41(2B)(b) of the *Migration Act 1958* (as amended by the ORA) that prescribes the following visa sub-classes as a means of enlivening the object of the ORA:

  (a) a Subclass 400 (Temporary Work (Short Stay Activity)) visa; and
  (b) a Subclass 457 (Temporary Work (Skilled)) visa.

Finally, we also note the Migration Maritime Taskforce was concerned about the paucity of information about the number of workers on vessels servicing the offshore oil and gas industry and periods of work i.e. how long such workers are in Australia. This lack of information constitutes a gap in Australia's national security regime.

One further general comment is that in presenting proposed new visa options, the paper does not explain how the proposals compare to existing visa options. Neither does it present any evidence as to why those existing visa options are not considered adequate and what perceived problems the new visa types are designed to address. The Proposal Paper does provide a very cursory overview of how the existing visa types map against the proposed new visa types, but a more detailed explanation would assist in understanding each individual proposal.

We turn now to comment on specific aspects of the Proposal paper.

RESPONSE TO SPECIFIC PROPOSALS

Short-term mobility visa

The Proposal Paper puts forward a new short-term mobility visa for consideration.

This appears to be nothing more than a thinly veiled attempt to allow employers to bypass the current sponsorship and legislative obligations that would otherwise apply to them under the 457 visa program. It would mean access to a new 12 month temporary work visa that would have no labour market testing requirements attached to it, no English language proficiency requirements, no skills assessments, apparently no sponsorship approval by DIBP of individual employers, no legally enforceable sponsorship obligations, and no requirements to pay market rates. This proposal may align with the 'wish list' of certain employers, but it is not in the interest of Australian or overseas workers.

The new visa would be a substantial departure from current visa arrangements. At present, the Temporary Work (Short Stay Activity) visa (subclass 400) already provides for short-term, highly specialised, non-ongoing work of up to three months (or up to 6 months in limited circumstances). Temporary skilled work that does not fall under this short-term visa class

would generally be captured by the subclass 457 visa. The 457 visa program, despite its flaws, at least contains some basic protections and safeguards such as sponsorship approval processes, sponsorship obligations, and limited labour market testing for some occupations.

By contrast, the proposed new short-term mobility visa would allow entry to overseas workers for up to 12 months (as opposed to three months at present under the subclass 400 visa). As a result, it would cover a large group of sponsors and visa applicants, many of whom would most likely fall under the 457 visa program at present. The bare minimum health, character and security requirements would be the only visa criteria to be satisfied for those working under this proposed new visa.

It appears also that access to the new visa could be opened up so that it applies not only to 'highly specialised' work, but to any form of 'intermittent work' of up to 12 months duration. One likely result is that some employers would incorporate this visa option into their business model and keep churning through overseas workers on 12 month cycles, unimpeded by any 'irritants' such as labour market testing.

Clearly, it is intended that labour market testing requirements would not apply to this proposed visa. The paper tries to suggest a Genuine Temporary Entry (GTE) requirement would be used as an integrity tool and ensure the primacy of Australian workers. No further detail is provided on how the GTE requirement would apply. However, based on the GTE requirement as it applies to the student visa program, this would only act to ensure the visa applicant has a genuine intention to come to Australia temporarily for the stated purpose of the visa. It would do nothing to ensure the primacy of Australian workers.

There is no discussion of any monitoring or enforcement arrangements that would apply to the proposed visa. The visa operates largely on the basis of an employer endorsing and inviting the applicant to take up the position. For placements of longer than 3 months an undertaking is required detailing salary and conditions of employment, but an attestation of this sort appears to fall well short of an enforceable market rates requirement as applies under the 457 visa program.

In summary then, what is being proposed is a move away from the current subclass 400 visa that provides for a genuinely short-term visa of three months duration for highly specialised work. In its place would be a longer 12 month visa with potentially much broader coverage, and with no labour market testing or other integrity requirements. However, despite the major changes and reduced protections being proposed with this new short-term mobility visa, there is no attempt in the paper to explain the operation of the existing subclass 400 visa or make any case for change to those current arrangements.

The Paper provides no data whatsoever on the current numbers of subclass 400 visa holders in Australia, visa grants and trends to indicate the demand for this visa, no information on the skill level or occupations of those granted this visa, no information on what checks (if any) the Department undertakes to ensure that the work done on this visa is indeed 'highly specialised' and unable to be done by Australian workers, and how adequate that current system of checking is.

Similarly, the paper provides no projections of the expected number of 400 visas under the deregulated version it is proposing, nor the number of employers. Likewise, the Paper provides no evidence at all of the existing level of abuse of this visa such as by employers engaging so-called 'highly specialised' overseas workers on 400 visas but employing them as semi-skilled or unskilled workers, and underpaying and otherwise exploiting them.

In fact, it is not surprising that the Paper fails to present this data on the operation of the 400 visa (and its predecessor, the 456 visa and electronic versions thereof). It is not clear whether the department even collects this data on the 400 visa, which it now proposes to expand. The department has previously claimed that because employers of 400 visa holders have no sponsorship relationship with the department, there is nothing resembling the data collection system that exists for the 457 visa.

The paper could at least have acknowledged and presented references to the cases brought to the courts by the Fair Work Ombudsman (FWO) involving underpayment and abuse of 456 visa workers (the precursor to 400 visas). In one such case, the FWO alleged two Fijian men

on 456 visas worked eight hours a day, seven days a week at the Port Adelaide docks for a 'living-away-from-home allowance' of $100 a day.[8]

The paper could also have expressed a view as to how widespread are such abuses of the 400/456 visas, and the evidence for that view. If the department does not have evidence, it should justify why the review paper is even proposing any expansion of the visa at all.

It is anticipated the argument from its proponents would be that the proposed new visa is designed for 'highly specialised work', involving for example, international intra-company transfers. However, as discussed above, it is not at all clear the visa would be confined in this way. If the 456 visa is any guide, the 400 visa will be available for work in all occupations at trade level and above – and possibly even sub-trade occupations. It is also significant that the term 'specialists' is used in Free Trade Agreements to mean 'trade, technical or professional work'

While the paper suggests that visas of less than three months would only be for 'highly specialised work', the paper then refers more expansively to 'highly specialised and intermittent work' for visas of longer than 3 months and up to 12 months. The paper also proposes that the potential scope of the visa be explored and the obvious concern is that the push will be to widen the scope of the visa as far as possible.

We also make the observation that the 457 visa was originally conceived and operated on much the same basis - as a tailored, specialist visa restricted to certain high-level occupations - before it too expanded into a far wider range of occupations.

In any case, even if the visa was properly confined to highly specialised work (as commonly understood) this does not diminish the importance of labour market testing. Labour market testing is a principle and practice that should apply equally to all workers and all work, regardless of skill levels and degree of specialisation. Suitably qualified Australians should not be denied the opportunity to perform work that would be captured under this visa. Whether the position is white collar or blue collar, high income or low income, the same principle applies i.e. an employer wanting to engage a temporary overseas workers must

[8] See for example, FWO, "Fijian workers allegedly underpaid $25,000 whilst working at Port Adelaide docks", media release 25 July 2012. http://www.fairwork.gov.au/about-us/news-and-media-releases/2012-media-releases/july-2012/25072012-devine-prosecution

show they have first tried to find a suitably qualified Australian worker and were not able to do so. Again, this is more important than ever with unemployment at record highs.

For example, in relation to intra-company transfers which are identified for the short-term mobility visa, does the government believe that an international company wanting to rotate its young graduate employees through a 12-month job in its Australian branch should be entitled to do so, regardless of how many young Australian graduates are qualified to do the work and unable to find a full-time job?

Proponents of this proposed visa also seek to argue that those who are unemployed would not be filling the type of specialist jobs that might be subject to the short-term mobility visa. Even if that was the case, it is not much to ask that labour market testing be required to verify that is in fact the case, rather than relying simply on the 'say-so' of the employer. This is important to protect the rights of Australian workers to jobs and for community confidence in the program.

The fact is though that Australians at all skill levels can and do find themselves out of work. ABS figures show for example that there are currently 62 600 professionals unemployed and a further 142 400 who are unemployed – that is 204 900 Australian workers who are classified as professionals and who are looking for work or who want more work than they currently have. [9] There are a further 63 300 unemployed trades and technician workers and 102 700 who are unemployed. Labour market testing is essential to ensure that these highly skilled workers have access to available jobs.

A further, related concern is that a visa designed for 'highly specialised' work is at odds with other aspects of Government policy which seek to encourage Australian specialisation where scale and comparative advantage provides a competitive edge. Australian expertise in offshore oil and gas development is one such area.

The development of home grown specialist skills in niche markets where we have comparative advantage is in the national interest, and can help ensure that Australia can compete in an international marketplace. Unions operating in the offshore sector have accepted that overseas workers with specialist skills should be able to be imported on a

[9] ABS Labour Force, Australia, Detailed, Quarterly, cat. 6291.0.55.003, Table 18 and 19, November 2014

temporary basis in certain circumstances, however the long lead times for commencement of offshore projects and the recurring nature of the requirement for specialist skills like heavy lift crane operators on pipe laying vessels, which have been required on the Bayu Undan project, the Gorgon project and now the Ichthys project, provides ample opportunity for Australian nationals to be trained up for these specialist roles.

For all of the reasons identified above, we urge the Government to not proceed with this proposal for a 12 month short-term mobility visa.

Temporary Skilled Visa

The paper indicates the temporary skilled visa subclass will continue to be the current 457 visa, as varied by any changes the Government determines in response to the recommendations of the 457 review panel.

As detailed above, we urge the Government to not proceed with any recommendations that will result in fewer protections and safeguards for Australian and overseas workers under the 457 visa program.

The scope and coverage of the 457 visa program would also be altered if the Government went ahead with the proposal for a short-term mobility visa because it would effectively remove a whole new category of work from the reach of the 457 visa program requirements.

Permanent skilled visa

The paper describes this visa as allowing individuals to apply for permanent residency to fill a vacancy in the local labour market, 'where a genuine vacancy exists'. Without labour market testing, it is not clear how this would be determined. As set out in our preliminary submission, our position is that labour market testing should apply equally to permanent, employer-sponsored visas to ensure that access to the visa is based on filling genuine vacancies

The paper then canvasses various issues and options around the transition from a temporary to a permanent visa. In one sense, this should not be an issue at all. If the temporary visa program operated strictly as intended to fill genuine temporary skill shortages, then visa holders would return home when their position could be filled through the employment and training of Australian workers. However, we acknowledge that many temporary visa holders have a legitimate and understandable desire to progress to permanent residency and this needs to be managed in a fair and transparent way.

In our submission, one of the key issues in managing this transition is to somehow remove or reduce the perennial problems caused when temporary visa holders are dependent on a single sponsoring employer for their goal of permanent residency. This was an issue highlighted back in the 2008 Deegan report and again in the 2014 Azarias report. Removing this link would leave workers far less vulnerable to exploitation.

We note the assessment in the Proposal Paper that it is unlikely that consideration would be given to an immediate or automatic progression, and nor should it be. However, there is merit, as the paper suggests, in looking at replacing sponsorship with other pre-qualifying characteristics. The ACTU supports the idea of giving 457 visa workers priority access to independent permanent migration channels as a way to reduce the problems caused by dependence on a sponsoring employer.

We also indicate our support again for other proposals to reduce dependence on a single sponsoring employer. For example, we support the recommendation from the 457 visa review panel that would 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 any one 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 and employers are still not able to find a suitable Australian worker for the job.

Seasonal worker program

The proposal is that the Seasonal Worker program currently operating under the Special Program (subclass 416) visa be merged into the International Relations (subclass 403) visa as a distinct stream.

The paper advocates this change as a means of reducing red tape and making it easier for employers to access the program. However, the critical issue which the Proposal Paper is silent on is whether this change also means that current requirements and obligations under the Seasonal Workers Program would be reduced in a substantive way. This detail is required for a full and proper assessment of this proposal.

As we stated in our preliminary submission, unions are prepared to examine and support sensible reform options but will focus closely on what any change mean for the wellbeing of workers. 'Red tape reduction' that actually means reducing protections and safeguards for workers will be vigorously opposed.

On a related matter, we note that the website covering the Seasonal Workers Program has a list of approved employers already operating currently under the program. There does not appear to be any reason why a similar list of sponsoring employers under the 457 visa program could not be made available in the interests of accountability and transparency.

Community and Events Visa

This proposed visa would allow for entry into Australia for up to four years to participate in or assist with an event, or an approved cultural or social activity. The examples provided indicate it would cover things such as major sporting and music events, festivals, conferences and trade fairs.

The lack of detail around this proposed new visa type is of concern, particularly in regard to the rights of Australian workers to gain employment at events and other productions that could be caught by this visa.

For example, we understand the need for international performers and participants in various events to enter the country with an appropriate visa. However, the situation becomes far less clear when it concerns the variety of support staff that can be required for these events, whether in professional or technical roles or other ancillary support roles (eg catering). There may be genuine reasons for some of those support staff to be from overseas but the proposal to explore the potential scope for this visa gives rise to concern that it could be opened up to all types of support work that could be performed by Australian workers.

The paper goes some way to acknowledging this concern by indicating a GTE requirement would be in place as an integrity tool and to 'ensure the primacy of Australian workers'. However, as we noted above, the GTE requirement is manifestly inadequate for this purpose. Only a genuine labour market testing requirement can protect the rights of Australian workers in this regard.

Our position is that Australian workers should be given the opportunity to work on major international events held in Australia, particularly considering the visa would cover work of up to four years. It should also be made clear why the proposed entry is for a period of up to four years, when it seems to be covering mainly one-off events of much shorter duration.

Again, it would assist if the proposed new visa was compared with its existing equivalent, the subclass 420 visa for Temporary Work (Entertainment), with an explanation of how the proposed new visa would be different and why the existing visa option is not considered sufficient.

We note the existing 420 visa provides for consultation with relevant unions such as the MEAA and the Musicians' Union during the visa nomination process. This consultation requirement must be retained to ensure the right and interests of relevant Australian workers are properly taken into account.

Training and Specialist Research visa

This proposed visa would allow for entry to Australia for up to three years to undertake approved training or research activities.

We understand the genuine need for such a visa in certain circumstances. However, we note the examples of serious misuse of similar visa types in the past such as the Occupational Trainee Visa (442) that highlight the need for rigorous integrity measures.

We also seek clarification as to whether work rights are attached to this proposed visa. The existing training and research visa (subclass 402) specifies that it is not a work visa, but the requirement under the proposed new visa for there to be an undertaking about salary and conditions suggests that work rights could be attached to the proposed new visa.

Working holiday maker visa

The Proposal Paper has failed to grasp the importance of including the working holiday visas within the scope of this review. The paper still presents these visas as primarily a cultural exchange program, with some short-term work to supplement travel and a limit of six months of work with a single employer.

Again, this fails to recognise the reality of how these visas are utilised in practice. For many young people, particularly those from recession-hit countries with high youth unemployment, it is likely that finding work is the primary purpose of their visit to Australia. Visa holders can work lawfully in Australia from the date of their arrival to the date of their departure non-stop and full time, provided that they only work a maximum of 6 months with any one employer. They are also able to apply for a second working holiday visa for a further 12 months, if they perform 'specified work' in a designated regional area for a period of 88 days. The figures provided in our preliminary submission show the extent to which working holiday makers are looking to transition to the 457 visa and to permanent residency and why this visa should therefore be part of a review of the overall skilled migration program.

Our submission is not that young overseas travelers be denied the chance to work in Australia under a visa of this type. However, consideration must be given to the impact this visa (and other temporary visas) has on employment opportunities and employment conditions for Australians, particularly young Australians in lower-skilled parts of the labour market. This is particularly important because, as the paper notes, the visa currently applies to any type of work and is not subject any sponsorship or skill requirements, such as labour market testing. Where labour market conditions require it, capping visa numbers should be one option available.

The working holiday visa is also in need of urgent review in light of the continuing reports of mistreatment and exploitation of overseas workers under this visa, with Australian workers not even being considered in some cases. A scan through job sites such as Gumtree and Indeed uncovers numerous examples of job advertisements directly targeted at overseas workers, enticing them with the lure of a second working holiday visa as described above. [10]

The Fair Work Ombudsman, to their credit, have begun a visible compliance campaign on this issue and have already highlighted a number of cases of underpayment, provision of sub-standard accommodation, debt bondage, and requirements for payment by employees in return for the employer signing off on a second year visa. [11] The concern, as with the 457 visa program, is that the reported cases of exploitation are only ever the tip of the iceberg as many workers do not feel able to make a complaint to authorities for fear of jeopardising their visa status.

[10] See for example http://au.indeed.com/m/viewjob?jk=ef4d6d979b9942b4&from=ja

[11] Fair Work Ombudsman, Media Release, 5 January 2015. www.fairwork.gov.au

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