



**CFMEU SUBMISSION TO STRATEGIC REVIEW OF THE STUDENT VISA PROGRAM 2011**

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15 April 2011

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## **Executive summary**

The CFMEU's key points are as follows.

### **Improved data and research**

Data on the size of the international education sector in Australia is misleading and confused, even about such basic facts as the number of international students in Australia at any given time. It is important to sort this out.

There is an urgent need for a serious, independent research program providing regular and up-to-date data and analysis on:

- the employment activity of overseas students and graduates in Australia, and
- the labour market impacts of this activity on jobs, wages and training opportunities for Australian young people and workers generally.

### **Strategic directions**

1. Australia's International education policy in future should give relatively more emphasis to providing courses offshore and less onshore.

2. Onshore provision should be targeted more to high-yield/high fee courses, not courses targeting overseas students so destitute they have to work 40 hours or more per week just to make ends meet.

3. In an overall international education strategy, the place of courses for overseas students in vocational education generally and particularly so-called 'trades' courses need a serious re-think.

4. The total number of student visas granted for so-called 'trades' courses at Certificate 3/4 level in individual trades on the Skilled Occupation List (SOL) must be regulated and subject to an annual cap, determined on advice from the relevant Industry Skills Council (ISC).

### **Work rights for overseas students and graduates**

The Review should endorse the fundamental principle that no increase in these work rights should be considered without an independent, transparent and detailed assessment of the likely impact of any extension on Australian residents, especially young people.

Work rights for overseas students should not be increased from their current level of 20 hours/week during term and unrestricted outside term.

### **Graduates – 485 visas**

- A mechanism must be introduced to ensure that 485 visa grants are responsive to changes in Australian labour market conditions. Current rules allow an unlimited number of 485 visas to be granted to overseas student graduates, even if there is high unemployment among Australian tradespersons and apprentices and graduates generally.

- The total number of 485 visas granted in particular ‘trades’ occupations on the Skilled Occupation List (SOL) must be regulated and subject to an annual cap, determined on advice from the relevant Industry Skills Council (ISC) – as with student visa numbers.
- There should be closer and more effective regulation by FWO of wages and conditions of 485 temporary visa holders, and the employers hiring these workers.

### **Work done by overseas students and graduates as an ‘independent contractor’**

The current policy of allowing work done by temporary visa holders as an ‘independent contractor’ to be credited towards PR visas needs to be reviewed for industries such as construction with a high-risk of sham contracting.

Only work undertaken as an employee by temporary visa-holders should be considered for the purpose of PR visa consideration.

### **Consultative group**

The CFMEU supports the establishment of a new forum that regularly brings together all stakeholder representatives with interests in the international education sector. In recognition of the broad employment and labour market issues associated with international students, this forum must include trade unions (beyond education unions) and agencies such as the Fair Work Ombudsman (FWO).

# 1. Introduction

The Construction, Forestry, Mining and Energy Union of Australia, (CFMEU) welcomes the opportunity to make this submission to this important Review. The CFMEU consists of three Divisions namely the Mining and Energy Division, Forestry and Furnishing Products Division and the Construction and General Division. We are the major union in these industries and represent approximately 110,000 members.

The CFMEU supports a strong, sustainable and ethical international education industry in Australia. The characteristics of such an industry are that it provides real and lasting benefits to Australia including good jobs, protects the rights and interests of Australian residents (citizens and permanent residents) and international students, and treats international students with respect and dignity.

The CFMEU's interests in this Review arise primarily because of our responsibilities to protect the interests, jobs and working conditions of our members and their families, working people generally and the rights of international students in Australian workplaces.

Our union has a strong interest because many construction trades have been placed on the new and more restricted Skilled Occupation List (SOL). This means that:

- overseas students have a strong incentive to undertake VET courses in these trades, to secure either a permanent residence (PR) visa via the General Skilled Migration (GSM) program or a 485 Graduate skills visa. The 485 visa provides unrestricted work rights for up to 18 months in Australia.
- Australian VET providers have a strong incentive to offer VET courses in these trades, and are doing so.

## 2. Data and research on overseas students

### 2.1 Data on overseas students in Australia needs to be improved

At the moment there is unnecessary confusion about the size of the international education sector in terms of the most basic issue, namely the actual number of students in Australia.

The Review's Discussion Paper presents two charts based on Australian Education International (AEI) data to illustrate the growth in international student numbers and enrolments in Australia between 2002 and 2010 – see 'The Growth in International Student Numbers', p4.

The AEI chart 1 shows the number of international students in Australia increasing from around 210,000 in 2002 to just under 500,000 in 2009.

But AEI data is not a reliable indicator of the number of overseas students in Australia at any one time and significantly overstates these numbers. There are differences in data from the two main official sources of data on the number of overseas students in Australia at any one time: DIAC's stock

data on the number of overseas student visa holders in Australia, and the statistics published by AEI purporting to show the same group.

According to DIAC stock data<sup>1</sup>, in 2008 the average number of international students in Australia was 324,600 while according to AEI data cited by Access Economics, the number of overseas students (not student enrolments) in Australia in 2008 was 435,300<sup>2</sup> – 110,700 or 34% more than the DIAC stock figure. Other data in an authoritative study by Birrell and Smith (2010) suggests that in 2007-08, AEI figures could have been up to 47% higher than DIAC stock data.<sup>3</sup>

The ABS uses the DIAC stock figure for overseas students (not AEI data) in its estimation of the economic value of overseas students to Australia.<sup>4</sup> The Birrell and Smith study reports that this is because the DIAC stock counts adjust for students who spent only part of the year in Australia or were absent for brief periods, while AEI figures do not.<sup>5</sup>

This basic data issue should be cleared up. AEI data overstates the size of the international education sector (measured by number of students) by at least one-third. DIAC stock data is a better source and should preferably be used for most purposes. If AEI data are used, at the very least they should be accompanied by the appropriate provisos.<sup>6</sup>

## **2.2 International students' and graduates employment in Australia**

There is an urgent need for a serious, independent research program providing regular and up-to-date data and analysis on:

- the employment activity of overseas students and graduates in Australia, and
- the labour market impacts of this activity on jobs, wages and training opportunities for Australian young people and workers generally.

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<sup>1</sup> DIAC, *Immigration Update July to December 2008*, Table 4.1, p40.

<sup>2</sup> Access Economics, *The Australian education sector and the economic contribution of international students*, Report for the Australian Council for Private Education and Training, April 2009, Table 6-7, p24.

<sup>3</sup> Bob Birrell & T Fred Smith, *Export earnings from the overseas student industry: how much?* Australian Universities Review, vol. 52, no. 1, 2010, pp 1-12. This shows DIAC stock data used by the ABS put the average overseas student population at 273,600 in 2007-08 while in AEI data, the average for 2007 and 2008 (calendar years) was 402,800.

<sup>4</sup> ABS, 5368.0.55.004, *International trade in services*. The ABS uses unpublished monthly DIAC stock data, adjusted for arrivals and departures and those granted student visas onshore, and student visa holders converting to other visa subclasses onshore.

<sup>5</sup> Bob Birrell & T Fred Smith, *op cit.*, at p6.

<sup>6</sup> AEI data may be a useful indicator of the annual student throughput (vs stock), provided there is no double counting of overseas students, eg those enrolling in several courses or changing courses during the year.

Directing, co-ordinating and managing this research program could be one of the functions of the broader Consultative Group canvassed in the Review's Discussion paper at p20 – see also below p17.

The lack of reliable data on overseas students' employment activity and experience in 2011 is astonishing, given the size and characteristics and growth of this population. (The number of international students more than doubled between 2004 and 2010.)

This includes such basic information as the numbers working, their employment patterns and experiences, their earnings) and so on.

This information is central to assessing the true economic value of the international education industry, and the full range of its effects (positive and negative) on the Australian labour market.

There has been no systematic data collection conducted since the survey of overseas student employment earnings was conducted in 2004, the most recent official survey.<sup>7</sup> Since that time, there has been huge growth in the size of the overseas student population and a major shift in composition towards VET students with a much higher propensity to work.

The proposed data collection and research needs to take into account the fact that many students work in breach of their current visa conditions (generally 20 hours/week in term, unlimited hours outside of term).

Much research on the work patterns of temporary visa holders is incomplete because it assumes strict compliance with the work conditions attached to the particular visa, even where it is common knowledge that visa-holders actually work beyond those conditions (eg DIAC surveys of Working Holiday visa holders suffer from the same shortcoming).

Ways must be found to obtain comprehensive and accurate data on actual work done by overseas students, not cosmetic versions of this behaviour. The CFMEU is prepared to help design such research.

### ***Proportion of overseas students who work and earnings***

Estimates of the proportion of overseas students who actually reported working while in Australia range from 70% in a 2009 study of university students to 32% in the 2004 survey mentioned above. But these studies have been confined to university students and exclude VET students.

International students taking VET courses are likely to have a higher propensity to work, and to work in more precarious employment. As well as coming from lower-income backgrounds with fewer resources, the courses taken by these students generally require a period of work or 'work experience' to obtain the qualification from the VET provider, satisfy the requirements of Trades Recognition Australia (TRA) or DIAC, if they are applying for a PR visa.

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<sup>7</sup> Western, MC, Laffan, WS, Haynes, MA, Chesters, JJ, Tighe, M and Arts, DAG 2005, *Final Report of the survey of International Students' Spending in Australia, University of Queensland, July 2005.*

Birrell and Smith (2010) conclude that employment earnings by overseas students in 2007-08 were likely to be nearly double those estimated by the ABS. The ABS estimate for the average level of overseas student earnings in 2007–08 was just A\$4,386.

Birrell and Smith suggest that a more realistic indicator of overseas students earnings from employment is the amount earned by domestic students. This was \$8,270 in 2006.

More data and scrutiny is also needed on work done by 485 visa holders, or graduates on bridging visas while waiting for their 485 or GSM visa applications to be processed.

Many in this group are seeking PR visas and are therefore at risk of exploitation by unscrupulous employers whose support may be needed to obtain a PR visa.

### **3. Strategic directions for international education**

The CFMEU believes the following approaches should guide future strategic direction for international education policy in Australia.

#### **1. Australia's International education policy in future should give relatively more emphasis to providing courses offshore and less onshore.**

This will ensure a stronger focus on the educational quality of courses, rather than the offer of access to the Australian job market on a temporary or permanent basis. This approach will reduce the risk of the riots and labour market and social pressures associated with onshore provision (eg., in the rental and housing markets), seen recently in stark form.

This approach will also help relieve somewhat population growth pressures associated with temporary migrant populations, and give Commonwealth and State/Territory governments more scope to better manage that issue.

This approach was supported in the recent Sustainable Development Panel Report chaired by the Hon. Bob Carr, as shown in the following excerpt under the heading 'Government needs more control over its migration program':

The Government is currently choosing to have less control over the immigration program. As immigration is the largest component of projected population, a national commitment to action on sustainability requires the Australian Government to exert more control over the size and composition of all immigration, particularly the temporary programs. The current approach of allowing the 'market' to determine the annual size and composition of the temporary migration program creates clear tensions with a sustainable population agenda. The recent record level of net overseas migration (320,000 in the year to March 2009) was driven by migrants entering through uncapped temporary programs, in particular the student program.<sup>8</sup>

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<sup>8</sup> *Sustainable Development Panel Report*, Chair: The Hon Bob Carr, Report commissioned by the Hon Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities, December 2010, p29.

This approach would allow more room for *permanent* migrants in Australia's growth. The CFMEU has long held a strong view that Australia is far better served by growth in permanent migrants with unrestricted work rights compared to temporary migrants with restricted work and other rights.

Offshore provision of international education must be very well-regulated, especially in VET, to ensure Australian qualifications standards are maintained and not diluted.

**2. Onshore provision should be targeted more to high-yield/high fee courses, not courses targeting overseas students so destitute they have to work 40 hours or more per week just to make ends meet.**

This is a prudent approach aimed at maximising economic value to Australia from international education and minimising negative economic and social impacts. This includes avoiding the creation of a permanent (but rotating) underclass of temporary migrant workers highly vulnerable to exploitation in the Australian labour market.

This approach has also been canvassed by the recent Bob Carr Sustainability Panel Report.

Similarly, there also needs to be consideration of whether government can encourage international services industries, for example the international education sector, to shift to a different growth model that will be complementary and compatible to sustainable population growth. Incentives for these sectors could involve emphasis on two elements:

- Lower growth numbers of temporary residents in Australia, but a higher economic yield from those that do come; and
- More offshore provision of some services (eg education) and less provision on shore.<sup>9</sup>

**3. In an overall strategy for international education, the place of courses for overseas students in vocational education generally and particularly so-called 'trades' courses need a serious re-think.**

These courses should not be expanded because they are inherently very high-risk, due to the fact that they require employment-based experience/training. Especially in cyclical downturns, overseas students will therefore by necessity be competing with young and other Australians for shrinking job opportunities, compressing wages in the process as they fight for jobs.

This is a particular issue with overseas students and/or graduates who need the work in order to meet the course qualification requirements, or the 'skilled work' component for points towards a points-tested GSM visa, or need a job to convince an employer to sponsor them for a 457 visa.

Under the present system, these temporary visa holders have a very strong incentive to undercut local workers in order to get jobs.

This is already happening in the construction sector in March 2011 in Sydney. Overseas students taking 'trade courses at Certificate 3/4 level In NSW TAFE are required (in some cases) and

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<sup>9</sup> Bob Carr, op. Cit, p29.

encouraged in others to undertake so-called 'work experience' of 120 or 144 hours, to gain their qualification. The 'trades' are bricklaying and wall tiling, both occupations on the SOL.

According to NSW TAFE, this so-called 'work experience' can be either paid or unpaid depending on what the student is able to 'negotiate' with the employer. However, NSW TAFE is advising employers that TAFE will cover the students for all insurances (workers compensation, public liability etc) *provided that the student is **not** paid.*

Once the student is paid by the employer, TAFE insurance cover lapses and becomes the responsibility of the employer.

NSW TAFE is clearly offering incentives to employers to take on these overseas students as unpaid workers. This is clearly unacceptable and the CFMEU is taking action to end this practice once and for all.

To compound the offence, our union has bricklayer members in Sydney who cannot get work or enough work. They are being forced to compete for bricklaying work with overseas students in bricklaying Certificate 3 courses being touted by TAFE as unpaid work experience students.

This is a situation that the CFMEU will not accept. It underlines the folly of a strategy of offering so-called 'trade' courses to overseas students.

Many Certificate 3 and 4 courses are now established and are proliferating in construction trades, eg bricklaying, tiling, and plasterers. Our view is that this development must be brought under control quickly, to avoid a repeat of the cooks and hairdressers fiasco.

It is also clear to us that many overseas students are taking these courses in trades on the SOL with a PR visa outcome in mind. Many students have told our officials that this is their objective, when CFMEU officers have been invited to speak to the international students in NSW TAFE about the role of unions in Australia.

Furthermore, several international students (eg in bricklaying courses) have admitted to our officials that once they got their PR visas, they had no intention of working as bricklayers in Australia.

In 2011 these Certificate 3 courses in bricklaying in NSW TAFE have fees of around \$13,000 and a 1.5 year Certificate 4 course has fees of \$20,000.

It is clear that for many students these fees are effectively the down payment on a PR visa, given that for a mere fraction of that money they could be trained in their home countries in these 'trades'.

This (employment-based training) is an issue for VET trade courses not just for the current upturn, but for the future generally, because periodic cyclical downturns are inevitable. An international VET growth strategy that emphasizes employment-based training courses for overseas students is therefore inevitably a high-risk option for the domestic population and workforce.

For the same reasons, the CFMEU has concerns about the push to more employment-based components in international education courses more generally.

For example, we were concerned to find that a September 2009 International Student Roundtable called for an increase in “industry experience” for overseas students, without any acknowledgement of the potential consequences of such an approach and the need for strong safeguards. The Roundtable Communique says:

**Industry experience** – the Roundtable feel a more ‘hands on’ approach to education, with industry experience, is necessary in refining student qualifications and learning. It would like educational institutions to provide this experience by increasingly linking institutes to industries and offer international students more internships or training programs at no additional cost.<sup>10</sup>

**4. The total number of student visas granted for so-called ‘trades’ courses at Certificate 3/4 level in individual trades on the Skilled Occupation List (SOL) must be regulated and subject to an annual cap, determined on advice from the relevant Industry Skills Council (ISC).**

Under current immigration policy and regulations, the number of overseas student visas granted for so-called ‘trades’ courses is not capped. It is determined solely by the number of such students wanting to do these courses (demand) and the supply of course places in Australia.

This means that if 20,000 international students want to do bricklaying courses in 2012 and TAFE and private colleges decide to meet that demand, then 20,000 students will be granted visas to do these courses.

This is an absurd situation, but the fact is it is exactly what happened – and worse - in the case of cooking courses.

It is not good enough to say that regulation of student visa numbers is not necessary, on the grounds that the government has broken the nexus between VET courses and GSM visas.

While the government has gone a long way towards breaking the nexus, it is not clear that the nexus has been completely severed.

As well, these courses (in occupations on the SOL) will for future international students be the only pathways to a 485 visa and 18 months unrestricted work rights. That will be a sufficient incentive for some international students.

The CFMEU believes that DIAC and/or DEEWR should be closely monitoring the number of overseas student enrolments/numbers in VET courses in trades on the new SOL, by trade and State/Territory.

We understand that DIAC does not collect this data in its own administrative data collections but the data is held by DEEWR/AEI.

### **3. Work rights for overseas students and graduates**

The Review’s Discussion paper invited comments on several issues of interest to the CFMEU:

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<sup>10</sup> International Student Roundtable, Parliament House, Canberra. Communique, 15 September 2009.

- Whether current work rights for overseas students should be extended (20 hours/week during term, unrestricted hours outside term)
- The 485 visa for overseas student graduates, and proposals to increase the permitted stay from 18 months to 3 years

### 3.1 Overseas students

With regard to the work rights of overseas students in Australia, the CFMEU believes the Review should endorse the fundamental principle that no increase in these work rights should be considered without an independent, transparent and detailed assessment of the likely impact of any extension on Australian residents, especially young people.

As pointed out earlier in our submission, no such assessment has been yet been undertaken. There has been a lack of research on the employment activity of overseas students in Australia, let alone the impacts on Australian workers and young people.

Until such an assessment has been undertaken, work rights should not be increased from their current level of 20 hours/week during term and unrestricted outside term.

There is some evidence to suggest that overseas students have been employed as substitutes for young Australians in the period following the GFC.

- Between June 2008 and June 2009, the number of young people aged 15-24 employed in Australia fell by a massive 101,000 persons (ABS Labour Force Survey, original data). The unemployment rate in this age group increased sharply, from 8.6% to 11.6% in the period.
- But while the Australian job market for new entrants contracted by over 100,000 in the period concerned, the Australian government continued to grant an increasing number of overseas student visas, particularly in PR-driven VET courses that required the students to find work to get their qualification and PR visas. Between June 2008-09, the number of overseas students in Australia increased by 68,000 or 21%, from 317,900 to 386,300.<sup>11</sup>

The growth in the number of overseas students (and graduates) in Australia with work rights took place at precisely the time that the job market for young people in Australia collapsed following the GFC.

The CFMEU is also aware of numerous examples of overseas students:

- Working for low wages (eg \$4/hour) and in some cases for no pay at all, in order to clock up the hours of 'work' or 'work experience' needed to obtain the qualification necessary for PR.
- Actually paying the employer for the job and working for no pay, for the same reason, ie to acquire the documentation needed to support the claim to a qualification and/or PR visa.

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<sup>11</sup> DAC stock data, *Immigration Updates*, various.

- Engaged in sham contracting arrangements, working with an ABN as an independent contractor when in fact and in law they were employees<sup>12</sup>.

In recent years, a disturbing number of overseas students have been detected in Sydney and Melbourne working in breach of their visa conditions on construction sites. This has been happening at a time when many Australian construction workers are still unable to find work.

**Example 1:**

In mid-late 2009, on several Sydney building sites, it was found that hundreds of Chinese temporary workers including overseas students, had not been paid their wages for six weeks. Most could not speak English. Among the cocktail of abuses discovered were that all these workers had ABN numbers (sham subcontracting), no workers compensation insurance coverage, no award conditions, no superannuation and rates of pay barely half what they were entitled to.

**Example 2:**

In February 2011, on a Queensland building site, a group of mainly Korean construction workers (tilers) were located also working under sham contracting arrangements, and with rates of pay barely a third that of equivalent CFMEU workers (\$14/hour vs \$40/hour). Again, appropriate entitlements (such as sick leave, superannuation etc) were not being paid.

As shown in Box 1, current and former overseas students featured prominently on this site:

- There were 7 different visa types held by the 15 workers on the site (tilers), comprising 4 temporary residence and 3 PR visas – though one PR visa is effectively a temporary visa since it can be cancelled by DIAC if the visa-holder does not stay with his/her sponsoring employer for 2 years (ie visa subclass 857, RSMS).
- Of these 15 workers, nearly half (7) clearly held overseas student-related visas, made up of 5 x 572 VET visas plus two on 485 Graduate skills visas.

The 487 visa is also for former overseas students, but not exclusively so. It is impossible to tell (from this data) whether any others are also former OS students who have changed to subsequent visas eg 857 regional employer-sponsored visas.

At the time of writing this present submission, DIAC was investigating whether these 572 visa-holders (ie current OS students and/or partners) were working in breach of their visa conditions re 20 hours max/week; and whether the employers of these workers had committed offences that would lead to sanctions.

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<sup>12</sup> Examples of the first two abuses were reported by VET instructors of international students in Birrell, Healy and Kinnaird, 'Cooks galore and hairdressers aplenty', *People and Place*, Vol 15, no 1, 2007, pp30-44; and 'The cooking-immigration nexus', *People and Place*, Vol.17, no.1, 2009, pp63-75. For sham contracting, see below, this section.

**Box 1 - Visa types held by construction workers on one site involving sham contracting, 2011**

<b>Visa subclass</b>	<b>Visa title</b>	<b>Work entitlement</b>	<b>No</b>
<b>Permanent residence (PR) visas</b>			
801	Spouse/partner permanent visa	Unlimited	1
856	Employer Nomination Scheme (ENS)	Unlimited	1
857	Regional Sponsored Migration Scheme	Unlimited, but must stay with sponsoring employer for 2 years	3
<b>Temporary residence visas</b>			
457	Business long-stay	4 years, with sponsor/employer	0
417	Working Holiday	12 months, 6 months max with one employer	2
485	Graduate Skills visa	Unlimited, up to 18 months	2
487	Skilled – Regional Sponsored (Provisional)	Unlimited, for 3 years - but work only in specified regional area	1
572	Overseas student, Vocational Education and Training (VET) sector OR partner of 572 visa holder	20 hours week in term, unrestricted outside study term	5
<b>Total</b>			<b>15</b>

Source: DIAC Visa Entitlement Verification Online (VEVO), accessed by CFMEU with workers' permission.

**Inadequate regulation of the work rights entitlement**

It is clear to the CFMEU that currently regulation of the involvement of overseas students in the Australian labour market is grossly inadequate. Overseas students work in breach of their visa conditions (ie more than 20 hours/week) as a matter of course; overseas students and their organisations have said as much in submissions to various inquiries (usually in support of more legal hours); and DIAC and other Commonwealth officials openly admit that this is the case.

As far as we are aware, no employer has been charged with an offence under the Employer Sanctions Act 2007 for employing overseas students in breach of their visa conditions by allowing them to work more than 20 hours/week.

In our view, the target of any campaign to secure compliance with this visa condition must be the employers who engage overseas students.

### 3.2 Graduates – 485 visas

The 485 or Graduate Skills visa provides unrestricted work rights in Australia for 18 months, to international student graduates from certain study or training courses in Australia, ‘to allow them to gain skilled work experience in Australia.’ These include construction trades courses, among others.

The position of the CFMEU is as follows:

- A mechanism must be introduced to ensure that 485 visa grants are responsive to changes in Australian labour market conditions. Current rules allow an unlimited number of 485 visas to be granted to overseas student graduates, even if there is high unemployment among Australian tradespersons and apprentices and graduates generally.
- The total number of 485 visas granted in particular ‘trades’ occupations on the Skilled Occupation List (SOL) must be regulated and subject to an annual cap, determined on advice from the relevant Industry Skills Council (ISC) – as with student visa numbers.
- There should be closer and more effective regulation by FWO of wages and conditions of 485 temporary visa holders, and the employers hiring these workers.
- There is no case for a longer duration graduate work visa as per the 3-year visas mentioned in the Discussion Paper.

#### Regulating 485 visa grants

The CFMEU has serious concerns about this visa, despite some restrictions having been introduced by the government. From July 2011, 485 visas will only be available in occupations on the new Skilled Occupation List (SOL). The exception is the 455,000 overseas students enrolled in Australian courses as at 8 February 2010 who can apply under the old SOL (with a much larger list of occupations).

Many construction trades are included in the new SOL, and consequently the international education VET sector is already gearing up to expand overseas student enrolments in these trades.

As noted above, there is no regulation of the numbers of overseas students doing these courses. Under current rules, neither is there any regulation of the number of graduates from these courses granted 485 visas. Overseas student graduates have an automatic entitlement to a 485 visa so long as their occupation remains on the SOL, *regardless of changed labour market conditions for young Australian job seekers in these occupations.*

In other words, current rules allow an unlimited number of 485 visas to be granted to overseas student graduates from certain courses, even if there is high unemployment among Australian tradespersons and apprentices.

This is unacceptable, and a mechanism must be introduced to ensure that 485 visa grants are responsive to changes in Australian labour market conditions.

The mechanism we propose – advice from the Industry Skills Councils as to numbers – is preferable to the mechanism operating in the 457 visa, namely sponsorship by an individual employer. The

latter would tie the 485 visa holder to an individual employer, effectively reducing the bargaining power of the 485 visa-holder and creating a bonded labour arrangement.

The CFMEU is also concerned that in the 485 visa, there is no requirement for Labour Market Testing (i.e., employers are not obliged to demonstrate that they were unable to find Australian workers including graduates for the position, before hiring the 485 visa-holder), effectively granting these temporary visa holders the same rights to work as Australian residents; no requirement to pay 485 visa-holders 'market rates'<sup>13</sup>, as required in the 457 visa program from September 2009; and no effective minimum salary threshold.

The lack of these provisions in the 485 visa means this visa program carries a high risk of undermining Australian wages and conditions for entry-level jobs. This underlines the importance of improving regulation of this visa from its current abysmal level.

If the measures proposed by the CFMEU do not achieve a satisfactory level of protection of entry-level wages and conditions, then we believe that the 485 visa program should be reviewed if not abandoned.

### **Regulating wages and employment conditions of 485 visa-holders**

The CFMEU is aware that some private companies have set themselves up as intermediaries marketing 485 visa-holders to potential employers on 'Internships', with the offer to discount the wages of 485 visa holders by 25%.

This is claimed to be in recognition of the need for these 485 visa workers, despite having attained Australian VET and higher education qualifications, for more 'supervision' relative to other graduates.

The CFMEU referred one such case to DIAC and the FWO. The DIAC response was that this matter was not their concern.

We have no role with internships and unpaid internships. They are matters for Fair Work Australia. If some of these students get practical training sufficient to be regarded as a tradesperson and employers will sponsor them as fully paid skilled workers under 457 provisions, it may be beneficial for all.<sup>14</sup>

We understand that subsequently the FWO investigated this case, discovered several other organisations in Sydney operating similar schemes, and launched a joint investigation with DIAC into possible breaches under legislation administered by both agencies. We have not to date been advised of the result of these investigations.

This is just one example of why tighter regulation of these visas is needed.

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<sup>13</sup> 'Market rates' in the 457 visa program are defined as the same wages and employment conditions that an equivalent Australian worker receives, at the same workplace where the 457 visa holder will be employed.

<sup>14</sup> DIAC email to CFMEU dated 22 October 2010.

### **3.3 Work done by overseas students and graduates as an ‘independent contractor’**

At present, any work done by overseas students and graduates as an ‘independent contractor’ (as distinct from a direct employee) can count as credit towards various PR visas.

A recent report on sham contracting from the CFMEU Construction and General Division called for this policy position to be changed.

The *Race to the Bottom* report found that between 26-46% of all ‘independent contractors’ in the Australian construction industry are likely to be in sham contracting arrangements, that is, they are likely to be working in arrangements which are legally those of an employee-employer relationship.

- In other words, there is almost a 50% chance that an independent contractor working in the construction sector is in fact an employee.

These sham arrangements are far more prevalent in construction than in other industries; and new entrants such as recent graduates are more likely to be enticed into them.

The CFMEU strongly believes that, on a range of public policy grounds, the practice of sham contracting in the construction industry must be greatly reduced if not eliminated.

One important step towards this objective is to send a clear signal to overseas students/graduates and construction employers that employment as a sham contractor will not be rewarded for migration purposes.

This is why the CFMEU report said:

.....current immigration policy and Regulations allow certain temporary visa holders to claim work done in Australia as an ‘Independent contractor’ as ‘Australian experience’ that counts towards various permanent residence (PR) visas, including employer-sponsored visas. For example, a subclass 485 or 417 (WHM) visa-holder can claim work undertaken as an independent contractor in Australia in their PR visa applications.

This policy needs to be reviewed for industries such as construction with a high-risk of sham contracting, and only work undertaken as an employee by temporary visa-holders should be considered for the purpose of PR visa consideration.<sup>15</sup>

The CFMEU believes the Review should endorse this position.

## **4 Consultative group**

The CFMEU supports the establishment of a new forum that regularly brings together all stakeholder representatives with interests in the international education sector. In recognition of the broad employment and labour market issues associated with international students, this forum must include trade unions (beyond education unions) and agencies such as the Fair Work Ombudsman (FWO).

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<sup>15</sup> CFMEU, *Race to the Bottom: Sham Contracting in Australia’s Construction Industry*, March 2011, p33.