

CFMEU Submission
Planning the 2016-17 Migration Program

'We called for labour, but people came' - Max Frisch

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Table of Contents

1. Introduction	3
2. The policy intent of the migration programme.....	5
2.1 Temporary work visas as a pathway to permanent migration.....	5
Temporary work visas are being used as a pathway to permanent migration that does not require genuine consideration of Australian workforce needs.....	7
Foreign workers are vulnerable when their migration status is directly linked to their employer	8
Foreign worker vulnerability is undermining conditions for local workers.	11
2.2 Family stream migration	13
2.3 Business Innovation and Investment Program (BIIP).....	14
3. The size and composition of the migration program	17

1. Introduction

The Department of Immigration and Border Protection is seeking comment on migration policy to provide advice to the government on the 2016-17 Migration Program which will inform the size, balance and composition of Australia's future migration intakes.

The Construction, Forestry, Mining and Energy Union (CFMEU) is Australia's main trade union in construction, forestry and furnishing products, mining and energy production. We welcome the opportunity to submit comment to the Department of Immigration and Border Protection.

In making this submission we also support the submission of the Australian Council of Trade Unions (ACTU) of which we are an affiliate, and we promote the submissions of other Australian trade unions providing advice to the Department.

The CFMEU recognises the economic and social contribution migrants have made, and continue to make, to our country. We could not have achieved the society we have today without the invaluable contribution of migrants to our workforce, our culture, our economy and our union. Australia is a country of migrants, with a quarter of Australia's population born overseas and over 40 per cent of people having at least one overseas born parent.¹ Overseas migration contributes to more than half of Australia's population growth.²

Australia's migration program has shifted from a policy based program, designed to meet the medium to long term national interest, to a demand driven program based on the needs of employers. While demand based systems serve the interests of employers, they do not adequately reflect the interests of the public, foreign workers, or local workers. Immigration policy should not be based on the immediate profitability motives of the private sector, but rather it should promote the long term interests of Australia. Australia should have a flexible, policy driven system that places weight on employer demand but also on the interests of local workers and the community in general.

The increasing focus of Australia's migration policy on the skills stream, at the expense of family reunion and humanitarian visas, is not consistent with ensuring migrants can make a life for themselves in Australia or with building Australia's social capital. The CFMEU recognises that skilled migration will continue to play a role in meeting Australian skill shortages. However, we assert that skills shortages should be met in the first instance through employing local workers or through the training and development of locals.

We acknowledge that there is a role for employer-sponsored and temporary skilled migration in meeting short-term skill shortages. Unfortunately, evidence shows that these programs are being used to exploit vulnerable workers and undermine the working conditions of locals. Migration schemes which bind migrant workers to individual employers increase those workers vulnerability to exploitation. As workers ability to stay in Australia under employer sponsored agreements is often directly linked to their employer, and visa holders have a restricted capacity to leave that employer (particularly where workers have a desire to become permanent residents), workers are much more vulnerable to mistreatment by unscrupulous employers.

¹ Australia Bureau of Statistics (2012), '2011 Census reveals one in four Australians is born overseas', CO/59, 21 June 2012, accessible at: <http://abs.gov.au/websitedbs/censushome.nsf/home/CO-59>

² Australian Bureau of Statistics (2015), 'Migration, Australia 2013-14', cat no. 3412.0, accessible at: <http://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/3412.0Media%20Release12013-14>

The current system of regulating, monitoring and enforcing temporary work visas is inadequate. In order to be credible and to maintain public support, migrants arriving in Australia sponsored by employers – particularly temporary workers - need to have skills aligned with current skills shortages. As such, the CSOL and SOL need to adequately reflect Australia’s present skills needs, and labour market testing needs to be mandatory.

It is inappropriate to continue considering Australia’s permanent migration, particularly skilled migration, in isolation from the under-regulated and under-enforced temporary work visa program. Temporary work visas have become an established pathway to permanent residence with over 70 per cent of 457 visa holders being granted permanent residence and around half of all permanent visa grants going to people already in Australia on a temporary visa.

CFMEUs key concerns regarding Australians current migration policy are outlined through this submission. Key points include:

- Australia’s migration program has moved from being policy to employer driven. This is problematic in that it puts the short term profitability interests of business before the medium to long-term national interest. The program needs to be rebalanced from employer sponsored visas towards independent permanent migration.
- There is an increasing focus on the use of temporary work visas rather than permanent migration. The link between temporary work visa holders, employers and permanent migration is resulting in systematic exploitation and undermining working conditions and training for locals. Employers can, and are, exploiting temporary workers vulnerability in order to reduce costs. This is detrimental to the employment opportunities and working conditions of local workers and other non-employer sponsored migrants. Australia’s permanent migration system cannot be viewed in isolation from temporary work visas. The program needs to shift back towards permanent migration.
- The CSOL does not reflect the skills needs of the Australian labour market. Current labour market testing provisions for 457 visas are inadequate, unreliable and are increasingly being removed under Australia’s Free Trade Agreements. Employers are using temporary visas as a ‘try before you buy’ option with temporary migrants converting to permanent residence with little requirement for employers to offer jobs to locals first.
- We support the family reunion program. It should remain a key component of Australia’s overall migration program as it not only contributes to Australian productivity but also improves social capital. Family reunion is crucial for attracting and maintaining skilled migrants in Australia. The current trend toward demand based skilled migration should not be at the expense of the family reunion program.
- The Business Innovation and Investment Program is not achieving its objectives. The CFMEU recommends that the Australian Government abolish the Significant Investor Visa and Premium Investor Visa streams.
- The CFMEU sees no case for changing the overall size of the annual permanent migration program for 2016-2017.

2. The policy intent of the migration programme

2.1 Temporary work visas as a pathway to permanent migration

“The temporary and permanent immigration programs, and the various visa subclasses, have their own objectives. However, these programs do not exist in isolation, and although the intake for a given visa (or subclass) needs to be justified in its own terms, it should also be viewed in the broader context of the migration program... there is a strong interdependency between temporary and permanent immigration which affects both the supply of potential immigrants and the demand for immigrants” Productivity Commission, 2015

Australia’s migration policy has shifted towards being determined by business, rather than by the government, with temporary visa holders making up an increasingly large proportion of the granted permanent visas. The temporary migration program is demand driven, with the number of 457 skilled temporary work visas, and other temporary work visas, determined by employers who claim they can’t meet demand locally, despite evidence that many employers aren’t even trying to employ local workers first.

The demand model is based on the assumption that the short-term interests of business determine the best migrants. While demand based systems serve the short-term interests of employers, they do not adequately reflect the interests of the Australian public and foreign and local workers. Immigration policy should not be based on the immediate profitability motives of the private sector, but rather it should promote the long term interests of Australia. The shift from permanent to temporary migration is consistent with protecting the interests of business at the expense of Australia’s long term migration interests.

Jock Collins, Professor of Social Economics at UTS, states that Australia *‘can no longer be regarded as a settler immigration nation’*.³ He states that the shift from a settler immigration nation to a temporary migrant nation has been one of the biggest changes in Australia’s immigration history, yet there has been *‘virtually no debate about it, other than understandable concerns about abuses of workers under the temporary 457 visa and of some working holiday makers by unscrupulous employers or agents.’*

Peter Mares, Adjunct Fellow at the Swinburne Institute for Social Research states that *“what was initially intended as a way of plugging temporary skills gaps has become a permanent feature of the Australian labour market... This underlines another profound shift in Australia’s migration program: from government planning, control and target setting to a flexible system in which numbers fluctuate*

³ Collins, J. (2014), ‘Report marks Australia’s shift from settler to temporary migrant nation’, *The Conversation*, 2 Dec 2014, accessible at: <https://theconversation.com/report-marks-australias-shift-from-settler-to-temporary-migrant-nation-34794>

*according to employer demand. In effect, the Commonwealth is surrendering to business a measure of control over migration flows.*⁴

Temporary visa holders, including 457 visa holders, are able to apply for permanent residence while in Australia. As such, work visas have increasingly become a stepping stone for permanent migration. Research shows that the 457 program is an established pathway to permanent migration – *“for an increasing number of immigrants, temporary immigration serves as a pathway to permanent immigration. In 2013-14, around half of all permanent visa grants went to people already in Australia on a temporary visa”* and just under 100,000 people making the transition from a temporary to permanent visa. Between 1991 and 2004, the 457 visa program provided *“a significant pool of applicants for permanent immigration”* with 72 per cent of 457 visa holders being granted permanent residence.⁵

The background discussion paper to this planning program itself states that *“at any one time, there are around 1.8 million people in Australia on a temporary visa. Analysis of these temporary entrants and their possible implications for future migration programs is crucial due to the increasing propensity in recent years of temporary entrants to transition to permanent residence while in Australia.”*

Shanthi Robertson, from Western Sydney University, and Martina Boese, from La Trobe University, state that both statistical and sociological work show that temporary migration programs are very closely related to permanent intakes.⁶ Joanna Howe, an expert in migration law and labour law from the University of Adelaide, states that the increased use of skilled temporary migration by employers has *‘significant influence’* upon Australia’s permanent migration intake, both for local working people and the long-term composition of the Australian population.⁷

It is inappropriate to continue considering Australia’s permanent migration, particularly skilled migration, in isolation from the under-regulated and under-enforced temporary work visa program.

Recommendation: Australia’s permanent migration system cannot be viewed in isolation from temporary work visa programs. The increasing focus of Australia’s migration program towards temporary work visas to permanent migration needs to be re-evaluated, there needs to be serious debate as to why our permanent skilled migration is relying so heavily on temporary and employer sponsored migration.

⁴ Mares, P. (2009), ‘The permanent shift to temporary migration’, Inside Story, accessible at: <http://insidestory.org.au/the-permanent-shift-to-temporary-migration>

⁵ Productivity Commission (2015)

⁶ Robertson, S., and Boese, M. (2015), ‘Temporary migrants are people, not ‘labour’, *the Conversation*, 4 Sep 2015, accessible at: <https://theconversation.com/temporary-migrants-are-people-not-labour-46941>

⁷ Howe, J. (2013), ‘Is the Net Cast Too Wide? An Assessment of Whether the Regulatory Design of the 457 Visa Meets Australia’s Skill Needs’ 41(3) *Federal Law Review* 443

Temporary work visas are being used as a pathway to permanent migration that does not require genuine consideration of Australian workforce needs.

The Department of Immigration and Border Protection states that the temporary skilled work visa (457) *“enables eligible employers to address short-to-medium-term skill shortages in their business that cannot be filled from the local labour market.”*⁸

However, Australian migration expert Joanna Howe states there is a *‘clear disjuncture’* between the objectives and practice of the 457 visa program which is demonstrated through the inability of the program to effectively identify and meet skills shortages.

Firstly, the Consolidated Sponsored Occupations List (CSOL) which facilitates the use of temporary migration by business for most occupations is not a list of occupations currently facing skills shortages. The CSOL identifies the occupations which are acceptable for temporary skilled migration into Australia under the 457 visa program. It includes, with few exceptions, all ANZSCO occupations from skill levels 1 to 3.⁹ There is no requirement that an occupation be in a condition of labour shortage to be on the CSOL. In addition, there is *“little publicly available information about this process and there does not seem to be any mechanism for an occupation to be removed from the list”*.¹⁰

Howe states that *‘the CSOL includes too many occupations, as its primary determinant is the skill level of the occupation in question, not whether it is in demand in the domestic labour market. The definition of skill is too broad and includes occupations in which it takes a relatively short time to train unskilled Australian workers. The broad description of CSOL occupations and the fact that there is no real scrutiny of whether the sponsored occupation is the one actually being performed by the visa holder hampers the effectiveness of this visa as a skilled visa designed to meet Australia’s labour market needs.’*

As the CSOL does not reflect the skill needs of the labour market, sponsors are required to conduct labour market testing to make sure there are no locals available to do the job. However, exceptions are increasingly being made which exempt employers from labour market testing. The ACTU estimates that in the nine months to May this year, less than one third of 457 visas granted required the employer to test the local market first to ensure there were no locals who could do the job.¹¹ Temporary 457 visa workers from Chile, China, Japan, Korea and Thailand have been made exempt from labour market testing where inconsistent with our trade agreements. Even where labour market testing is required, the OECD has found that employer-conducted labour market testing has not been *“fully reliable”*.¹²

Howe states that the recent introduction of a limited form of employer-conducted labour market testing is problematic as it can be *‘circumvented by those wishing to evade the obligation to advertise jobs locally prior to sponsorship’* and that the fact that the scheme does not take account of whether

⁸ DIBP (2015), ‘Fact Sheet – Temporary Work (Skilled) (subclass 457) visa’, accessible at:

<https://www.border.gov.au/about/corporate/information/fact-sheets/48b-temporary-business-visa>

⁹ Azarias, J., Lambert, J., McDonald, P., and Malyon, K., (2014), ‘Robust new foundations: a streamlined, transparent and responsive system for the 457 Program’, An independent review into integrity in the subclass 457 programme, accessible at: <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/streamlined-responsive-457-programme.pdf>

¹⁰ Productivity Commission (2015).

¹¹ ACTU (2015), ‘Fewer job opportunities for Australian workers under free trade agreements’, Media Release, 10 Jul 2015, accessible at: <http://www.actu.org.au/media/845571/acturelease-150710-perth-temp-visa-inquiry.pdf>

¹² OECD (2009), ‘International Migration Outlook: SOPEMI 2009’, accessible at: <http://www.oecd.org>

there is a surplus of staff in a particular occupation for the employer “means that 457 visas can be used to develop a more compliant workforce less likely to voice concerns over safety, pay and conditions because of a desire to remain in Australia on the visa or to one day achieve permanent residency through employer nomination.”

The Department of Immigration and Border Protection states “most temporary visa holders, including subclass 457 visa holders and students, are able to apply for permanent residence while they are (legally) in Australia – meaning that temporary residence can be a pathway to permanent residence through various programmes and arrangements which do not require initial labour market testing or other consideration of genuine workforce needs.”¹³

It is clear that the objective of the 457 visa program to address short term skills shortages is not being met, particularly as employers are able to engage foreign workers on temporary visas for basically any skilled occupation, with limited and inadequate, or no, labour market testing. As temporary work visas have become an established pathway for permanent residence, this means that a considerable number of permanent migrants are entering Australia with neither consideration of genuine workforce needs nor consideration of Australia’s medium to long-term migration policy objectives.

Recommendation: The CSOL should be better aligned with existing skill shortages and only include occupations which are deemed to be in a condition of labour skill shortage. The process for including and excluding occupations from the CSOL should be more transparent, more frequently reviewed and should include more consultation with stakeholders.

Recommendation: The Government should incorporate more rigorous evidentiary requirements for labour market testing into legislation. This should include minimum requirements for the duration, timing and medium of mandatory ads.

Foreign workers are vulnerable when their migration status is directly linked to their employer

Temporary work visas are increasingly being used as a pathway to permanent migration. As temporary workers are dependent on their employer to be able to stay in Australia, and for permanent residency, overseas workers are placed in a vulnerable position which has led to systematic exploitation, many cases of which have recently come to light in the media.

The vulnerability of temporary work migrants stems from their ability to stay in Australia being directly linked to their employer. A desire to stay in Australia and/or achieve permanent residence means they are often willing to accept worse working conditions and are less likely to speak out than their local counterparts. They are also more likely to accept working in jobs for which they are over skilled. “The temporary nature of these visas, when combined with a lack of awareness of workplace rights and obligations, and, in some cases, language barriers, make temporary immigrants more susceptible to adverse outcomes, including exploitation by employers.”¹⁴

Disturbing cases of exploitation and mistreatment of temporary work visas have gained media exposure recently. This has included Filipino workers hired as welders who were paid as little as \$9 an hour, working 11 hour days, with only one day off a month with 25 people living in one three bedroom

¹³ Department of Immigration and Border Protection (2015), ‘Planning the 2016-17 Migration Programme’, discussion paper, November 2015.

¹⁴ Productivity Commission (2015)

house; Chinese workers who were paid nothing for three months of work being forced to survive on a \$15 a day food allowance¹⁵; 11 Filipino 457 workers forced to sleep in a Melbourne office for a month after their employer stopped paying them;¹⁶ Operators who charge backpackers \$450 to find them jobs then pay them as little as 60c an hour to work on local farms¹⁷; etc.¹⁸

These examples of exploitation are not isolated cases. They are systematic. Mares states that the problem is a structural one - *'given the disparities in power between first world employers and third world workers, abuses of the 457 program are all too predictable'*.

The temporary migration program should be based on the premise that jobs will go to locals first, temporary foreign workers are then used where there is an excess demand for workers and skills shortages exist. However, where temporary work programs are inadequately managed and monitored, employer demand will be for more than merely filling skill shortages that can't be met by locals, vulnerability will be used to minimise costs.

*"Employers will always have a 'need' or a demand for foreign workers if by employing them they can lower their costs. If labour and migration policies make it possible, either by intent or by default, to employ foreign workers below minimum standards, then it should not be a surprise to find employers clamouring for more liberal admission of foreign workers."*¹⁹

Businesses have an incentive to employ foreign workers if it results in them lowering their costs or having a workforce that has less ability to resist poor working conditions. The failure of the system to manage the demand for temporary work labour leads to the misuse of the system. One example of how employers are misusing the work visa system, and the vulnerability of temporary foreign workers, is through the use of skilled 457 visa holders as cheap unskilled labour.

The substitutability between low and unskilled migrants and local workers is primarily why this type of labour has historically been excluded from migration policy - unskilled and low skilled positions can easily be filled with domestic labour or by training locally. However, despite this, employers have been found to be nominating workers for skilled temporary work (457) visas and then working them as cheap lower or unskilled workers. For example, the CFMEU referred detailed allegations to the Department of Immigration in 2012 that 124 foreign 'tradespersons' at the Sino-Iron project at Cape Preston in North West WA were working only as 'trades assistants', and some were working in semi-skilled or sub-trade work.

Joanna Howe and Alex Reilly, experts in migration and labour law at the University of Adelaide, state that the shift in Australia's migration policy over the past 20 years has left a system that is *"subject to widespread rorting and controversy... Employers are alleged to have sponsored migrants to work in*

¹⁵ Taranto, C. (2015), 'Workers without borders: the rise of temporary migrant labour', ABC, accessible at: <http://www.abc.net.au/radionational/programs/earshot/the-rise-of-temporary-migrant-labour/6472368>

¹⁶ Toscano, N. and Donnelly, B (2015), 'Workers in visa row forced to sleep in office, union claims', Sydney Morning Herald, accessible at: <http://www.smh.com.au/national/workers-in-visa-row-forced-to-sleep-in-office-union-claims-20150320-1m3v7q.html>

¹⁷ Fair Work Ombudsman (2015), 'Growers, hostels, labour-hire contractors, cautioned over backpacker, seasonal work entitlements', accessible at: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/january-2015/20150105-dont-get-ripped-off-this-harvest-season>

¹⁸ For further examples see ACTU (2015), 'ACTU Submission: Senate Inquiry into the temporary work visa program', 1 May 2015, accessible at: <http://www.actu.org.au/media/715155/actu-submission-re-senate-inquiry-into-temp-working-visa-1-may-2015.pdf>

¹⁹ Abella, M. (2006), 'Policies and best practices for management of temporary migration', International symposium on international migration and development, accessible at: http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P03_SYMP_Abella.pdf

areas of employment on the government's skilled occupation list, only to then employ them in much lower skilled jobs."²⁰

Employers are able to exploit these workers as temporary migrant workers who find themselves *"working in jobs not commensurate with their level of skill, are unlikely to complain as they are tied to their employer, and risk losing their jobs and their visa if they do."*²¹

The recent China Australia Free Trade Agreement, only further opens up the door to less skilled (semi-skilled and sub-trade) workers entering Australia using concessional 457 visas, under Investment Facilitation Arrangements.

Exploitation of temporary workers is directly linked to regulation and enforcement - *"the fact that existing arrangements for monitoring and enforcing workplace rights did not detect the apparently widespread exploitation of temporary immigrants suggests that current arrangements are inadequate... it seems at the very least that more resources to improve the detection of exploitation of temporary immigrants are warranted"*²²

Despite there being over 1.8 million temporary visa holders in Australia, including over 180,000 457 visa holders, approximately 150,000 working holiday maker visa holders, over 420,000 student visa holders and over 25,000 temporary graduate visa holders, the overseas worker team at the Fair Work Ombudsman consists of only 17 full time inspectors to investigate cases of exploitation.²³ Seventeen inspectors for approximately 1.5 million temporary visa holders with work rights.²⁴ It is no surprise that monitoring and enforcement is inadequate when there is only one full time inspector for over eighty thousand temporary work visa holders, on average.

Martin Ruhs from the Centre on Migration, Policy and Society at the University of Oxford suggests that one of the largest failures of migration policies is inadequate monitoring and penalising of employers. - *"The failure to enforce sanctions against employers is widely agreed to be one of the most important factors in irregular immigration/illegal work and, ultimately, in the failure of labour immigration policies. This is because, in contrast to all other immigration control policies, employer sanctions serve the important purpose of addressing the demand for illegally employing migrant workers."*²⁵

Manolo Abella, former Director of the International Migration Program of the International Labour Office (ILO) and member of the Advisory Board of the Centre for Migration Policy and Society (COMPAS) at the University of Oxford, states that managing the demand for labour is the first critical step in developing sound policies on temporary foreign workers.

²⁰ Howe, J. and Reilly, A. (2014), 'Australia has outsourced migration policy to the private sector', *The Conversation*, 12 Aug 2014, accessible at: <https://theconversation.com/australia-has-outsourced-migration-policy-to-the-private-sector-30347>

²¹ Howe, J. and Reilly, A. (2014).

²² Productivity Commission (2015).

²³ As stated by Michael Campbell, Deputy Fair Work Ombudsman, at the inquiry into Australia's temporary work visa programs, Education and Employment References Committee, 18 May 2015, accessible at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2Fe81e50f4-715c-4c83-bdd8-9279e1683df7%2F0003;query=Id%3A%22committees%2Fcommsen%2Fe81e50f4-715c-4c83-bdd8-9279e1683df7%2F0000%22>

²⁴ Calculated as the number of total temporary visa holders less bridging visa holders and visitor visa holders.

²⁵ Ruhs, M. (2006), 'The potential of temporary migration programmes in future international migration policy', *International Labour Review*, Vol. 145, No. 1-2, pp. 7 - 36

It is not just the 457 program where enforcement is inadequate. The Productivity Commission states that *“There is little official monitoring of the employment of student visa holders and weak enforcement of their adherence to working hours restrictions... while the numbers of international students and working holiday makers have increased substantially in recent years, resources devoted to monitoring the integrity of these programs have not increased commensurately”*²⁶

If engaging a temporary worker is conditional on ample testing to ensure there are no local workers available (not just superficial labour market testing); that wages and conditions are at least equal to, if not higher than, what would be offered to local workers; and most importantly, that these conditions are adequately monitored and enforced with adequate penalties to employers, the incentive to hire an overseas worker at the expense of a local worker is diminished.

It is not only direct exploitation that impacts on temporary workers. Research has demonstrated that temporary status can also have long-term impacts on migrants even after they become permanent residents, both in terms of labour market integration and social wellbeing: *“Living in Australia for a long time across different visa statuses is ‘precarious’ both within the labour market and more broadly. This precariousness is characterised by a general uncertainty about the future; pressures to make decisions about careers and other life choices in relation to migration outcomes; and a lack of access to social and political rights despite extended periods paying tax and living in the Australian community.”*²⁷ It is important to remember that migrants are people, not just labour.

RECOMMENDATION: Temporary work visas need to be more strictly enforced to ensure employers are not hiring skilled workers and working them as lower skilled labour.

RECOMMENDATION: Significant and substantial resources need to be devoted to monitoring the integrity of temporary visa programs and prosecuting breaches.

Foreign worker vulnerability is undermining conditions for local workers.

If employers are able to lower their costs by engaging workers on temporary visas as a direct, or indirect, result of migration regulation, they will likely choose to do so. Where temporary visa holders are not being used to address genuine skills shortages, this will be at the expense of the wages and working conditions of local working people.

Evidence examining the impact of immigration on the wages and conditions of local workers is limited, but where the skills of immigrants and existing workers can be viewed as substitutes for each other, immigration will increase competition and drive down wages.²⁸

The Productivity Commission states *“Where the skills of immigrants and existing workers are substitutes, immigration will increase competition in that segment of the labour market and drive down wages. This is considered by some as problematic if immigrants are predominantly low skilled and compete directly with the unskilled end of the labour market... the closer the substitutability between immigrants and incumbent workers, the greater are the adverse wage and employment effects. Further, lower wages may reduce the incentive of non-immigrants and employers to invest in skills acquisition, consequently eroding the formation of human capital in domestic labour supply.”*

²⁶ Productivity Commission (2015).

²⁷ Robertson and Boese (2015).

²⁸ Productivity Commission (2015)

This is particularly true for low skilled and unskilled workers and youth workers entering the labour market for first time.

“Increased risk of displacement can be expected to be more likely at the lower end of the skill spectrum and in the youth labour market. Youth (aged 15–24) labour market outcomes have been particularly poor in recent years.... preliminary, but not conclusive, evidence suggests that immigration may be contributing to adverse outcomes in the youth labour market. More research is required.”

Youth unemployment reached 14 per cent this year, the highest in more than a decade and more than during the global financial crisis.²⁹ When youth unemployment rates are so high, rapid growth of the utilisation of temporary work programs, such as the working holiday visa, adversely affects the employment opportunities and training for young workers. Working holiday visa holders compete directly with local workers currently facing high levels of unemployment, including young workers, low skilled workers in regional areas. They also compete directly with other low skill permanent migrants, such as many under the humanitarian stream.

“International students and working holiday makers are inherently more susceptible to exploitation as they are likely to be young, face language barriers, and be less aware of their work rights. Moreover, as they mostly work in low to semi-skilled jobs, for which labour is generally not in short supply, they have less ability to resist the coercive behaviour of unscrupulous employers. They are also less likely to have access to informed networks.”³⁰

The CFMEU submission to the Senate Inquiry into temporary work visas shows that while total number of working holiday makers in Australia doubled between 2007 and 2014 (representing a growth of 3.7% to 7.3% of the total youth labour force), and the number of second year 417 visa holders grew seven fold, the labour market for young workers has collapsed with unemployment increasing from under 10% to over 14% by November 2014.³¹

Temporary work visas and employer sponsored migration is also undermining training of local workers. Peter Mares, Adjunct Fellow at the Swinburne Institute for Social Research, states that the original intention of the 457 visa was to fill temporary skills shortages, after Howard took office in 1996 it was supposed to give the local training system space to catch up with the demand for qualified workers, now, it has expanded into something that has fundamentally changed Australia’s approach to selecting skilled migrants.³²

Employers are essentially using the 457 program as ‘try before you buy’ migration. Temporary working visa holders can be engaged with little or no adequate requirement for employers to conduct labour market testing to ensure there are no local workers to perform the work first. Employers can then sponsor temporary workers for permanent residence. With high levels of regional unemployment, labour market testing for both 457 visas and employer sponsored migration is vital.

The findings of the Productivity Commissions draft report into Australia’s migration program indicate that there is a severe lack of data on the impacts of immigration, particularly temporary migration, on

²⁹ Australian Bureau of Statistics (2015), ‘Labour force, Australia, Oct 2015’, Cat. No. 6202.0, accessible at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6202.0Oct%202015?OpenDocument>

³⁰ Productivity Commission, 2015

³¹ CFMEU (2015), ‘CFMEU submission senate inquiry into temporary work visas’, May 6 2015, accessible at: <http://www.aph.gov.au/DocumentStore.ashx?id=13a59bfe-0f44-41f8-8934-aa6e8600ec9d&subId=351101>

³² Mares, P. (2013), ‘Temporary migration is a permanent thing’, Swinburne University, accessible at: <http://www.swinburne.edu.au/chancellery/mediacentre/media-centre/news/2013/03/temporary-migration-is-a-permanent-thing>

the outcomes of local workers and on local training: *“There is a risk that skilled immigration may reduce incentives for skills investment among incumbent employees and employers. Further evidence is required to determine the size of any effect.”*³³

Despite this, there has been no extensive independent research into the labour market impacts of temporary work visas, including working holiday visas, on the job opportunities for Australian youth.

RECOMMENDATION: The Government should commission a research study examining the impact of temporary work visa holders on incumbent’s labour market outcomes in Australia and an analysis of exploitation of temporary visa holders.

RECOMMENDATION: The Government should conduct a public inquiry into the labour market and broader economy wide effects of temporary work visas, including work rights for international students, temporary graduate visa holders and working holiday makers.

2.2 Family stream migration

Family stream migrants enter Australia based on their family relationship with their sponsor in Australia. This may include partners, children, parents and other family.

The movement of Australia’s migration system towards economic migration has resulted in social costs including that it is harder for Australian citizens and permanent residents to sponsor family members from overseas to join them in Australia. Howe and Reilly, experts on migration and labour law at the University of Adelaide, state that the Australian migration system has a narrow definition of family reunion which mean it is often very difficult to sponsor family members without substantial financial contribution and long waiting lists due to demand outstripping supply of available places.³⁴

After allowing workers to migrate to Australia, due to their skills and availability of an employer sponsor, we make it difficult for them to make a life for themselves and bring over family members. Howe and Reilly suggest that not only is that socially troublesome, but it also negatively affects the productivity of a skilled migrant as they are forced to fly home to visit their family who have no migration pathway to join them. They find significant evidence that skilled migrants are more productive if they have a high level of social well-being including family and community networks.

While the benefits to business and productivity impacts of migration are important, recent migration policy is severely neglecting the civic and social contributions of migration – which are themselves, economic benefits. Migrants make economic contributions to Australia, beyond their labour force participation, including increasing cultural diversity and cultural links to other countries, contributing to new and innovative ideas, and social capital as a value of the networks and relationship migrants have with others.

Social capital generates benefits to society by *“reducing transaction costs, promoting cooperative behaviour, diffusing knowledge and innovations, and through enhancements to personal wellbeing*

³³ Productivity Commission (2015)

³⁴ Howe and Reilly (2014), ‘Submission to the review of skilled migration and 400 series visa programs’, Public Law and Policy Unit, University of Adelaide, accessible at: <https://www.border.gov.au/ReportsandPublications/Documents/submissions/joanna-howe-alexander-reilly.pdf>

and spill-overs".³⁵ Many existing government policies are aimed at supporting and building social capital, such as investing in education, family support, community services, etc.

Larsen (2013) states that family migration presents a net gain to Australia both economically and socially and that family structures are important in attracting and keeping skilled migrants, an 'issue of significance' particularly in regional areas.³⁶ He states that while the composition of Australia's migration program has shifted in favour of skilled migration over family migration, with the rationale being that skilled migration maximises economic gains, economic modelling has demonstrated *"that both the Skill and Family Streams of the Migration Program have a positive impact on the Commonwealth Budget overall, and that labour market outcomes may be optimised in the short-term by influencing the type of skilled migrant or by favouring more partner/spouse places within the Family Stream... Family brings important social gains that themselves translate into economic opportunities. Families of migrants are often driven to succeed and adapt to Australian society and culture."*

Social networks are also important for temporary workers, Robertson and Boese (2015) state that the focus on temporary migrants as workers often leaves out analysis of their social lives and families. Despite the fact that some temporary visas give holders the right to have spouses and dependents in Australia, visa conditions can have significant impacts on families and relationships *"Continued periods on temporary visas can also affect migrants' relations with offshore family and how they negotiate care of elders, marriage and financial support across borders. Family reunion is available only to those with permanent residency or citizenship, so an individual's migration journey can in fact be a collective investment in the future of a family. For example, permanent residency can enable better options for children's future education, parents' retirement, or siblings' work opportunities. This raises the stakes of the transformation of temporariness into permanence."*

They state that understanding the social networks of temporary migrants is crucial as social networks *"can be highly supportive and dramatically improve migrants' sense of wellbeing and belonging, as well as access to work. Peers can educate each other about rights, trade information about support services, and develop grassroots institutions that assist other temporary migrants."*

Recommendation: The Government support family reunion migration over employer sponsored migration by increasing family reunion migration intake and reducing the employer sponsored intake.

2.3 Business Innovation and Investment Program (BIIP)

The Business Innovation and Investment Program allows people with money to invest in Australia to apply for permanent immigration. Under the program applicants are granted a provisional visa and after a minimum of two years can apply for permanent residency. The program includes four streams:

- The Business Innovation stream (for those who want to establish, develop or manage a new or existing business);
- The Investor stream (for those who make an investment of at least \$1.5 million);
- The Significant Investor stream (for those who invest at least \$5 million in Australia); and

³⁵ Productivity Commission (2003), 'Social Capital: Reviewing the concept and its policy implications', Commission Research Paper, accessible at: <http://www.pc.gov.au/research/supporting/social-capital/socialcapital.pdf>

³⁶ Larsen, G (2013), 'Family migration to Australia', Social Policy, Parliament of Australia, accessible at: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/FamilyMigration

- The Premium Investor stream (for those who invest at least \$15 million in Australia).

In March 2015, the Joint Standing Committee on Migration tabled its report on the Inquiry into the Business Innovation and Investment Programme. The report found a number of peak bodies and individuals submitted that the BIIP visa fails to meet its intended objective stating *“based on the evidence, it is difficult to conclude that the programme meets any of the following key objectives:*

- *increase the export of Australian goods and services*
- *increase the production of goods and services in Australia*
- *introduce new or improved technology*
- *develop links with international markets*
- *increase the dispersal of business migrants across Australia through State and Territory government nomination.”*³⁷

The Committee stated that it *“questions whether the BIIP is effective in attracting high quality business migrants to fill Australia’s innovation requirements.”*

In its draft report on migrant intake into Australia, the Productivity Commission stated that *“One of the stated objectives of the SIV and PIV streams is to attract high net worth individuals to Australia. This appears to be based on the assumption that people with a lot of money are inherently desirable immigrants. However, the Commission’s analysis suggests that the economic benefits of the SIV and PIV are likely to be small, and accrue mostly to fund managers. The social impacts of the streams are likely to be less favourable than other skilled immigration streams (because of the lack of English-language requirements and the limited residency requirements)... The benefits to Australian businesses seeking investment and the economic benefits to the broader Australian community are likely to be very small or non-existent. Overall the case for retaining the Significant Investor Visa and Premium Investor Visa streams is weak...”*³⁸

Based on the submissions into the inquiry of the Joint Standing Committee on Migration, the Committee found that the large majority of BIIP immigrant businesses hired four people or fewer, settled in metropolitan areas, and bought established businesses. It stated that such small businesses are *“far less likely than large business to be innovative”*, contrary to the program’s design to encourage investment and innovative Australian ideas and emerging companies.

The Commission also stated that because of absence of an age limit or English language requirements and the minimal residency requirements for investor visa holders, they are *‘unlikely to be consistent with successful integration into the Australian community’*. It stated that inquiry participants, including law enforcement agencies, had raised concerns about the visas being used for purposes such as money laundering, fraudulent activity etc.

Clearly, the intended purpose of the visa to encourage innovation and new investment in Australian business is not being met. The Joint Standing Committee on Migration and the Productivity Commission agree that *“the BIIP probably does little to increase exports or innovation”*. Rather, it is merely the ‘selling’ of residency.

³⁷ Joint Standing Committee on Migration (2015), Inquiry into the Business Innovation and Investment Programme (BIIP), Draft Report, accessible at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/BIIP

³⁸ Productivity Commission (2015), ‘Migrant Intake into Australia’, Draft Report, accessible at:

<http://www.pc.gov.au/inquiries/current/migrant-intake#draft>

The CFMEU recommends the Government abolish the Business Innovation and Investment Program (BIIP).

Recommendation: Abolish the Business Innovation and Investment Program (BIIP).

3. The size and composition of the migration program

The Department seeks consultation on the size and composition of Australia's migration intake for 2016-17. Currently, there are up to 190,000 permanent migration places available in 2015-16 consisting of the skill, family and special eligibility streams. This does not include other significant components of Australia's migration system including temporary work visas (temporary work visas 457, working holiday visas, student visas) or the humanitarian program.

The 2015-16 Migration program planning levels include 128,550 migrants through the skill stream (68.9% of the total managed migration program) and 57,400 through the family stream. In the skill stream, 37.5% of migrants are employer sponsored, 34.2% are skilled independent and 22.4% are state/territory and regional nominated.

In terms of the size of the program, the CFMEU supports no change to the current intake given the current economic climate and high level of unemployment.

In terms of the composition of the program, for the reasons specified in the sections above the CFMEU supports a shift away from employer sponsored visas to policy driven migration and permanent independent skilled migration and family reunion visas. We recommend the removal of the Business Innovation and Investment Program and support the importance of permanent migration through the family stream.

It is clear that the skilled migration stream is being primarily served by temporary work visa holders, including 457 visa holders. As such there should be no policy difference in treatment between permanent and temporary migrants. There is an urgent need for a re-evaluation of the relationship between these two schemes. Our migration program needs to be realigned towards permanent migration in Australian long-term national interest.