



CFMEU submission into the Productivity Commission's
Migrant Intake into Australia - Draft Report

CFMEU

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1. Introduction

The Productivity Commission is undertaking an inquiry into Australia's migration program and the use of charges to determine the intake of migrants. The objectives of the inquiry are to examine and identify future options for the intake of temporary and permanent entrants that improve the income, wealth and living standards of Australian citizens, improve the budgets and balance sheets of Australian governments, minimise administration and compliance costs associated with immigration, and provide pathways both for Australian citizens to be altruistic towards foreigners including refugees, and for Australia's international responsibilities and obligations to foreign residents to be met.

The Productivity Commission released its draft report on 13th of November and has invited stakeholders to examine the draft report and make written submissions.

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 Productivity Commission's draft report.

The CFMEU recognises the economic and social contribution migrants have made, and continue to make, to our country. We would 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 short term needs of business. There are currently 1.8 million temporary visa holders in Australia, including over 180,000 457 visa holders, approximately 150,000 working holidaymaker visa holders, over 420,000 student visa holders and over 25,000 temporary graduate visa holders.

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 employer sponsored skills stream, and increase of temporary over permanent migration, 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.

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>

Unfortunately, evidence shows that these programs are being used to exploit vulnerable workers and undermine the working conditions of locals. Employers are utilising temporary migrants rather than investing in apprenticeships and training a future Australian workforce. The current training obligations under the 457 visa program are inadequate. They do not require employers to invest in training in the same occupations where they sponsor temporary workers. For many, they are simply an administrative threshold of training expenditure that would have been undertaken anyway.

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.

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.

CFMEU's key concerns regarding Australia's current migration policy are outlined through this submission. Key points include:

- Australia's migration program has moved from being policy-driven 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.
- The increasing number of working holiday visa holders and students visas is negatively impacting opportunities for low skilled and young workers. Working holiday visas and student visas are increasingly being used as a means to access the Australia labour market or to secure permanent residency, rather than for holidays or studying as per their intended purpose. Unscrupulous migration agents and training organisations are taking advantage of migrants. The second working holiday visa needs to be scrapped as it is not consistent with the objectives of a working holiday.

- The CFMEU does not support a price-based immigration system. While the system may attract immigrants who are willing and have the capacity to pay, the ability to pay is not the same as possessing the skills and characteristics that best contribute to the Australian community.
- We support the rebalancing of the migration system away from employer sponsored and temporary migration to permanent independent skilled migration, the humanitarian program and the family reunion program. Family reunion not only contributes to Australian productivity but also improves social capital. It 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.

2. The Australian economy is slowing

The Australian mining boom is over. The export priced for many minerals, such as iron ore and coal, have stabilised or collapsed. Mining investment has fallen as the industry shifts from the construction to the operation phase for many projects (which involves up to ten times fewer workers).³ With the Chinese economy slowing, markets will continue to weaken. In addition, Australia's residential property boom has begun to slow and the Australian manufacturing sector has been on the decline for years, with significant job losses.

As Australia faces structural change and slowing growth, unemployment in the construction and resources industries will rise. Yet there is no intention to slow the number of temporary overseas workers entering these industries into the future.

Australia's unemployment rate is stubbornly high at around 6 percent. GDP growth in the year to September 2015 was only 2.5 percent. The Government's Midyear Economic and Fiscal Outlook has downgraded its economic growth projections to 2.5 percent. Nigel Ray, Deputy Secretary of the Commonwealth Treasury stated "*Australia is now in a prolonged period of below-par growth, the likes of which we have rarely seen outside of a recession*".

The migration system is failing to take into consideration Australia's slowing economy. The temporary work visa program is uncapped and has been growing in size without proper consideration of unemployment in Australia. While immigration has the potential to create jobs to buffer the impact on local workers when the economy is growing well, during periods of slower economic growth and higher unemployment, immigration harms the job prospects of local workers.

Advocates of unregulated and uncapped temporary migration programs claim that, in periods of slower economic growth, the program is essentially self-regulating in that businesses will choose to sponsor fewer temporary overseas workers. While the number of 457 visa holders sponsored may decrease as employers hire less people in general, business may still choose to hire a cheaper overseas temporary worker at the expense of hiring or training locally. As temporary workers are inherently more vulnerable, they have less ability to resist employers who employ them at below minimum standards (see section 3.3).

Recommendation. Australia's migration program needs to take account of, and respond to, current economic conditions. The number of new entrants needs to be transparently assessed relative to current levels of local unemployment and economic conditions. This should include consultation with relevant stakeholders and trade unions.

³ Garnett, A. (2015) 'Australia's 'five pillar economy': mining', *The Guardian*, 1 May 2015, accessible at: <https://theconversation.com/australias-five-pillar-economy-mining-40701>

3. Temporary work visas

3.1 Temporary work visas as a pathway to permanent migration

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 those 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'*.⁴ 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 according to employer demand. In effect, the Commonwealth is surrendering to business a measure of control over migration flows."*⁵

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.⁶

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*

⁴ 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>

⁵ Mares, P. (2009), 'The permanent shift to temporary migration', InsideStory, accessible at: <http://insidestory.org.au/the-permanent-shift-to-temporary-migration>

⁶ Productivity Commission (2015)

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.⁷ 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.⁸

Recommendation: The increasing focus of Australia’s migration program towards temporary work visas rather than permanent migration needs to be re-balanced in favour of Government selected permanent migration with family reunion and humanitarian programs sharing an equal place with skills migration.

3.2 Lack of 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.*”⁹ 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 3.¹⁰ The Productivity Commission finds 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*”.

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.*’

⁷ 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>

⁸ 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

⁹ 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>

¹⁰ 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>

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. Labour market testing for 457 visas was introduced in 2013, after the CFMEU and other unions fought for it in order to protect local jobs. The labour market testing requirement already includes exemptions for numerous occupations, including occupations at ANZSCO skill levels 1 and 2, as well as where it has been deemed that labour market testing would be inconsistent with Australia's international trade agreements. Temporary 457 and 400 visa workers from Chile, China, Japan, Korea and Thailand have been made exempt from labour market testing where inconsistent with our trade agreements. These exemptions will increase under the TPP for which Australia has negotiated labour market testing exemptions for Brunei Darussalam, Canada, Malaysia and Mexico.

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 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 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

Employers are essentially using the 457 program as 'try before you buy' migration, where workers are hired on a temporary basis with the possibility of converting to more permanent employer sponsored visas in the future. As overseas workers are not hired on a permanent basis, their ability to stay in Australia is linked to their employer and they are inherently more vulnerable to exploitation.

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 and 400 visas and employer sponsored migration is vital.

It is clear that the objective of the 457 and 400 visa programs 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

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>

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

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 including more union representation.

Recommendation: The Australian government should establish an independent statutory body comprising specialists and stakeholders including representatives from trade unions to advise on skilled migration.

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 adverts and a greater burden of proof on employers, i.e. increased reporting obligations including the number of job applications received and why they weren't suitable. Labour market testing should be broadened out to cover all occupations as well as an extension beyond the general 457 visa stream to include all 400 and 457 visas.

Recommendation: Australia should not enter into free trade agreements that prevent the Australian Government requiring mandatory Labour Market Testing.

3.3 Exploitation of foreign temporary workers

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 Productivity Commission finds *"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."*

Disturbing cases of exploitation and mistreatment of temporary work visas have gained media exposure recently.

- After conducting a routine safety inspection, the CFMEU discovered 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 house;
- Chinese ceiling fixers came to the CFMEU for assistance in November this year after not being paid for 10 weeks and being owed more than \$500,000. The workers included working holiday visa holders and student visa holders;

- Chinese workers who were paid nothing for three months of work being forced to survive on a \$15 a day food allowance¹⁴;
- 11 Filipino 457 workers forced to sleep in a Melbourne office for a month after their employer stopped paying them;¹⁵
- Operators who charge backpackers \$450 to find them jobs and then pay them as little as 60c an hour to work on local farms¹⁶; etc.¹⁷

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'*.

It is not only the 457 visa program which is open to exploitation. The Productivity Commission states *"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."*

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."*¹⁸

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 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

¹⁴ 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>

¹⁵ 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>

¹⁶ 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>

¹⁷ 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>

¹⁸ 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

been found to be nominating workers for skilled temporary work 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 areas of employment on the government’s skilled occupation list, only to then employ them in much lower skilled jobs.*”¹⁹

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.*”²⁰

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 Productivity Commission states “*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*”

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.²¹ Seventeen inspectors for approximately 1.5 million temporary visa holders with work rights.²² 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.

Despite this, the Fair Work Ombudsman’s annual report stated that it received over 2163 workplace dispute forms from overseas workers, finalising 1971. This accounted for over 10% of all Fair Work Ombudsman matters and was predominately related to underpayment (71%).²³

¹⁹ 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>

²⁰ Howe, J. and Reilly, A. (2014).

²¹ 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=ld%3A%22committees%2Fcommsen%2Fe81e50f4-715c-4c83-bdd8-9279e1683df7%2F0000%22>

²² Calculated as the number of total temporary visa holders less bridging visa holders and visitor visa holders.

²³ Fair Work Ombudsman (2015), ‘Annual Report 2014-15’, accessible at: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/annual-reports>

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.”*²⁴

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.²⁵

It is not just the temporary work visa programs 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”*

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.”*²⁶ 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. Significant and substantial additional funding and resources for the Fair Work Ombudsman need to be devoted to monitoring the integrity of temporary visa programs and prosecuting breaches. Sanctions against employers for breaches need to be higher.

RECOMMENDATION: Employers sponsoring temporary work visa holders should be required to provide visa workers with their specific pay and conditions of employment in writing.

RECOMMENDATION: The Government should keep a register of all sponsoring employers which is published on the DIBP website.

²⁴ 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

²⁵ Abella, M. (2006)

²⁶ Robertson and Boese (2015).

3.4 Undermining conditions for local workers: Working holiday and student visas

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.

The Productivity Commission finds 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.

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.”*

This is particularly true for the effect of working holiday visas on 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.”

There are currently almost 150,000 working holiday makers in Australia. Countries involved in the Working Holiday Visa Program (417) with Australia include: Belgium, Canada, Republic of Cyprus, Denmark, Estonia, Finland, France, Germany, Hong Kong (including British National Overseas passport holders), Republic of Ireland, Italy, Japan, Republic of Korea, Malta, Netherlands, Norway, Sweden, Taiwan, and the United Kingdom. Australia also allows Work and Holiday Visas (462) for people with passports from Argentina, Bangladesh, Chile, China, Indonesia, Malaysia, Poland, Portugal, Spain, Thailand, Turkey, USA and Uruguay.

The purpose of Australia’s working holiday visa programs are to foster closer ties and cultural exchange between Australia and its partner countries, by allowing young people from specified countries to experience Australian culture and lifestyle through an extended holiday as well as to engage in short-term employment. This short-term employment has been described by DIBP²⁷ and is described under Australia’s Memorandums of Understanding relating to working holidays as *‘an incidental aspect of that holiday in order to supplement their travel funds’*.²⁸ Even the most recent Memorandum of Understanding between Australia and China on Working Holiday Visas (non-reciprocal) as part of the China Australia Free Trade Agreement package states visa holders must have regard to: *“the principal purpose of their stay under the Work and Holiday visa arrangement which is*

²⁷ Department of Immigration and Border Protection (2014), ‘Annual Report 2013-14’, accessible at: http://www.border.gov.au/ReportsandPublications/Documents/annual-reports/DIBP_AR_2013-14.pdf

²⁸ For example see The Taipei Economic and Cultural Office Australia and the Australian Commerce and Industry Office, Taipei (2004), ‘Memorandum of Understanding between the Taipei Economic and Cultural Office, Australia and the Australian Commerce and Industry Office, Taipei relating to working holiday visa s’, accessible at: <https://www.immigration.gov.tw/public/Data/082616455571.pdf>

*a holiday, with work being incidental to the holiday.*²⁹ 'Incidental' by definition means that the work occurs as a minor accompaniment to the holiday.

The Productivity Commission states that the Working Holiday Maker program in addition to supporting the tourism industry, is also intended to support the Australian economy by providing supplementary labour for industries requiring for short-term casual workers. The CFMEU argues while this may be an effect of the Working Holiday Visa it is not the original purpose nor intention of the program. The current work rights attached to the 417 and 462 visas are not consistent with the stated purpose of the visa and undermine employment for young workers, unskilled workers, Australian students and local workers seeking part-time or casual work.

Many working holiday visa holders and student visa holders are working as independent contractors, under ABNs, many for labour hire agencies. This business-to-business relationship is not consistent with the primary purpose of the visa (studying or holidaying). It also makes it increasingly difficult for these visa holders to exercise their rights.

Youth unemployment reached 14 per cent this year, the highest in more than a decade and more than during the global financial crisis.³⁰ When youth unemployment rates are so high, rapid growth of the utilisation of temporary work programs, such as the working holiday visa, adversely affects 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 and, low skilled workers in regional areas. They also compete directly with other low skill permanent migrants, such as many under the humanitarian stream.

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

The findings of the Productivity Commission's 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 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."*

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 to collect data on the impact of temporary work visa holders on incumbents' labour market outcomes in Australia and an analysis of exploitation of temporary visa holders.

²⁹ The Government of Australia and the Government of the People's Republic of China (2015), 'Memorandum of Understanding between the Government of Australia and the Government of the People's Republic of China on a Work and Holiday Visa Arrangement', accessible at: <http://dfat.gov.au/trade/agreements/chafta/official-documents/Documents/chafta-mou-on-a-work-and-holiday-visa-arrangement.pdf>

³⁰ 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>

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>

RECOMMENDATION: The work rights attached to working holiday visas need to better reflect the primary purpose of the visa. Working holiday visa holders should be limited to a maximum of 6 months employment including a maximum of 3 months with any one employer. Working holiday and student visa holders should not be permitted as independent contractors (i.e. should be prevented from obtaining an ABN) and labour hire firms should be excluded from engaging workers on working holiday visas. The second working holiday visa initiative should be scrapped.

3.5 Temporary work visas and inadequate training obligations

Temporary work visas and employer sponsored migration are 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

As employers can easily access temporary overseas workers, often with no need for labour market testing, they have less incentive to put substantial thought into training and skills development of local workers. In the resources and construction sectors, young Australians are finding it increasingly difficult to find an apprenticeship, yet employers continue to sponsor temporary foreign workers rather than invest in training. While the number of 457 visas has increased over 50 percent from 127,563 from June 2010 to 193,151 in March 2015, the number of apprenticeships has fallen. In the five years to June 2015, the number of apprentices and trainees in training in Australia decreased approximately 30 percent from 436,000 to 308,800.³³ The number of building apprentices and trainees has decreased 15 percent from 56,000 to 47,700.³⁴

Economist Ross Gittins states *"To me the main drawback [of the shift towards temporary migration] is not so much that employers may not try hard enough to find local workers to fill jobs, or that the availability of this external supply may limit to some extent the rise in skilled wages, but that it reduces employers' incentive to go to the bother of training young workers."*³⁵

While some employers may have a genuine need to fill positions where skilled workers are unavailable, they need to demonstrate that they are actively training local workers to fill these positions into the future. The fact that the number of 457 visas is increasing, while the number of apprenticeships continues to decline, indicates that employers sponsoring 457 visa holders are not adequately investing in training Australia's future workforce.

Sponsors of 457 visas are required to demonstrate training of Australian citizens or permanent residents through either a) making a contribution of at least 2% of their annual payroll into an industry training fund or b) spending at least 1% of their annual payroll on the provision of training their Australian employees.

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>

³³ NCVET (2015), 'Apprentices and trainees 2015', June Quarter, Australian vocational and education and training statistics, accessible at: <http://www.ncvet.edu.au/>

³⁴ NCVET (2015), 'Historical time series of apprenticeships and traineeships in Australia from 1963', Australian vocational and education and training statistics, accessible at: <http://www.ncvet.edu.au/>

³⁵ Gittins (2015), 'Long-term employment trends: retired workers happy to put their feet up', *Sydney Morning Herald*, 21 Feb 2015, accessible at: <http://www.smh.com.au/business/the-economy/long-term-employment-trends-retired-workers-happy-to-put-their-feet-up-20150220-13k8ug.html>

The obligations are insufficient, as outlined by the ACTU³⁶, in that they do not require employers to train Australian workers in the same occupation where they are using 457 workers, employers who sponsor a large number of 457s have the same obligations as an employer who sponsors a single 457 worker, and the obligations are not properly enforced. The ACTU states *“For many, the current benchmarks are simply an administrative hurdle to jump over by demonstrating a ‘spend’ level, which many would have done anyway. There is no concept of training additional skilled workers.”* It points out that the current obligations are also subject to rorting with sponsors artificially minimising their payroll base by setting up separate companies that employ 457 workers, or 457 workers and one or two local workers.

Recommendation: The Government needs to ensure that employers who have a genuine need to sponsor overseas workers to fill skill shortages are also training the future workforce, reducing their need to rely on temporary overseas workers in future. Employers should be required to train workers and employ apprentices in the same occupations where they are using 457 visa workers.

Recommendation: Employers who sponsor multiple (e.g. 10+) 457 visas in any one year should be required to employ them under a labour market agreement, not on individual visas. This should include mandatory stakeholder consultation, including a requirement to provide trade unions with evidence demonstrating the existence of skill shortages. Employers should also be required to demonstrate how the agreements support local jobs and training.

Recommendation: Employers should be required to employ one apprentice for every four tradespersons employed and should need to make a contribution to a dedicated training fund for each 457 visa worker employed.

3.6 Unscrupulous migration agents and training providers

Training providers have also been found to be exploiting temporary visa holders. Working holiday visas and student visas, where the primary purpose is for travelling or studying, are being misused for work, or as a means to access work or more permanent visas. A Senate inquiry into the operation, regulation and funding of private vocational education and training (VET) providers in Australia found that a number of private VET providers had exploited students in order to make massive profit at public expense.

In its submission to the inquiry, the ACTU stated that overseas workers and students were being exploited by organisations who offer training along with promises of various jobs and visa outcomes. In one case, the ACTU reports that an immigration agent in China recruited 21 Chinese nurses to come to Australia on a temporary training visa, with the promise of work in the residential aged care sector and 457 visa after completing a three month English language program. After paying an initial \$12,000 following their training none were offered jobs. When their 457 visas expired the migration agent organised a three month tourist visa with the promise they would be offered jobs in Adelaide. The Adelaide jobs did not exist, instead there was placements at another training centre with an additional \$7,000 fee. This resulted in many of the temporary migrants having no job, no money, visas that were soon to expire and being unable to pay for their flight home.³⁷

³⁶ ACTU (2015), ‘ACTU submission to review of the training obligations underpinning the 457 visa program’

³⁷ ACTU (2015), ‘ACTU submission Senate Inquiry into private training providers’, accessible at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/vocational_ed/Submissions

Some training organisations have allegedly taken cash kickbacks in return for helping overseas workers and students win Australian visas by using fake qualifications, a practice that has been described as ‘widespread’ and ‘coupled with the exploitation of overseas workers’.³⁸

Unscrupulous migration agents and agencies have been found to be exploiting foreign nationals wishing to work or study in Australia. This includes charging exorbitant and unfair fees, including back in the country of origin, and making unrealistic promises which they fail to meet. There is concern about the ability of the Government to monitor and prosecute corrupt migration agents. While Australian migration agencies or agents are required to be registered with the Office of Migration Agents Registration Authority (OMARA) (attached to the DIBP), overseas migration agents are not required to be registered.

OMARA outlines obligations for migration agents under a code of conduct, which require agents to provide clients with an estimate of fees, to act with honesty, not to intimidate or coerce, nor to engage in misleading advertising, etc. Migration agents operating outside Australia, providing advice relating to Australian migration, are not required to follow this code of conduct. This is in contrast to regulation in countries such as New Zealand, where anyone providing immigration advice in regard to an immigration matter relating to New Zealand, either in New Zealand or offshore is required to be licensed.

Even where migration agents are registered, as OMARA is not a law enforcement agency, it has no power to impose criminal sanctions or powers to enforce a pecuniary penalty. It also has a lack of power in obtaining information. A 2014 independent review of OMARA stated ‘*The OMARA has received criticism for not acting in certain matters to protect consumers, yet it has not been able to do so for lack of access to the evidence required.*’³⁹ With no power, it is difficult for OMARA to sanction migration agents who exploit vulnerable overseas workers, despite complaints.

Recommendation: Regulation governing migration agents should protect all employees and should apply to all business structures. All migration agents bringing workers into Australia, including overseas agents and agencies, should be registered by an independent statutory body in Australia. This body should be given powers to access information and enforce criminal sanctions and pecuniary penalties.

³⁸ McKenzie, N., and Baker, R., (2015), ‘Exploitation fears as students pay for “fake skills”’, *The Sydney Morning Herald*, 6 Aug 2015, accessible at: <http://www.smh.com.au/national/cash-for-visas-international-colleges-fake-qualifications-in-migration-rackets-20150805-gis11z.html>

³⁹ Kendall, C., (2014), ‘2014 Independent review of the Office of the Migration Agents Registration Authority’, Final Report, September 2014, accessible at: <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/omara-review.pdf>

4. A price-based immigration system

The Productivity Commission was asked to consider an immigration system where the allocation of permanent visas is determined by a fee. It finds *“The adoption of a price-based immigration system presents the real possibility of adverse change in the composition of immigrants. Given the scope for adverse demographic, economic and fiscal impacts, a price-based system should not be adopted.”*

The CFMEU also strongly rejects a price-based immigration system. While a price-based system may reduce the costs associated with the immigration, it completely undermines the objectives of Australia’s migration system. Immigrants would be selected based on their ability to pay rather than their ability to contribute to Australia, based on their skills or family connections.

Public benefits from migration do not necessarily align with private interests

Gary Becker argues that charging migrants a fee would ensure that chosen migrants were economically active and had a real commitment to the country.⁴⁰ He essentially argues that those who would be willing to pay the fee would be those with the greatest potential to earn in the new country.

A stand-alone price system can lead to allocative efficiency when the benefit from the purchase of a good accrues to the individual making the purchase. Where the public benefit does not equal the private benefit, such as is possible for immigration, an inefficient outcome is likely to occur. Sendhil Mullainathan of Harvard University points out that the private and social benefits of immigrants can differ due to externalities, and consequently basing admission decisions on willingness to pay is not the best approach.

Migrants are not homogenous; they have differing skills, English language abilities, social networks, etc. They each have differing potential to generate positive externalities such as the passing on of skills or different techniques to the resident workforce, cultural and social benefits, etc. This potential is not the same as the ability or willingness to pay.

For example, a price-based system may see an older wealthy individual, with no family or social ties, limited English and skills and no desire to contribute to the community, purchase a visa simply to acquire an existing property and retire in Australia. This may be at the expense of a lower paid skilled individual, with the potential to diffuse new skills, with extensive family and social ties and who has a real desire to contribute to the community.

The draft report states *“a price-based system may be less effective in targeting those who have the skills in need, are at an age where they still have a long working life ahead, or who have good English-language skills.”* Such a system *“would attract immigrants who are willing and have the capacity to pay but who may not have the desirable attributes that underpin successful integration.”*

Like the investor visa streams, a price based migration system is based on the assumption that people with a lot of money are inherently desirable immigrants. Possessing wealth is not the same as possessing the characteristics which contribute to a better Australia. The Productivity Commission’s research demonstrates this, showing the economic benefits of investor visas are likely to be small and the social impacts are likely to be less favourable than other immigration schemes.

⁴⁰ Becker, G. (2011), ‘The challenge of immigration – a radical solution’, Institute of Economic Affairs, London, accessible at: <http://www.iea.org.uk/sites/default/files/publications/files/IEA%20Challenge%20of%20Immigration%20web.pdf>

Motivations for migration are more than financial

Arguments in favour of a price based system of migration included that potential migrants make their decision to migrate based on the explicit cost of the visa relative to their potential earnings. The argument is that if a potential immigrant believes that the additional income they can earn by immigrating to Australia exceeds the cost of migration, they will have an incentive to migrate. If their earnings do not exceed the price they will not have an incentive.

This argument is limited in that migration is motivated by more than just perceived potential future earnings, as demonstrated by refugees who take on significant debt to pay people smugglers to carry them to Australia. Winchie and Carment state that while migration is often viewed as economically motivated, this is often based on the assumption that potential migrants are economically rational maximisers who evaluate migration on this basis.⁴¹ Motivations for migration, other than job and income opportunities, include a desire for travel and adventure, to be close to friends and family, better education systems, stability of the destination country, political problems in the home country, crowded living conditions, etc.

Demand based immigration and the problem of imperfect information

A price-based system for migration is based on the assumption of full information, that potential migrants have a clear and realistic understanding of their potential future earnings. In reality, potential immigrants' knowledge may be either over-optimistic or under-optimistic about their potential income in Australia.

McKenzie et al suggest that potential immigrants may receive inflated stories about potential earnings from previous immigrants or from unrealistic media portrayals of life abroad.⁴² Braga finds that media plays a role in the information potential migrants receive about the economic condition of destination countries and that individuals exposed to foreign media are more likely to migrate.⁴³ Aggressive migration agents and people smugglers also may overstate the benefits of life overseas. As a result, potential migrants may overestimate the incomes they could earn in Australia. McKenzie et al postulate that *"overly optimistic expectations about incomes abroad could account for growing migration pressures around the world"*

In a study of Tongan migration, Lee states that many Tongans overseas are often in poorly paid jobs and are living on or below the poverty line, yet a strong remittance culture means many send remittances home. Tongans returning home from overseas can also exaggerate their success and wealth creating unrealistic expectations. *"For our relatives who live in the isle, in their small minds they think that money grow[s] out of trees, and thus expect people overseas to provide them with their need[s]...Tongans returning home for visits make the situation worse by exaggerating their success and wealth and creating unrealistic expectations"*.⁴⁴

⁴¹ Winchie, D., and Carment, D., (1989), 'Migration and motivation: The migrant's perspective', *The International Migration Review*, Vol. 23, No. 1, pp 96-104

⁴² McKenzie, D., Gibson, J., Stillman, S., (2013). 'A land of milk and honey with streets paved with gold: Do emigrants have over-optimistic expectations about incomes abroad?', *Journal of Development Economics*, Vol 102, pp. 116-127.

⁴³ Braga (2010), 'Dreaming another life. The role of foreign media in migration decision. Evidence from Albania',

⁴⁴ Lee, H. (2003), 'Tongans overseas: between two shores', University of Hawaii Press, Honolulu.

If potential migrants over-estimate their earnings, their willingness to pay will be higher. Consequently, migrants with low or minimal earning opportunities may pay to enter Australia and not have the means to pay back the costs of migration in the future.

By contrast, if migrants underestimate their earnings potential, they may choose not to migrate when they otherwise would. McKenzie states that one reason why so few people leave their country of birth, or return home to their countries after only staying abroad for brief periods away maybe that *“many potential migrants actually underestimate how much better off they could be abroad, and only learn if they spend time in a foreign labour market.”*

While imperfect information will always play a role in the inefficient migration decisions of individual migrants, the movement towards a price based and demand orientated migration system shifts away from having government decide the desirable characteristics of migrants based on Australia’s long-term interest.

Recommendation: The Government should not implement a price-based migration system as it is counter to migration objectives and the long term interest of Australia.

5. 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 there are long waiting lists due to demand outstripping supply of available places.⁴⁵

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.

The Productivity Commission finds that social capital generates benefits to society by “*reducing transaction costs, promoting cooperative behaviour, diffusing knowledge and innovations, and through enhancements to personal wellbeing and spill-overs*”.⁴⁶ Many existing government policies are aimed at supporting and building social capital, such as investing in education, family support, community services, etc. A price-based migration system ignores the positive externalities created by migrants in addition to their potential future earnings.

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.⁴⁷ 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*”

⁴⁵ 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>

⁴⁶ 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>

⁴⁷ 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

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.

6. 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
- 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.”*⁴⁸

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...”*⁴⁹

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.

⁴⁸ 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

⁴⁹ Productivity Commission (2015), ‘Migrant Intake into Australia’, Draft Report, accessible at: <http://www.pc.gov.au/inquiries/current/migrant-intake#draft>

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.

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

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