



**CFMEU SUBMISSION TO NATIONAL RESOURCES SECTOR EMPLOYMENT TASK FORCE (NRSET)
DISCUSSION PAPER, "RESOURCING THE FUTURE", MARCH 2010**

13 April 2010

A handwritten signature in black ink, appearing to read 'John Sutton'. The signature is fluid and cursive, with a large initial 'J' and a long, sweeping underline.

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Executive summary

The CFMEU's main recommendations in response to the Task Force's Discussion Paper are as follows.

The resources construction sector

The CFMEU **recommends** that:

- The resources construction sector workforce required to support resources development be given more adequate attention by the Resources Sector Employment Task Force.
- The Commonwealth government commission improved data collection and analysis of employment and skills requirements in the resources construction sector by the ABS, funded by the industry.

Role of unions

The Task Force's Discussion Paper did not mention unions once in the whole paper.

The CFMEU **recommends** that:

- Government establish national industry-level mechanisms for ongoing tripartite consultation on industry direction including workforce planning for the resources sector.
- Skills Australia, which already has a tripartite Board structure, be given the central workforce planning role.
- Individual mines or mining companies adopt mechanisms to provide for collective consultation with their workforce on all employment arrangements, and especially working hours and rosters. Where unions are present, they should be formally involved in such collective consultations. Where unions are not present, other mechanisms that are collective in nature (ie that provide for the workforce to form a collective view, and not just individual feedback to management) should be adopted.

International standards regarding labour and health and safety

- Governments, with industry and union support, move immediately to ratify ILO Convention 176 on Safety and health in Mines as part of a broader commitment to the implementation of international standards in the resources sector.
- Resources sector companies commit to a program of certifying their sites to SA8000 as part of a program to demonstrate compliance with internationally recognised minimum employment standards.

Improved data collection on the resources sector by the ABS, funded by the industry.

The quality of official data available on this sector is not adequate to the sector's importance to Australia. We do not have reliable data even on total employment or changes in employment levels in the sector, let alone on women, Indigenous Australians employed, working hours and rosters.

- The Commonwealth government commission improved data collection on employment in the resources sector by the ABS, on a regular (say annual) basis, funded by the industry.
- The industry fund detailed data collection on working hours and rosters in the resources sector.

The supply of labour and local communities

The CFMEU **recommends** that the industry:

- Adopt targets for the employment of women, and Indigenous Australians.
- Commit to limiting and reducing family-unfriendly rosters, and to making the majority of rosters and site positions capable of being undertaken by people with family responsibilities.
- Work with State and Local governments to define and achieve a minimum level of community facilities in mining towns that enable living in mining towns to be a reasonable choice for the families of mineworkers.

Education and training

The sector has a very poor record in entry-level training, preferring to poach already qualified tradespersons and others from other sectors. Our main **recommended** changes include that:

- Employers in the resources sector establish on-site trade training centres (infrastructure plus trainers), integrated into major resources projects. Skills audits of their workforces to identify the existing skills gaps at enterprise and industry level can then be undertaken, and on-site training tailored to fill those gaps.
- Employers in the resources sector be subject to training quotas on construction projects in the resources sector, equal to 10% of workforce hours.
- Legislation be introduced requiring all employers in the resources sector to maintain ratios of qualified apprentices to tradespersons. This should be in the ratio of 1:10 as per the recommendation of the COAG Apprenticeship Taskforce for the Building the Education Revolution Stimulus Package, with targets adopted beyond this to encourage women and indigenous people into the resources sector.
- A resources sector industry training fund be established through legislation, financed by dedicating a percentage of mining royalties to the training fund, the fund to be administered through SkillsDMC.
- Construction industry training funds be established in the resource states of NSW and NT (and Victoria).

- The Commonwealth government publicly and firmly reject the proposal that overseas students can undertake onshore VET “trade” courses for the resources sector, and/or to acquire Australian work experience on 485 visas after completing their trade courses.

Immigration

If 457 visas are to be used in the resources sector, the CFMEU **recommends** that:

- The 457 visa position should be subject to Labour Market Testing (LMT), that is employers should be required to test the local (Australian) labour market first, advertising the position at market rates and conditions, and demonstrate that there are no qualified Australians who can do the work.
- The CFMEU does not accept that LMT in the 457 visa is a breach of Australia’s international trade commitments under WTO GATS.
- Labour Agreements for 457 visa workers are preferred, subject to certain changes to the Labour Agreement process, namely:
 - the matters on which proponents of labour agreements are required to consult unions be expanded to include remuneration and conditions of employment;
 - companies be required to have an employment and training plan to reduce reliance on “temporary overseas workers” over time; and
 - unions have a monitoring role in the Labour Agreement.
- Regional Employment Authorities (REAs) be established to scrutinise trades 457 visa applications, as soon as possible.
- There must be a very high level of public disclosure about the operation of 457 visas in the resources sector, to win and maintain public confidence that Australians are not being excluded from the opportunities created in the resources sector. This includes details of positions filled by 457s, including location and wages and conditions. This could be managed through the tripartite structure, recommended earlier.

Employer-sponsored skilled PR visa for regional areas

- DIAC no longer have the legal authority to cancel the skilled regional PR visa, the employer-sponsored skilled PR visa for regional areas (the Regional Sponsored Migration Scheme or RSMS), simply on the basis that the visa-holder does not complete the two year contract with the sponsoring employer.

The CFMEU is concerned that some sections of the employer community (and others at the political level) see the real solution to skills and labour issues in the resources sector as a temporary migrant workforce, brought to Australia as FIFO labour or otherwise, from Asia and elsewhere.

The CFMEU hopes that concerns that the Australian government will allow this to occur are proven wrong.

1. Introduction

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

The CFMEU supports a strong and sustainable resources sector in Australia that provides real and lasting benefits to Australia.

1.1 Defining the resources sector

The Task Force Discussion Paper defines the Australian resources sector as “mining, oil and gas operations, including operating mines, quarries, oil and gas wells, *as well as constructing those operations*” (p1, emphasis added).

However the Paper states on p11 that it:

does not attempt to profile the resources construction industry workforce because the data available at the national level does not distinguish between those construction workers who are working on resource projects and those engaged in other activities. Even if the data did permit this comparison it would be a snapshot of the situation at a given point in time. Given the transience of the construction industry workforce and the unpredictable nature of resources projects, the information would likely be of little value.

The CFMEU considers this position unsatisfactory. The resources construction phase is the vital first stage in the process of resources development and exploitation and one where skills and labour requirements must also be planned for. While of shorter duration, it raises many of the same employment and training issues that the Paper identifies in the mining and resources sector. The fact that employment in the resources construction sector is difficult to measure means that more effort must go into its measurement, not that it should be ignored.

There is also some overlap in skills and labour requirements in the resources construction and mining sectors. For example, earth-moving plant operators are significant requirements in both sectors, the trades occupational profile of 457 visa workers is similar¹ and FIFO concerns are common to both.

The Paper also cites data suggesting that the resources construction workforce might be substantial, with SkillsDMC reporting that Civil Infrastructure (which includes resources construction) and Metalliferous Mining each employ (directly *and* indirectly) around 200,000 people.

¹ Of all 457 trades workers sponsored by Mining industry employers in 2008-09, 56% were in just 5 trades (Fitters, Welders (First-class, Metal fabricators, General electricians and Motor mechanics), as were 31% of those sponsored by Construction industry employers (unpublished DIAC data). See also Section 6 below.

The CFMEU therefore **recommends** that:

- The resources construction sector workforce required to support resources development be given more adequate attention by the Resources Sector Employment Task Force.
- The Commonwealth government commission improved data collection and analysis of employment and skills requirements in the resources construction sector by the ABS, funded by the industry.

In the rest of this submission, references to “the resources sector” will often cover both the resources construction and mining sector.

1.2 Overview

In April 2010, the “skills shortages” in the resources sector were put into a more realistic perspective by Mitch Hooke, CEO of the Minerals Council of Australia. As reported in *The Australian*, Mr Hooke “said there was growing demand for skilled workers in the resources sector *but it should not be overstated* (emphasis added). The minerals industry workforce in total represents less than 1.5 per cent of the overall workforce”.²

Mr Hooke added that the minerals industry predominantly uses the temporary 457 skilled migration program and “is a strong supporter of a robust skilled migration program that is based on economic need”. The usual meaning of ‘economic need’ in relation to migration is that migration is justified only where the skills are not available in the domestic labour market.

The CFMEU believes the resources sector has to a large extent contributed to its own workforce problems. Compared to other sectors, it has always shirked its training responsibilities, preferring to poach skilled labour from other Australian industries and more recently from overseas especially through temporary migration on the 457 visa.

Once other Australian industries, and notably the public utilities sector, stopped substantial training of tradespeople in the last few decades, the lack of new supply of tradespeople should have rung louder alarm bells for the resources companies and their training efforts.

With respect to unskilled or semi-skilled labour, the resources sector always assumed that there would be an inexhaustible supply of young male blue collar labour that could be used-up and replaced. The combination of increased expectations of Generation Y for work/life balance, plus an ageing workforce in the longer-term, means that the resources sector now faces additional pressures in attracting available labour.

Two further factors contribute to the resources sector skills and labour shortages, aside from the obvious problem of rapid growth. Long hours and the winding back of company-sponsored services

² “Skills shortages to cripple nation-building”, *The Australian*, 9 April 2010.

<http://www.theaustralian.com.au/politics/skills-shortage-to-cripple-nation-building/story-e6frgczf-1225851585390>

in mining towns (including through greater use of Fly-In, Fly-Out) has meant that mining jobs and mining careers have become intrinsically less desirable. Increased pay may help overcome this problem in the short-term, but it does not address it directly and therefore does not resolve it.

Finally, there is an endemic problem of short-termism with respect to workforce planning in resources, notwithstanding that most mining projects are large-scale and long-lived. During the industry downturn in the second half of the 1990s, large numbers of skilled and professional staff were retrenched. Many refused to return to the industry during the upswing caused by the resources boom in the last decade – “once bitten, twice shy”. Despite companies claiming to have learned their lesson, when the GFC hit the major companies again announced swathes of jobs cuts, retrenching around 16,000 people in a single year, according to some estimates. Now the upturn is back less than 12 months after the job cuts, and firms are again complaining of labour shortages.

As was argued by John Buchanan, Director of the Workplace Research Centre at the University of Sydney, any industry needs to take a good hard look at itself if it is going to complain of labour shortages only months after implementing major job cuts.³

2. Role of unions and international standards

2.1 The role of unions and the collective voice

It is notable that the Taskforce Discussion Paper makes no mention whatsoever of unions and their role in workforce planning for the resources sector, industry training, safety, and managing labour turnover.

Unions are already centrally involved in key tripartite institutions at an industry level including the National Mine Safety Framework, in the national industry training body (SkillsDMC) and have been involved in the National Resources Sector Employment Taskforce. That tripartite working arrangement should be more formalised and made ongoing, with a body charged with overseeing and advising on implementation of government decisions on the Task Force’s eventual recommendations.

The CFMEU **recommends** that:

- Government establish national industry-level mechanisms for ongoing tripartite consultation on industry direction including workforce planning for the resources sector.
- Skills Australia, which already has a tripartite Board structure, be given the central workforce planning role.

As highlighted elsewhere in this submission, unions have played a critical role in bringing the mining and construction industries to industry training (see Section 5 below).

³ ABC TV *Lateline*, 8 February 2010.

With respect to the acknowledged industry problem of high labour turnover, it is no coincidence that there is a significant correlation between the presence of unions on a site and rate of turnover. The gold mining industry appears to have the highest turnover, and is the sector with the longest history of low unionisation. The iron ore sector has more recently sought to expel unions from its operations, and its turnover problem is not as bad as gold. The coal sector has the lowest average rate of turnover (closer to 10%) and the highest rate of union density. Within the coal sector, it is also unlikely to be coincidental that there is greater turnover in Queensland, where there is lower union density, than in NSW with higher union density.

Anecdotally, the lower turnover in coal mining is attributed by management to “the weather”. That is, that coal mining occurs in regions in or near nicer weather. This omits the fact that iron ore and much other Western Australian mining had lower labour turnover rates in the past – and the weather hasn’t changed that much! The increase in turnover correlates to both the decline in union density AND the increase in the use of FIFO and extreme working hours.

These are related factors. In the coal sector the CFMEU has generally agreed to 12 hour shifts but not to extreme rosters. Most rosters in coal mining are even-time rosters or better.

The point here is that unions provide a “collective voice” on working hours issues, and that a collective voice tends to have a longer term perspective and is more considered than ad hoc individual decisions. This is particularly so where extreme rosters were introduced on a “take it or leave it” basis by mine management, especially in the second half of the 1990s when the industry was reducing labour. Workers had little real choice when employment was conditional on both individual contracts and long working hours.

A further dimension is that many individuals may well agree to long working hours and FIFO, but they do that on a short term basis. The Centre for Social Responsibility in Mining (CSR) 2003 study on FIFO and labour turnover referred to in the Discussion Paper⁴ shows that many workers say they like FIFO and long hours, but many such sites nevertheless have high turnover rates, indicating that the working arrangements are not conducive to long term employment.

Also relevant is the level of pay, particularly pay-per-hour-worked. Unpublished ABS data shows that coal mining had significantly better pay per hour worked. This can be attributed to the greater role of collective bargaining in the coal sector. In 2006:

- Hourly cash earnings for full-time non-managerial adult employees in coal mining were 25% higher than the average for all mining sectors combined (\$46.70 vs \$37.50 per hour).⁵
- Hourly cash earnings in coal mining were higher than recorded in all other mining sectors except Oil and gas extraction, but the figures for this relatively small sector were subject to a relatively high margin of error.

⁴ NRSET Task Force Discussion Paper, March 2010, *Resourcing the Future*, p16.

⁵ ABS *Employee Earnings and Hours, Australia*, May 2006. Cat 6306.0 (customised unpublished data). Data are for all occupations combined.

Coal mining has always had higher wages due to the role of the CFMEU, but there have been higher rates of increase in the non-coal sector during the resources boom. This indicates that the non-coal mining industry has had to “play catch-up” with the coal sector in order to mitigate escalating turnover.

While some sectors of the mining industry may initially deplore the role of unions in negotiating better wages and conditions, the key point is that these better wages and conditions play a key role in attracting and retaining both skilled and semi-skilled workers. Collective agreements usually run for 2-3 years and provide for modest and predictable wage increases. In the non-union areas, the more short-term approach sees extremely volatile wages and conditions. Put another way, collectively determined wages and conditions provide greater certainty to both workers and management and allow both parties to plan better for their long term future.

The CFMEU **recommends** that:

- individual mines or mining companies adopt mechanisms to provide for collective consultation with their workforce on all employment arrangements, and especially working hours and rosters. Where unions are present, they should be formally involved in such collective consultations. Where unions are not present, other mechanisms that are collective in nature (ie that provide for the workforce to form a collective view, and not just individual feedback to management) should be adopted.

2.2 International standards on labour and health and safety

The Australian resources sector is dominated by multinational companies. Despite this, the industry has been remarkably reluctant to embrace relevant international standards with respect to its workforce. This contributes to a atmosphere of relative anarchy in the industry.

There has been a culture of “pushing the workforce to its limits” especially with respect to working time arrangements. It is not surprising therefore that fatigue management has become such a major issue in the industry, along with alcohol and drug abuse (and random testing regimes) and obesity/health management.

The mining industry has moved to improve its sustainability reporting, with many major companies adopting the standards of the Global Reporting Initiative including the very recently-adopted Mining Supplement to the GRI.⁶ However, the GRI is still a work in progress. Further, it is a reporting mechanism, not a minimum performance standard.

⁶ See www.globalreporting.org/ReportingFramework/SectorSupplements/MiningAndMetals/

ILO conventions

Australia has become a laggard with respect to the adoption of the minimum standards of the authoritative international body in the labour area, the UN's International Labour Organisation.

Australia has not yet ratified ILO Convention 176 on Safety and Health in Mines, despite it being supported on a tripartite basis back in 1995. ILO 176 has been adopted by most developed nations including the United States, and by major developing nations that are also major mining nations, such as South Africa and Brazil.

The lack of Australian progress on ratification of the principal international standard on safety and health in mines after 15 years underlines the lack of commitment by both governments and industry to the application of minimum international standards.

The CFMEU **recommends** that:

- governments, with industry and union support, move immediately to ratify ILO Convention 176 on Safety and health in Mines as part of a broader commitment to the implementation of international standards in the resources sector.

The resources sector's record with respect to core or fundamental ILO labour standards is poor. While it has (usually) been compliant with Australian labour laws, those laws have been ruled by ILO bodies to be non-compliant with Australia's international obligations under core ILO labour standards. (These are Conventions 29, 87, 98, 100, 105, 111, 138, 182 on freedom from child and forced labour, equal pay and non-discrimination in the workplace, and freedom of association and the right to collectively bargain.)

The period of non-compliance was greatest during 1996 to 2007, and the non-compliant laws were more heavily used by the resources sector than any other industry.

Core ILO labour standards have been agreed by governments, employers and unions worldwide to be the absolute minimum requirements for dignity and respect in the workplace; without these basic rights it is not possible for workers to bargain for a fair deal. It is little wonder that, regardless of the absolute pay levels in the sector, the sector has had difficulty attracting and retaining good workers when it has been unwilling to comply with international minimum standards with respect to workplace rights.

It is often claimed that ILO standards are the responsibility of governments, and it is the duty of employers only to comply with local laws. The fact that the mining industry is choosing to embrace emerging international standards with respect to sustainability reporting shows that the industry recognises that simple compliance with domestic law is often not adequate. It is a starting point, not an end point.

There is an international standard specifically designed for employers to demonstrate that they are complying with ILO minimum standards with respect to their employment practices.

It is SA8000, which is administered by Social Accountability International (www.sa-intl.org). The management system provides for the certification of specific sites by accredited third party auditors. While the system is about more the ILO standards, it is designed to be consistent with them.

- It is instructive to note that the Australian resources sector does not have a single site certified to SA8000 (www.saasaccreditation.org/certifacilitieslist.htm)

This is despite some major companies claiming that their practices are consistent with SA8000. (see for example, BHP Billiton's Health, Safety, Environment and Community Management Standard at www.bhpbilliton.com/bbContentRepository/docs/creisAppR3HsecManagement.pdf)

The CFMEU **recommends** that:

- resources sector companies commit to a program of certifying their sites to SA8000, administered by Social Accountability International, as part of a program to demonstrate compliance with internationally recognised minimum employment standards.

Such certification would result in, for example:

- average working hours not exceeding more than 48 hours per week, and workers having at least one day off in every 7 days. (This might differ for construction project sites in remote areas, but is definitely achievable for ongoing mine sites.)
- workers being able to freely choose to collectively bargain, and thereby be more likely to bargain for working hours and conditions that enable a better work/life balance.

Both measures will help the industry by improving worker retention.

3. Demand for labour and skills

3.1 Employment levels

This chapter demonstrates that there is a problem, but it cannot be properly measured because the available data is not adequate. If the problem cannot be properly measured, we can't be sure of the size of problem and we almost certainly don't have the capacity to fix the problem and then verify that the problem is being fixed.

This chapter shows that the most basic employment information about the Australian resources sector – how many people are employed in the sector and trends in employment levels - is not available to acceptable standards of reliability.

The Discussion Paper says (p11) that in 2009 “the number of people employed directly in mining is 165,000 or approximately 1.5% of Australia's total workforce.” This figure is sourced to the ABS Labour Force Survey (LFS) data shown in Table 3 on page 12. As well, this section says that “...employment has almost doubled in a number of categories, eg coal mining and gas over the past five years” (p11). The table also shows total mining employment jumped from 138,000 in 2007 to 180,000 in 2008 – and increase of 42,000 or 30% in 12 months – before falling to 165,000 in 2009, a decline of 15,000 persons.

The Discussion Paper makes no cautionary comment at all on the limitations of this ABS employment data and the conclusions drawn from it, but it should have.⁷

The fact is that the ABS LFS is sample-based and is too small to accurately measure total employment in mining or changes over time, let alone in sub-sectors of mining. This is because the statistical ‘margin of error’ on small estimates is too large for these purposes. For example, consider the ABS LFS estimate that total employment in mining was 165,000 persons in 2009. From a statistical point of view there is a 95 per cent chance that the true number of employed persons was within 165,000 plus or minus 9,600, that is, in the range of 155,000 and 175,000.⁸

The ‘margin of error’ on employment estimates for smaller mining subsectors is even larger than for total mining employment.

For example, the Discussion Paper presents ABS data for coal mining showing that estimated total employment increased from 32,000 in 2008 to 42,000 in 2009 – an apparent increase of 10,000

⁷ But elsewhere the Paper notes in relation to other ABS survey data (on retirement intentions) that ‘the ABS also noted that this data may not be reliable due to the small sample size’ (p16).

⁸ The estimate plus or minus two standard errors. Calculated using the ABS Standard Errors Calculator on the ABS website, Cat 6298.0.55.001 - *Labour Force Survey Standard Errors, Data Cube*, Oct 2009.
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/6298.0.55.001>

persons or over 30% in just 12 months. But the margin of error (the 95% CI or Confidence Interval) on 42,000 is 42,000 plus or minus 6,000 (or 14 per cent), that is between 36,000 and 48,000.

The CFMEU has its own information and intelligence on the coal mining sector. It is our view that there was a downturn from around 36,000 to around 33,000 in the last half of 2008 and early 2009, and that since that time the industry has recovered those jobs and grown somewhat.

As well as total employment estimates for mining and its sub-sectors, the Discussion Paper also relies on the ABS LFS for data on important characteristics of the workforce including the occupational and age composition of the mining workforce. Other studies often use the same ABS data on the employment of women and Indigenous Australians in the resources sector.

These are vitally important aspects of the mining workforce to be measuring, but relying on the ABS LFS for this data is subject to the same serious limitations described above.

The CFMEU concludes that the quality of official employment data available on this sector is not adequate for the policy task in regard to the sector's growing importance to Australia. We do not have reliable data even on total employment or changes in employment levels in the sector, let alone reliable data on women, Indigenous Australians employed, working hours and rosters (see also below).

The ABS Census is one other official source that produces more statistically reliable data on mining industry employment. But the census is conducted only every 5 years, there is limited employment data collected and there are long lag times between data collection and publication.

The mining industry itself does not appear to have more reliable employment information, through its own surveys. In fact, the Minerals Council of Australia itself relies on ABS Labour Force Survey for data on employment in mining and its sub-sectors, and data on the composition of mining employment.⁹

In any case, the CFMEU believes that it is far preferable that employment data on the resources sector be collected by an independent official agency like the ABS rather than the industry itself. This will ensure the data has the high credibility needed for both effective public policy making and also general community acceptance. The ABS Construction Industry Survey (CIS), last conducted in 2002-03, is something of a model. The objective of that survey was 'to provide the fundamental base line data necessary to understand the nature of the industry, to enable comparison with other industries, and to provide a benchmark for measuring change over time'.¹⁰

⁹ See Minerals Council of Australia, *Submission to Skills Australia: workforce futures*, November 2009. Section 3, Minerals industry workforce, is based largely on an NCVET study which in turn uses employment data from the ABS Labour Force Survey.

¹⁰ ABS Construction Industry Survey, ABS website accessed 4 April 2010.
<http://www.abs.gov.au/websitedbs/c311215.nsf/20564c23f3183fdaca25672100813ef1/58455c5828063b3bca256b6000219ae2!OpenDocument>

However, the improved employment data collection on the resources sector by the ABS should be funded by the industry. This is similar to the ABS policy applied previously, including to the ABS Construction industry survey.

The **CFMEU recommends** that, given the industry is now - and for the foreseeable future will be - a major priority area in terms of demand for labour, shortcomings in supply and achievement of public policy employment objectives (such as increased employment of women and Indigenous Australians):

- The Commonwealth government commission improved data collection on employment in the resources sector by the ABS, on a regular (say annual) basis, funded by the industry.

3.2 Working hours and rosters

A related and important area where improved data is needed concerns working hours and rosters. This is already accepted to be a key issue with respect to recruiting and retention of workers, but the dataset on working hours and rosters in mining is very poor. While the ABS does provide something on average hours, it does not capture the full dimension of the issue.

The Minerals Council of Australia believes that “within the mining sector there are at least 350 different rostering arrangements – including special shifts for women and men with principal care for children, fly-in and fly-out shifts and 12 hour shifts”.¹¹

The Discussion Paper (p16) refers to anecdotal evidence about high employee turnover. Two studies are also cited. It is worth noting that the 2003 study by the Centre for Social Responsibility in Mining (CSR) specifically identifies that FIFO arrangements, while not always associated with high turnover, are frequently associated with intensive work and high burnout. The anecdote that one year in FIFO is “like a dog year” (ie as ageing as 7 years of normal life) is a common industry understanding.

While the Issues paper does address the FIFO issue – though inadequately – it barely addresses at all the related but broader issue of working hours and rosters. There have been very few studies or survey in this area. One useful one is that done by ACIRRT (now WRC – Workplace Research Centre) or the International Labour Organisation (ILO) in 2000.¹²

That study showed that 12 hour shifts were virtually the standard practice in mining. On top of that, one third of all sites with 12 hour shifts were working 14 twelve hour shifts in a row.

Anecdotally, it is the case that since 2000 the preponderance of “14 on, 7 off” rosters has decreased. This is not so much due to union pressure, as many companies have sought to remove unions from their workplaces, but simply due to a dawning realisation among the employers that the rosters

¹¹ MCA, *Submission to Skills Australia: workforce futures*, November 2009, p7.

¹² Kathryn Heiler, Richard Pickersgill and Chris Briggs (2000), *Working Time Arrangements in the Australian mining industry: trends and implications with particular reference to occupational health and safety*. ILO Sectoral Activities Programme, Working paper 162, Geneva.

were a major contributor to high turnover. If they had not excluded unions from their sites, that problem would have been communicated earlier. Instead it had to come through the crude instrument of the “exit voice” – where workers tell the employer the conditions are intolerable through their exit.

It is difficult to conceive that any worker will make a lengthy career (say 10 to 20 years) working a “14 on, 7 off” roster. Such rosters allow workers very little time for family or other social and community activity. They are not sustainable. An industry that is practising such rosters is not using its workforce sustainably; it is “using up” its workers and simply hoping it can replace them.

The point here is with respect to the data – knowing, documenting and understanding the problem. The industry needs detailed data on what hours and rosters are being worked. It is a key metric or data source in measuring the industry’s efforts to provide reasonable working hours and work/life balance for its employees. In the absence of such data collection, we cannot comprehend or address the problem.

The **CFMEU recommends:**

- that the industry fund detailed data collection on working hours and rosters in the resources sector.

4 Increasing the supply of labour

Questions 6-14 in the Discussion Paper cover these issues. They concern increasing resources sector employment of local people, women, older workers, the underemployed, Indigenous Australians; and FIFO and Interstate/intrastate labour mobility.

4.1 Introductory comments: local communities

This chapter of the Discussion Paper has a tendency to place the problems into silos and not recognise the inter-linkages. There is a lengthy account of encouraging local participation, but no recognition that the lack of local workers is related to both the extensive use of FIFO and the use of long working hours.

The shift to FIFO is portrayed by mining companies as responding to a workforce desire to live in major urban areas. While there is certainly a major element of that, this was not what drove the trend. The driving factor was cutting costs. Mining companies wanted to withdraw from providing mining towns – the housing, the roads, social infrastructure. This became a self-reinforcing trend. It is largely because the services and facilities in mining towns are so poor (and often that housing is limited and expensive) that mineworkers prefer FIFO.

There is now a belated shift back to local workforces because of the high turnover problem. FIFO workforces have no long term connection to a mine or the locality in which the mine is located. They are not even likely to stay with the job long because the hours are so difficult.

So the initial problem with increasing “local employment” is that the mining companies have done a good job of removing or avoiding a local community near the mine.

4.2 Hours and rosters

The next issue is that the long hours and difficult rosters mean that mining jobs are usually “one per family” as the spouse has to do all the work raising a family that the mineworker cannot do. It is virtually impossible to have a family with two parents working 12 hours shifts.

Childcare in mining towns is a very scarce commodity. This is partly because childcare wages are low and mining towns are expensive places to live; partly because mining companies don’t see it as their business to support childcare services; and partly because mineworker spouses are mostly locked out of mining jobs and have to stay home to look after the children.

The CFMEU has frequently been told by mining companies that 12 hour shifts and compressed rosters are essential to economically viable mining operations. It has therefore come as quite a surprise to see, during the height of the resources boom and the associated labour shortages, that it has been possible for mining companies to provide “mummy rosters” and similar shorter shifts to enable greater local workforce participation. So-called “mummy rosters” are short shifts within school hours (say 10 am til 3.00pm) for jobs that do not need to be done 24 hours a day.

There is finally greater flexibility on the part of employers, driven by necessity: the need to structure at least some mining jobs so they can be done by those other than those able to work 12 hour shifts. There are other ways in which part-time or short hours work could be provided. There is very little part-time work in the industry, despite the alleged “flexible work practices”. There is plenty of casual and contract work, but the hours are not only full-time but often extreme.

The rosters most liked by workers are “even time” rosters, meaning broadly 12 hour shifts, but equal numbers of days on and off work - for example, 4 days on, 4 days off of 12 hour shifts. This works out at an average of 42 hours per week over the roster cycle. While this is still a relatively lengthy working week by international standards, it is a great deal less than the average 56 hours per week for a “14 on, 7 off” roster.

If an even-time roster was provided on a part-time basis, the pool of local and FIFO workers prepared to do the work might be increased significantly. For example, 2 x 12 hour shifts per 8 day roster cycle. This kind of part-time work might even be attractive to some women who are primary care-givers.

4.3 Women (and family)

The Issues paper significantly understates the problem with respect to the employment of women, and overstates the efforts of mining employers to address the problem. The stark reality is that, apart from the corporate office jobs and the recent example of “mummy rosters”, it is impossible for any person with primary caregiver responsibilities to hold a job in mining.

It is a staggering indictment of the industry that in 2010, its working hours and rosters are designed to almost systematically exclude any person who has primary responsibility for children.

This is not just an issue for most women; it is an issue for men who want to participate meaningfully in the raising of their children.

While the problem of family-unfriendly working time arrangements is a problem in many industries, the resources sector is an extreme case and this is undoubtedly the primary reason for the low participation rate of women in the resources sector workforce.

The CFMEU **recommends** that:

- the resources sector commit to targets for the revitalisation of mining/resources towns, including the provision of services such as childcare that are essential for enabling larger local communities and greater workforce participation by those communities.
- the industry:
 - adopt targets for the employment of women, and Indigenous people
 - commit to reducing family-unfriendly rosters and making the majority of rosters and site positions capable of being undertaken by people with family responsibilities
 - work with State and Local governments to define and achieve a minimum level of community facilities in mining towns that enable living in mining towns to be a reasonable choice for the families of mineworkers.

4.4 Indigenous people

The resources sector has moved from having an appalling record on indigenous employment to something better – but still a long way short of where it should be given the available supply of indigenous labour in mining regions.

The CFMEU believes that the industry has taken significant steps to improve its ability to employ indigenous people.

- In some case the increased flexibility that employers have been prepared to offer indigenous people (eg extended periods of leave for family business) could usefully be extended to all workers as part of increasing the pool of people willing and able to do resources jobs.

The Discussion Paper does identify the main problems with increasing indigenous employment on page 32. However, many of these problems have been exacerbated by the unreasonable expectations placed on mineworkers by resources sector employers. As identified later in the paper, the industry has a poor record of employing school leavers and those without formal qualifications. The industry has unrealistic expectations that people will pay for their own training prior to obtaining employment in the industry.

Further, the industry has imposed extreme and unsustainable working hours and rosters on large sections of the workforce, and it is therefore hardly surprising that most indigenous people cannot meet the requirements. Most other Australians can't meet the requirements either!

So it is not just a matter of improving the capacity of indigenous people to be employed in the resources sector; it is a matter of improving the capacity of the industry to employ a more diverse cross-section of Australians who require far more reasonable working hours, rosters and flexible working conditions than the industry has hitherto provided.

4.5 Older workers, the underemployed and mobility

In the following Section 5, we note that 10,000 applicants applied for 52 jobs with Rio Tinto at its Clermont mine in Queensland in March 2010. There is no shortage of potential applicants for many resources sector jobs, even if many have no previous experience ('cleanskins') and might not be suitable for the particular jobs advertised.

Persons living outside the remote resources sector areas must be given the opportunity to apply for and be considered for the emerging positions. As well as physically fit and younger age groups, this includes older workers and the underemployed – both groups having expanded in number through the GFC. While the proportion able to perform some mining jobs will probably be small, there will be some who are capable (even with minimal training). They should not be denied the chance to be considered - and must be considered before employers look to migration solutions.

The costs of job search and relocation are significant, especially before a firm job offer is on the table. The CFMEU believes some form of financial assistance should be provided to overcome these cost barriers, building on the modest assistance provided by the Commonwealth in a pilot program in 2007.

The CFMEU believes that in determining the level of assistance for intrastate/interstate mobility, the Commonwealth and State governments should take into account the level of financial assistance that 457 employers are prepared to expend on recruitment and settlement of 457 visa workers and their families from overseas.

5 Education and training to supply the right skills

Questions 15-30 in the Discussion Paper cover these issues. They can be considered under the following broad areas:

- Understanding future skills requirements in the resources sector (Q15)
- Apprenticeship and trade training
- Unaccredited training

Before doing so, we provide some introductory comments.

5.1 Introduction

The shortcomings of the industry with respect to making an adequate contribution to the supply of needed labour are amply demonstrated at page 43 of the Discussion Paper:

Most come to the sector already qualified. Although the sector does not generally assist people to obtain an initial qualification there are exceptions in some apprenticeship areas and for some indigenous students.

The sector generally has high profit margins and high value-added per employee. It is abundantly capable, if it so chooses, of making a major commitment to training new entrants to the industry. Instead there is an entrenched culture of entitlement by senior management; the industry has an expectation that people will pay for their own initial training and/or that other industries (and other countries, in the case of migrants) will provide the workers that the Australian resources sector needs.

The history of industry training in the resources sector is illustrative in this regard. It was the CFMEU's experience that, while industry training through SkillsDMC and its predecessors is now embraced, the employers had to be dragged in reluctantly.

The coal sector was the first to have formalised industry training arrangements. Not because it was the area of highest need (it tends to have more experienced workers and lower turnover than other parts of the resources sector) but because the CFMEU is strongest in coal.

There was substantial employer resistance, even to the notion of formal skills accreditation. Employers preferred to have informal site training that left workers without portability in their qualifications.

The metalliferous mining sector followed the coal sector after some years – even though it had the larger problem with attracting and retaining skilled labour.

A similar story applies in the construction sector. The CFMEU was instrumental in establishing industry training funds (discussed further below) and union-operated training centres today play a major role in delivering construction training that industry genuinely needs.

In the resources sector, it may be interesting to compare the practices of with that of the Australian Defence Force (ADF). Both face the need to recruit and retain workers who are required to be very

flexible and tough in terms of relocating to remote locations, undertaking postings in harsh and hazardous environments, and achieving and maintaining high levels of physical capability.

The ADF makes an extensive commitment to training its recruits and providing formal qualifications. Indeed that is one of its marketing tools. Further, it provides extensive housing options and extensive services to its members.

What does the resources sector do? Anecdotal evidence is that it often seeks to poach skilled workers from the ADF. The human capital investment made by the publicly funded armed services in its members is appropriated by the highly profitable resources sector through the simple device of a high wage offer.

Another example demonstrates that the industry is not yet serious about making use of the available pool of potential workers through making a greater commitment to training and providing better jobs (ie jobs that are more do-able by more people).

The online industry journal International Longwall News reported on 11 March 2010 that Rio Tinto had 10,000 applicants for 52 new jobs at its Clermont mine in Queensland. The vast majority of these would be considered as unsuitable for employment in the resources sector due to not possessing sufficient skills, physical capabilities, aptitude and family situation.

This example shows that there are many people in Australia interested in employment in the resources sector but that the jobs the industry is providing exclude them. Fundamentally what is needed is to redesign the mining jobs – and the associated benefits and lifestyle – so that the work is able to be undertaken by more Australians.

This must include a far greater commitment by the industry to providing basic training and qualifications to new entrants.

5.2 Understanding future skills requirements in the resources sector

As proposed earlier in this submission, projections of future skills and labour needs should be carried out by Skills Australia or under its auspices.

National and state-based industry skills councils (ISCs) conduct regular environmental scans to understand future skills requirements with their jurisdictions. It would be prudent to use the work already undertaken by the ISCs, as a starting point.

Confidential data submitted by resources firms can be added to these, to allow forward projections and a timetable of labour and skills needs. These can be developed, based on alternative scenarios of project start times and completion dates,

The CFMEU does not accept that the aim of this exercise of projecting future needs is to “best allow the market to match skills requirements to available work opportunities” (Discussion Paper, p49, Q15). There will be times when the government should intervene in this market, in the national interest. For example, if necessary the government should influence the start date and sequencing of proposed new projects so that skilled labour completing other projects are available for the new project.

5.3 Apprenticeship and trade training for the resources sector

The Discussion Paper (Q17) asks what reforms would make the apprenticeship more sustainable for the resources sector and less vulnerable to shifts in economic demand; and how can apprenticeship completion rates be improved?

Given that much of the resources sector, like the construction industry, is project based it makes sense for the sector to make maximum use of the existing group training apprenticeship schemes. This will help apprentices find new employers when projects finish before the end of an apprenticeship. This should also help improve apprenticeship completion rates

In addition, the CFMEU Construction Division produced a plan in 2005 addressing the issue of shortages and apprenticeships. Its main elements are still relevant today and are generally applicable to the mining sector as well. They are included in the following recommendation.

The CFMEU **recommends** that:

- Employers in the resources sector make maximum use of existing group training apprenticeship schemes. Additionally, the following measures are recommended -
 1. Introducing competency-based apprenticeships.
 2. Reducing the length of apprenticeships where the apprentice's competency can be proven early.
 3. Restoring the use of pre-apprenticeships (non award TAFE courses) making them the preferred pathway into apprenticeships, and ensuring apprentices are job ready from day one of their apprenticeship.
 4. Increasing apprentice wages. This may be less of an issue in the resources sector but must still be taken into account given the high cost of living in some remote areas.
 5. Establishing construction industry training funds in the resource states of NSW and the NT, along the lines of those already established in other States. These are financed by a levy (of up to 0.25%) on building and construction projects over a specified minimum value – see also next sections.
 6. Instituting proper auditing of training providers and employers beyond paper audits, to ensure that apprentices possess the necessary competencies of their trade.
 7. Improving access to RPL in apprenticeships, including for older workers.

On-site training centres and training quotas

Given the remote location and project nature of most resource construction projects, we recommend trade training centres be established on site. The CFMEU sees this as an appropriate model of trade training for the resources sector generally. We cite the example of the construction of the Stanwell Power Station in Rockhampton Queensland during the early 1990's – which incorporated an on-site trade training centre - as a good example of this approach.

If our recommendations regarding the establishment of onsite training centres are implemented, then FIFO arrangements should have limited impacts on apprenticeships, training and skills development. Without onsite training centres, FIFO workers would be required to travel out of work hours travel to existing TAFEs, effectively preventing training from occurring.

As well, the CFMEU supports a training quota requirement on workforce hours of 10%, this quota to be achieved through the employment of apprentices and upgrading the skills of other workers; and apprentice quotas.

The CFMEU **recommends** that:

- employers in the resources sector establish on-site trade training centres (infrastructure plus trainers), integrated into major resources projects. Skills audits of their workforces to identify the existing skills gaps at enterprise and industry level can then be undertaken, and on-site training tailored to fill those gaps.
- employers in the resources sector be subject to training quotas on construction projects in the resources sector, equal to 10% of workforce hours.
- legislation be introduced requiring all employers in the resources sector to maintain ratios of qualified apprentices to tradespersons. This should be in the ratio of 1:10 as per the recommendation of the COAG Apprenticeship Taskforce for the Building the Education Revolution Stimulus Package, with targets adopted beyond this to encourage women and indigenous people into the resources sector.

Resources sector training fund

In the Discussion Paper, Q28 deals with funding arrangements to create an appropriate balance between government and the resources sector (including contractors) regarding funding contributions to education and training (noting that training facilities for advanced process operations may require specific expensive facilities).

As noted in point 5 in the preceding recommendation, it is unacceptable that in 2010 NSW and the NT still have not instituted a construction industry training levy to assist construction employers with their training arrangements. They should not be allowed to avoid their responsibilities any longer. The processes of COAG should be used to ensure that all states and territories operate training levies with arrangements harmonised to ensure highest standards and best practice in these schemes.

In relation to the mining component in the resources sector, currently there is no mechanism similar to the construction industry training levy.

The CFMEU believes that resources sector employers should be legislatively required to contribute to industry training funds, to support a much larger apprenticeship and training effort. There is demonstrated industry need for increased training, and it is unarguable that resource sector companies are extremely profitable on average and can afford to accommodate an industry-wide training levy.

There are several options for raising such funds. The CFMEU favours the option of fixing a percentage of mining royalties to be directed to the training fund, with the fund administered through SkillsDMC, the existing tripartite Industry Skills Council for the sector.

Our view is that collective industry approaches work most effectively and are generally the preferred option. We also note that governments already largely fund the TAFE sector.

The CFMEU **recommends** that:

- a resources sector industry training fund be established through legislation, financed by dedicating a percentage of mining royalties to the training fund, the fund to be administered through SkillsDMC.

Alternative models of trade training

The Discussion Paper asked (Q18) whether there are alternative trade training models that might be trialled in the resources sector.

One such alternative is largely institution-based VET training for the trades. This model is advocated by many in the VET training sector. This model has also been attempted for overseas students on a large scale in the case of cooks and hairdressing, and on a smaller scale in the case of some construction and resources sector trades (eg, bricklaying, carpentry, wall tilers, and automotive mechanics in some states).

The CFMEU is strongly opposed to institution-based VET training for the trades, except where it is a recognised pre-apprenticeship program leading to an apprenticeship program. This applies to courses for both Australian residents and especially overseas students. Our main objection is that experience has consistently shown that trade skills cannot be achieved to the required level of competency through this training method.

However, as previously stated ¹³, the CFMEU is particularly opposed to any suggestion that onshore VET “trade” courses will be set up for overseas students in trade occupations, such as those identified in the new Skilled Occupation List or SOL, similar to the thoroughly discredited cooks and hairdressing courses. There were 22 trades occupations on the Skills Australia March 2010 list, many relevant to the resources sector.¹⁴ Training in these trades may be a pathway to a skilled PR visa.

The CFMEU opposes any arrangement under which overseas students train in trade skills in Australia, with the incentive of obtaining a skilled PR visa. This is a recipe for unfair competition for entry-level jobs and driving down wages.

As the CFMEU also said in 2009, there should be a review of whether VET “trade-level” courses involving some workplace-based training are an appropriate form of training to be even offered to overseas students.

When cyclical downturns inevitably occur, job opportunities for new entrants are the first to suffer. This means Australian young people and would-be apprentices have to compete for a shrinking number of entry-level jobs. This further raises the barriers for groups such as Indigenous Australians and disadvantaged young people, whose job market position is already precarious. Young Australians will be doubly disadvantaged, if they also have to compete in downturns against

¹³ CFMEU Submission on the 2010-11 Migration Program, February 2010.

¹⁴ Skills Australia, *Designated Skilled occupations*, 5 March 2010.

overseas students requiring work experience to achieve their Australian qualifications, both those seeking PR visas and those not.

This has been the actual experience of young Australians in the post-GFC downturn, where the number of 15-24 year olds in work fell by 100,000 in 12 months. But during the same time, the Rudd government granted hundreds of thousands of visas with work rights to temporary residents competing in the same job market, under uncapped visa programs. As our 2009 submission said:

This is an issue for VET trade courses not just for the current downturn, but for the future generally, because periodic cyclical downturns are inevitable. An international VET growth strategy that emphasizes employment-based training courses for overseas students is therefore inevitably a high-risk option for the domestic population and workforce.¹⁵

The CFMEU **recommends:**

- the Commonwealth government publicly and firmly reject the proposal that overseas students can undertake onshore VET “trade” courses for the resources sector, and/or to acquire Australian work experience on 485 visas after completing their trade courses.

5.4 Non-accredited training

The Discussion Paper asks (Q22) how can the resources sector make the best use of the accredited and non-accredited (qualifications versus skills) training system (including Australian Apprenticeships) to prepare for its future skills needs?

The CFMEU is generally opposed to considering non-accredited training activity on the same footing as accredited training. In our experience in the construction and mining industries, non-accredited training is often provided by employers as a means of reducing the potential mobility of employees, by equipping them with non-transferable skills. This might serve the short-term interests of the individual employer, but it does not serve the interests of either employees or the wider industry. It can also reduce incentives to engage apprentices in formal training.

The CFMEU sees the accredited training system as the primary system to be supported and developed, and mandatory requirements for training as the best way for ensuring the resources sector makes the best use of this system.

¹⁵ CFMEU Submission to Review of Education Services for Overseas Students (ESOS) Act 2000, Nov 2009, p6.

6 Immigration

6.1 Introduction

The Discussion Paper is enthusiastic about the use of both temporary and permanent immigration to meet labour shortages in the resources sector.

The CFMEU finds it surprising that the resources sector does not consider that the extensive use of migrant labour is an indicator that, contrary to its public relations rhetoric, the industry is neither a good employer nor typically an “employer of choice”. (Naturally, some employers are better than others; this is a comment on average industry performance.)

The sector pays significantly above average wages, but has increasing difficulty in attracting and retaining skilled workers. The anecdotal evidence (anecdotal because the data is not properly collected, despite it being a major public policy issue) suggests that labour turnover is high, indicating that good wages alone are not able to make up for the poor quality of the jobs and lack of work/life balance. Throughout the issues paper there are admissions, almost inadvertent, that the industry does not train unskilled people, does not employ school-leavers, that FIFO working arrangements are problematic for many groups of potential workers, that mining towns have poor services (especially for families) and so on.

It is widely acknowledged that the sector has for decades preferred to poach tradespeople, engineers and other professionals from other industries. Now the sector seeks to extend that poor practice to poaching labour from other nations.

With respect to engineers and other professionals, it is apparent that it is difficult to recruit talent from other developed nations – for the aforementioned reasons. So the resources sector is increasingly seeking to recruit from developing nations such as South Africa, India and the Latin American region.

These nations and regions have their own development needs, including their own mining and resources industries. They find it difficult to fund the education and further development of their skilled workforce. The poaching of these workers by Australian industry is exacerbating the problems in many of these developing nations. It is arguably contrary to Australia’s Overseas Development Assistance goals to be providing such assistance on the one hand, whilst poaching skilled and professional labour on the other.

With respect to the importation of semi-skilled and trades-qualified migrant labour there is the obvious OHS problem of the adequacy English-language skills, and the knowledge of Australian standards with respect to building and construction, and mine operation.

Any necessity to use imported temporary labour for routine construction and production work should be seen for what it is – an admission of failure. It should be seen as a stop-gap measure to address critical shortages only, and only as part of a strategy to improve the capacity of the industry to recruit Australians who would be available to the sector if only the jobs were humanised.

6.2 Principles and issues

The CFMEU supports permanent migration but does not support employer-sponsored temporary skilled migration on the 457 visa, other than in exceptional circumstances.

The CFMEU supports the use of 457 temporary skilled visas where there is clear and objective evidence that skilled positions in the resources sector cannot be filled by Australians in a reasonable time frame, even after training to upgrade skills or relocation of Australian workers,

The Discussion Paper claims that 457 visa workers in the mining industry are highly paid on average, relative to 457 visa workers in other sectors.

While this is true, it is not the whole story in the case of 457 trades workers in the mining industry. Unpublished DIAC data shows that in 2008-09, significant percentages of these 457 mining trades workers on 457 visas were approved at considerably lower salaries. While 62% of visas in trades occupations (ASCO 4) in this sector were nominated at base salaries of at least \$75,000:

- nearly one-third (32%) were nominated at salaries of \$65,000 or less, including 20% at salaries of less than \$50,000.

These facts do not support claims that there should be no concern about 457 visa workers in the resources sector because they are so highly paid. The unpublished DIAC data in fact suggests that a significant minority of 457 visa tradespersons in this sector are not at all highly paid, and almost certainly were being paid below market rates in this sector.

If 457 visas are to be used in the resources sector, the CFMEU **recommends** that:

- the 457 visa position should be subject to Labour Market Testing (LMT), that is employers should be required to test the local (Australian) labour market first, advertising the position at market rates and conditions, and demonstrate that there are no qualified Australians who can do the work.¹⁶
- The CFMEU does not accept that LMT in the 457 visa is a breach of Australia's international trade commitments under WTO GATS.
- Labour Agreements for 457 visa workers are preferred, rather than individual employers proceeding as a "Standard business sponsorship" or an "accredited sponsor" (within the new 457 system being introduced later this year), with less onerous responsibilities, subject to certain changes to the Labour Agreement process, namely:
 - the matters on which proponents of labour agreements are required to consult unions be expanded to include remuneration and conditions of employment;
 - companies be required to have an employment and training plan to reduce reliance on "temporary overseas workers" over time; and
 - unions have a monitoring role in the Labour Agreement.

¹⁶ "Market rates" in this context means the average of collective agreement rates for the occupation concerned, in the State/Territory concerned.

- Regional Employment Authorities (REAs) be established to scrutinise trades 457 visa applications, as soon as possible.
- There must be a very high level of public disclosure about the operation of 457 visas in the resources sector, to win and maintain public confidence that Australians are not being excluded from the opportunities created in the resources sector. This includes details of positions filled by 457s, including location and wages and conditions. This could be managed through the tripartite structure, recommended earlier in this submission.

Employer-sponsored PR visas that can be cancelled

The RSMS or Regional Sponsored Skilled Migration Scheme (Subclass 119/857) is an employer-sponsored PR visa that is increasingly being used as the route to PR by 457 workers in the trades, of whom there were around 13,000 in Australia at end-February 2009. But this “permanent residence” visa can be cancelled by DIAC in certain circumstances. The DIAC website (accessed 12 February 2010) says that:

- The visa-holder must “remain employed in the nominated position in the regional area for at least two years”.
- “The visa may be cancelled if the employee does not comply with these obligations to complete the two year contract with the employer.”

The CFMEU understands that DIAC has on occasions exercised its discretion and cancelled (at the behest of employers) these so-called PR visas granted under RSMS. We consider that this is grossly offensive and the DIAC power to cancel RSMS visas on the above grounds must be removed.

It is completely unacceptable that an employer can effectively determine whether a worker can continue to hold a PR visa. This arrangement continues the state of virtual bondage to the employer that was such an objectionable feature of the original 457 temporary visa program. It places excessive powers in the hands of employers and completely distorts the bargaining relationship between employers and workers. It guarantees – under duress - compliance with employer-determined wages and conditions for the duration of the bondage period.

The CFMEU **recommends** that

- DIAC no longer have the legal authority to cancel the skilled regional PR visa, the employer-sponsored skilled PR visa for regional areas (the Regional Sponsored Migration Scheme or RSMS), simply on the basis that the visa-holder does not complete the two year contract with the sponsoring employer.

State- or regional-based visas

There have also been some suggestions that some temporary visas (even PR visas) be made conditional upon the visa-holder remaining within a designated State or regional area, or effectively with the employers within these areas. This suggestion raises some similar issues to the RSMS visa, considered above, depending on how broadly the “regional area” is defined.

The CFMEU believes that if the “region” is defined broadly, there might be some merit in the proposal for the resources sector, subject to strict safeguards to prevent exploitation. However, at this stage we have not considered this option further, as it would appear to be unenforceable and impractical.

7 Conclusions

The CFMEU is concerned that some sections of the employer community (and others at the political level) see the real solution to skills and labour issues in the resources sector as a temporary migrant workforce, brought to Australia as FIFO labour or otherwise, from Asia and elsewhere.

The Minerals Council of Australia, while not endorsing exactly this position, has said:

The minerals industry is dominated by multinational companies who have an international workforce. The skilled migration program needs to accommodate ready movement of workers into and out of Australia.¹⁷

The CFMEU hopes that concerns that the Australian government will allow this to occur are proven wrong. We believe that the Australian community will expect tangible and long-lasting benefits from development of the resources sector. A crucial element of these benefits will be the employment, training and advancement opportunities flowing to Australian workers and their families.

Our constructive proposals in this submission are designed to further that objective of capturing those benefits for Australians.

¹⁷ MCA submission to Skills Australia, November 2009, p12.

http://www.minerals.org.au/data/assets/pdf_file/MCA_News/MCA_Sub_Future%20Workforce_Nov09.pdf