



**CFMEU SUBMISSION TO HOUSE STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS - INQUIRY INTO REGIONAL SKILLS RELOCATION**

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

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## **1. Introduction**

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

## **2. Scope of our submission**

Our submission provides extracts from the CFMEU's recent submission to the NRSET Task Force on the Resources Sector which are relevant to the Committee's Terms of Reference, including the need for more serious efforts to find 'home-grown' solutions to our skills and labour problems, and correspondingly to reduce employer and government reliance on migration solutions.

I am happy to expand on issues in our submission, in evidence to the Inquiry, if the Committee so wishes.

## **3. Background**

The Terms of Reference for this Inquiry are:

To inquire into and report on the applicability of government employment policies to address the skills shortages in regional Australia focusing on opportunities to support the relocation of unemployed workers from areas of high unemployment to areas experiencing skills shortages.

### **Current relocation assistance**

According to the transcript of evidence to the Inquiry on 11 March 2010 (p17 and later), the Commonwealth has provided three forms of assistance:

- Standard relocation assistance to the unemployed through Job Services Australia (JSA).
- Pilot programs (2) of more substantial relocation assistance, commencing in November 2006
- Living-away-from-home allowances (LAFHA) for apprentices

### ***Standard relocation assistance and the pilots***

According to the transcript:

- The government's "prime means to assist relocation of the unemployed is through Job Services Australia", specifically an 'employment pathway' comprising a pool of money available to Job Services Australia providers 'to spend on job seekers on a range of things that will help them get a job, and that can include relocation'.

- The government is projecting 900 persons will use the relocation support component in 2009-10. The actual usage figure up to 11 March 2010 was 580, at an average cost of around \$730 a person.
- The main locations that people are moving from (so far) are Cairns, Hobart and the lower Hunter. It is not clear if the reason for this is that JSA providers in these areas are simply more active in promoting the availability of assistance to the unemployed.

The Commonwealth/DEEWR also ran two pilot relocation assistance schemes commencing in November 2006, the first running from November 2006 to February 2007. The main features of these pilot programs were as follows:

- The two high unemployment areas chosen to source job seekers in the first pilot were Coffs Harbour and the Shoalhaven in NSW - Northern Adelaide added later - and the work destination was Western Australia, primarily metropolitan Perth (not regional WA). Some also did fly-in fly-out arrangements from Perth to locations further north in Western Australia.
- Employers were sourced in the hospitality and construction industries. Some hospitality work was done on a FIFO basis to more remote areas.
- \$5,000 was available per person, not handed directly to them but managed through a co-ordinator and spent on relocation costs. It could cover items such as flying people over, finding temporary short term accommodation, paying for bonds and for furniture to be moved or stored back at home. The average cost was 'a bit over \$5,000'. It could be 'topped up' with monies from the standard relocation assistance available through JSA, described above.
- The maximum number of positions available on the trial was 130, but only 87 were ever filled. Of the 87 unemployed persons who relocated, 67 were still in Perth in November 2008 and 20 had returned to their home State.
- Job seekers were identified by going through the books of the Job Network.
- DEEWR reported that it was 'quite difficult' to find both employers in WA and job seekers elsewhere who were interested, 'willing, able, skilled and equipped to do this'. Employers, particularly in mining were mainly not interested (p7).

DEEWR has not completed a formal evaluation report on this pilot but has undertaken to provide the Committee with such a report. The CFMEU looks forward to seeing this evaluation report, particularly its analysis of efforts to relocate people to WA construction industry employers.

The following quote from a senior DEEWR official Ms Margaret Kidd in evidence is noteworthy:

As it played out, it was very difficult to get employers to engage in the pilot. While there was a lot of noise in the media about it, actually finding employers who said: 'Yes, I want to be in this pilot. I'll commit to providing jobs for these people,' it was really difficult for us. In terms of our job seekers,

we were looking for fairly low skilled work over in the west and the shortages, it was reported, tended to be more in the skilled area.<sup>1</sup>

### **Apprentices LAFHA**

Though not strictly relocation assistance, DEEWR officials noted the living away from home allowance that applies for three years for apprentices leaving home to take up a job. According to evidence, this 'is for trade apprentices as well as for Service Skills Australian apprentices. So, in year one it is \$77.17 a week, for year two it is about \$35 and then it goes to \$25 for year three.'

## **4. General comments**

The CFMEU considers that Commonwealth government should provide relocation assistance to help unemployed workers move from areas of high unemployment to regional areas experiencing 'skills shortages'. But that assistance should not allow employers in these regional areas to avoid their responsibilities to provide financial assistance to help Australian workers relocate to where the jobs are.

The CFMEU set out its position in a recent submission to the National Resources Sector Employment Task Force (NRSET). While specifically addressing issues in the resources sector (ie resource construction and mining), our views on relocation assistance apply more broadly to regional skills relocation in general.

As stated in our NRSET submission, the CFMEU is concerned that some employers (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 (Fly-In, Fly Out) labour or otherwise, from Asia and elsewhere.

The CFMEU believes we need a serious Jobs and Training Plan to make sure all Australians benefit from developing opportunities in the resources sector, because the sector has a very poor track record. It relies excessively on importing temporary overseas workers on 457 visas,<sup>2</sup> it has created de-humanised working conditions and has ignored its training obligations in entry-level training, preferring to poach qualified tradespersons trained in other industries.

Further key points in our submission were as follows:

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.

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<sup>1</sup> Transcript, House of Representatives Standing Committee on Employment and Workplace Relations (Reference: Regional skills relocation), 11 March 2010, p3.

<sup>2</sup> Mining represents only 1.5% of total employment, but accounts for 8% of all 457 visa grants (Source: NRSET Discussion Paper *Resourcing the Future*, March 2010, p35).

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.<sup>3</sup>

Secondly, our submission also recommended that access to 457 temporary skilled visas for resources companies only be available where there is clear and objective evidence that skilled positions in the resources sector cannot be filled by Australians in a reasonable time, even after training to upgrade their skills *or relocation of Australian workers* (emphasis added), and:

- All 457 visa positions to 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 genuine market rates and conditions, and demonstrating that there are no qualified Australians who can do the work.

### **Expenditure by 457 employers**

A 2007 report from the Joint Standing Committee on Migration (JSCM) reported that evidence from business and employer representatives put the cost of 457 “sponsorship” at between \$10,000 and \$31,000 in 2007 dollars.

The cost of sponsorship was variously estimated as between \$14,000 and \$31,000 (ACCI), around \$25,000 (Baker Hughes Australia), some \$15,000 (Australian Mines and Metals Association) and about \$10,000 (Austral Ships).<sup>4</sup>

The JSCM report did not detail exactly which costs and parts of the total process – sponsorship, nomination, recruitment, relocation and settlement - were included in these various cost estimates. Some estimates may have included costs which are no longer in the obligations of sponsoring employer following the 14 September 2009 reforms to the 457 visa program, eg responsibility for private health insurance premiums for the 457 visa-holder and family members has now been shifted to the visa-holder.

The 2008 Final report of the 457 visa Integrity Review conducted by Commissioner Barbara Deegan (the Deegan report) did not provide updated estimates of 457 employer costs, but did refer to ‘the

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<sup>3</sup> CFMEU submission to NRSET Task Force, 13 April 2010, p19.

<sup>4</sup> Joint Standing Committee on Migration (JSCM), *Temporary migrants....permanent benefits: ensuring the effectiveness, fairness and integrity of the temporary business visa program*, August 2007, p78. The names of the organisations listed in the quote were footnoted in the JSCM report.

substantial costs employers incur in bringing Subclass 457 visa holders into the country'. The report also said:

Many employers who sponsor Subclass 457 visa holders expend considerable amounts of money to do so. Some stakeholders have noted that the fact that this money has been outlaid gives some sponsors the impression that they have a claim or entitlement to the visa holder's services.<sup>5</sup>

The CFMEU notes that the costs to employers associated with recruiting 457 visa workers will vary greatly, depending on (among other things) whether the visa holder is recruited from offshore or is already in Australia (onshore). Some employers sponsoring 457 workers onshore will have only negligible additional costs compared to recruiting Australian resident workers. This will be the case for employers already employing the foreign worker on another temporary visa (eg, a Working Holiday visa) and simply shifting the worker to a 457 visa.<sup>6</sup> The government now also allows 457 visa holders to change employers without the cost of obtaining a new visa.

The Committee might wish to pursue this further with DIAC and others, to derive more accurate information on the range of costs and "average cost" to 457 employers in regional areas of employing 457 visa workers.

## **5. Regional skills shortages and government migration policies**

Government immigration policies especially employer-sponsored visas are effectively 'employment policies to address the skills shortages in regional Australia', as per the Inquiry's terms of reference.

The main relevant policies are the two employer-sponsored visas, the 457 visa program for temporary skilled workers, and the RSMS or Regional Sponsored Migration Scheme (visa subclasses 119 and 857), the permanent residence (PR) visas. (Another employer-sponsored visa, the ENS or Employer Nomination Scheme can also be used by regional employers, though its standards are more onerous than the RSMS visa; and several so-called regional visas exist for independent or non-sponsored migrants.)

The CFMEU believes that the central issue for this Inquiry of regional skills shortages and relocation assistance cannot be adequately addressed without considering these visas and related policies.

Government policies in relation to these employer-sponsored visas influence the relative attractiveness to regional employers of alternative solutions to their skills and labour needs. If it is relatively more easy and more profitable to access migrant labour on employer-sponsored skilled temporary or permanent visas (compared to the alternative of training or relocating Australian workers), then some employers will choose the visa options.

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<sup>5</sup> Commissioner Barbara Deegan, *Final Report - Visa Subclass 457 Integrity Review*, October 2008, p66.

<sup>6</sup> In 2008-09, around 39% of all 457 primary visa grants in the trades occupations (ASCO 4) were made to persons already in Australia on various temporary visas (Source: DIAC, unpublished data).

This is the case in the 457 visa and the RSMS visa. While the Rudd Labor government has made some improvements to the 457 visa, significant shortcomings remain in these programs.

The effect of these shortcomings is that in 2010, substantial incentives still remain for regional employers to choose the migrant solution (temporary and permanent) over the 'home-grown' solution of recruiting, training or relocating Australian workers to do the work. In particular;

- There is no Labour Market Testing (LMT) in the 457 visa and only limited LMT in the RSMS, that is there is no requirement in either visa for employers to show they have tested the local labour market at market rates and conditions and have not been able to find suitable Australian workers.
  - Since the September 2009 'reforms' to the 457 visa program, there is no longer any requirement on employers to undertake Labour Market Testing before 457 visas are granted in regional areas.
- There is no requirement to pay genuine market rates to visa holders. In the 457 visa, employers must now pay the 457 'market rate', defined as the same rates of pay and conditions applying to an equivalent Australian worker at the same workplace – that is, the enterprise rate not the rate applying in the broader market or the average rate in collective agreements.
  - In the RSMS visa, there is no market rate requirement at all – employers are simply required to state that the visa holder will be 'employed on a salary and working conditions that accord with the relevant Australian legislation and awards'.<sup>7</sup>

In addition to these incentives for regional employers to employ migrant labour on these employer-sponsored visas, employers have a further incentive because workers wanting PR visas as the ultimate goal are effectively captive labour. In the case of 457 visa workers seeking employer-sponsored PR visas, employees without recognised experience must work for 2 years in Australia including the last 12 months with their sponsoring employer.

As shown later in this submission, even workers granted PR visas through the RSMS are also captive labour because their so-called 'permanent residence' visas can be cancelled if they do not remain with their regional sponsoring employer for 2 years.

The evidence for the extent to which regional employers have opted for migrant solutions is summarised below.

### **5.1 Regional employers use of 457 visas**

In 2008-09, DIAC unpublished data shows that at least 28% of all 457 primary visa grants in the trades occupations (ASCO 4) were for positions located outside capital cities (2,110 out of 7,600). This almost certainly understates the true proportion of 457 visas in trades positions granted for

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<sup>7</sup> DIAC, *Employer-sponsored Migration*, Booklet 5, Form 1131, November 2009 version, p22.

employers in regional areas. Some companies headquartered in a capital city (eg a mining company) intend their 457 visa holders to work in regional areas.

- Nearly 70% of all 457 trades positions outside capital cities were located in just 2 States – Queensland (44%) and WA (25%).

**Salaries paid to 457 trades workers in the mining industry**

The CFMEU submission to NRSET presented some information on this subject. It is also relevant to this present inquiry because the 457 trades workers employed in mining will nearly all be in regional areas of Australia.

The NRSET Discussion Paper claimed that 457 visa workers in the mining industry are highly paid on average, relative to 457 visa workers in other sectors. The CFMEU submission commented:

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:

- o 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.<sup>8</sup>

Table 1 shows in detail the wages data referred to above.

Salary range	Visa grants	%				
\$49,999 or less	193	20.1				
\$50,000 to \$64,999	115	12.0				
\$65,000 to \$74,999	62	6.5				
\$75,000 or over	590	61.5				
Total	960	100				
Source: DIAC unpublished data.						

<sup>8</sup> CFMEU submission to NRSET Task Force, 13 April 2010, p27.

## 5.2 Regional employers use of the RSMS visa

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 2010. At least 50% of 457 visa-holders in the trades convert to PR status, many using the onshore RSMS visa subclass 857.

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.

Unpublished DIAC data obtained by the CFMEU confirms that a relatively large – and increasing - number of 457 tradespersons are using the onshore RSMS visa, but that the visas are being approved at relatively low wages.

- In 2008-09, a total of **1,037** RSMS visas were granted in trades occupations (ASCO 4) in Australia, comprising 872 in the onshore visa 897 and 165 in the offshore visa subclass 119.<sup>9</sup>
- Between 1 July and 31 October 2009, there were 1,244 primary visa grants in trades occupations (ASCO 4) in ENS and RSMS combined, of which 436 were in RSMS visa subclasses. This is equivalent to an annual rate of around **1,310** in RSMS and 3,732 in ENS/RSMS combined.
- The median nominated base salary of trades workers granted RSMS visas in the first four months of 2009-10 was only \$43,440 per year. This is below the 457 MSL which operated from 1 July

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<sup>9</sup> There were also over 130 RSMS visas granted to persons in sub-trades occupations (ASCOS 5-9), including Miners, Scaffolders, and Train and truck drivers.

2009 until 14 September 2009, and which has been reclassified as the new Temporary Skilled Migration Income Threshold (TSMIT) for the 'reformed' 457 program (\$45,220).<sup>10</sup>

DIAC said in February 2010 that there is to be a review of the employer-sponsored PR visas including the RSMS, but so far none has been announced.<sup>11</sup>

## 6. Conclusions and Recommendations

The CFMEU's main conclusions and recommendations are as follows:

1. The Commonwealth government should provide relocation assistance to help unemployed workers move from areas of high unemployment to regional areas experiencing 'skills shortages'. But that assistance should not allow employers in these regional areas to avoid their responsibilities to provide financial assistance to help Australian workers relocate to where the jobs are.
2. Commonwealth assistance should not be restricted to unemployed persons, but should also be made available to employed persons willing to move to regional areas. In principle, the level of financial assistance for employed persons could be less than for unemployed persons.
3. The forms of Commonwealth assistance and amounts of monetary assistance should be based on realistic assessments of the actual costs incurred by relocating workers and their families. As a benchmark, the Inquiry should look to the level of relocation assistance the Commonwealth government provides to its own employees, including assistance provided to members of the ADF compared with that provided by mining companies and other regional employers.
4. In framing its relocation assistance, the Commonwealth should also take into account the level of financial assistance that employers sponsoring 457 visa workers are prepared to expend on recruitment and settlement of 457 visa workers and their families from overseas.
5. The Commonwealth's relocation assistance could also be modelled on the 'Try before you buy' approach, which the Commonwealth enthusiastically supports in its employer-sponsored skilled migration program.
6. Changes to the government's employer-sponsored immigration programs are needed, to remove the easy option of employers having recourse to captive migrant labour on the 457 visa and the RSMS visa. In practical terms, this means:
  - In the 457 visa, re-introducing Labour Market Testing at genuine market rates and conditions; and enforcing strict training obligations on 457 employers.
  - In the RSMS visa, introducing Labour Market Testing at genuine market rates and conditions; and removing the current discretion which DIAC has to cancel this so-called 'permanent' visa

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<sup>10</sup> According to the DIAC website, "The TSMIT is set at that level to ensure that all Subclass 457 visa holders have sufficient income to independently provide for themselves in Australia."

<sup>11</sup> DIAC, *Review of the General Skilled Migration Points Test - Discussion Paper*, February 2010.

simply on the basis that the visa-holder left the sponsoring employer within 2 years of the granting of the visa.

- Establishing the Regional Employment Authorities (REAs) to oversee both regional 457 visas and RSMS visas, with a tripartite structure (government, union and employer), as promised in the ALP Platform of 2007 and confirmed again in the 2009 Platform