



CFMEU SUBMISSION TO SENATE LEGAL AND CONSTITUTIONAL COMMITTEE

INQUIRY INTO MIGRATION AMENDMENT (VISA CAPPING) BILL 2010

By email: legcon.sen@aph.gov.au

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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 Inquiry into the *Migration Amendment (Visa capping) Bill 2010* (the Bill).

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.

Based on the Bill, the Second Reading Speech and Explanatory Memorandum, the essential features of the Bill are stated as follows:

- It is intended to give the Minister for Immigration and Citizenship (the Minister) 'greater power to effectively manage the migration program'.
- The amendments proposed will enable the Minister to cap visa grants and terminate applications based on the class or classes of applicant applying for the visa, ie applicant 'characteristics' (versus the current power to cap visas or terminate applications only for a particular visa class or subclass in its entirety). These characteristics include, but are not limited to, the *occupation* nominated by the visa applicant.
- It is required partly because non-sponsored places in the skilled migration program are declining due to the government's priority to support employer-sponsored migration or 'demand-driven' migration in its terminology. (The skilled migration program includes the General Skilled Migration program or GSM plus other skilled visas.)
- The 'primary policy imperative' is to end ongoing uncertainty faced by GSM applicants whose applications are unlikely to be finalised because their skills are not in demand in Australia.
- The proposed amendments will limit the number of GSM visas able to be granted to applicants whose occupations are in oversupply.
- It will also provide a power to cap and terminate not only GSM visas but 'all aspects of the migration program' with the sole exception of protection visas.

2. Our position

The CFMEU supports the Bill, for the reasons set out in the following sections.

The CFMEU does not support the government's priority to employer-sponsored skilled migration (temporary or permanent). However, our support for the Bill does not depend on whether government policy gives priority to employer-sponsored or independent skilled migration.

The CFMEU believes the government's priority on employer-sponsored migration, both temporary and permanent, is misguided and damages the interests of Australian working people. The main

employer-sponsored visas are the 457 temporary visa and the employer-sponsored permanent residence (PR) visa programs, the Employer Nomination Scheme and the Regional Sponsored Migration Scheme.

Employer-sponsored visas involve governments 'outsourcing' skilled migration decisions to employers when these decisions should be made by the national government; and most do not require employers to show that qualified Australian workers are not available, at market rates.

Employers have greatly disproportionate bargaining power relative to sponsored migrant workers, especially those on 457 temporary visas anxiously seeking employer-sponsored PR visas. Some regional employer-sponsored PR visas can even be cancelled if the worker leaves the employer within two years of the visa grant.¹

3. Reasons for supporting the Bill

The CFMEU's support for the Bill is based on the following considerations.

1. The Australian government must have the power to effectively manage the migration program. At present the government does not have that power. This Bill will give the government more power to control the number and characteristics of persons entering, living and working in Australia on most visa classes, though it does not guarantee that the power will be exercised.

Australia's national government must be able to control total permanent and temporary migration numbers because these largely determine our population size and growth rate, and have potentially significantly impacts on the Australian labour market.

Australia's population grew at an annual rate of 2.1 per cent, the highest growth rate recorded in the developed world according to the latest ABS figures. Most of that growth was due to Net Overseas Migration (NOM) of nearly 300,000 persons; and of that, most was contributed by uncapped temporary migration.

Australia's skilled migration program in particular must serve the interests of the Australian people (citizens and residents). The program cannot be justified unless it benefits the existing population. This Bill will give the Australian government power to do that more effectively and deal more effectively with oversupply.

The present situation whereby a large and growing onshore population of young temporary residents with work rights has been allowed to build up, when 100,000 jobs for Australian young people disappeared during the GFC, is unacceptable.

The consequences of this uncapped growth are not just intense competition in the job market but in rental housing markets for low-income people as well, to the detriment of young Australians.

¹ The Regional Sponsored Migration Scheme (RSMS, or visa subclasses 119 and 857) can be cancelled by DIAC for this reason. See CFMEU submission to Regional Skills relocation inquiry (No 24, p10), link here - <http://www.apf.gov.au/house/committee/ewr/regionalskills/subs.htm>

2. In relation to the GSM, we particularly support giving the Minister the power to cap and terminate the number of skilled visa applications by **occupation**.

The CFMEU has strongly supported giving the Minister the power to set occupational caps on the number of GSM visas that can be granted each year, in submissions to various reviews of aspects of the GSM over the last few years.

It makes good sense for the Australian Immigration Minister to have this power. This power and its exercise might have prevented the fiasco of the cooks and hairdressers, and the earlier example of overseas IT graduates from Australian universities flooding the IT graduate job market in the early 2000's, to the detriment of Australian IT graduates.²

The CFMEU also sees this power as necessary to help prevent a repeat of the cooks/hairdressers situation in VET building trades courses for overseas students, and similar courses in other trades.

The government has placed a large number of building trades on the proposed new Skilled Occupations List (SOL) for independent skilled PR visas under the GSM.³ It did so after accepting advice from Skills Australia, the basis of which has not yet been published. Some States (eg Victoria and WA VET colleges) are already running these courses for overseas students for tilers and in bricklaying, and have proposed similar courses for carpenters.

Providing the Minister with the power to impose a cap on the total number of skilled PR GSM visas available by occupation will help control – and hopefully dampen – excess international student demand for these courses. Graduates of these courses will be competing with Australian apprentices and young tradespeople for limited opportunities. There is high risk that the international graduates will also drive down wages in their desire to get the jobs needed to secure PR visas.

3. It is appropriate that the Minister should have the power to terminate visa applications and treat them as never having been made; and further, that the Minister should exercise this power in relation to cooks and hairdressers (and possibly other occupations) currently in oversupply.

The rights of GSM and other visa applicants cannot be viewed in isolation and must be balanced against the rights of Australians citizens and permanent residents.

While it would have been preferable if decisions had been made earlier to prevent excess applications being made, the fact is that a large 'pipeline' of applications in surplus now exists and that problem must be dealt with.

The CFMEU believes that persons who apply for a skilled visa in particular occupations are generally entitled to have their application considered under the rules applying at the time of application.

² See Bob Kinnaird, "Current issues in the skilled temporary subclass 457 visa", *People and Place*, vol. 14, no. 2, 2006, pp 49-65.

³ Of the 38 trades occupations on the proposed new SOL, 25 are construction industry trades.

However, broader public policy considerations sometimes justify departing from this general principle, for example if it would result in significant adverse impacts on Australian residents or if circumstances in Australia change.

The CFMEU therefore supports the Minister's stance that these visa applications should be terminated, on the basis that they are in oversupply.

The CFMEU rejects the option of allowing these applications to proceed and GSM visas to be granted, despite the oversupply in these occupations. This option will damage the interests of Australian residents competing in the same job and training markets.

Employment and training opportunities in service trades such as cooking and hairdressing must be preserved for young Australians, partly because manufacturing is in long-term decline as are training opportunities in such industries.

4. In relation to non-GSM visas, we also support the Minister having the power to 'cap and terminate' these as provided for in the Bill.

We note that the Explanatory Memorandum states that with the sole exception of protection visas, "the proposed amendments could apply to all visa classes, subclasses or streams within a subclass", and that the purpose of providing a mechanism not limited to the GSM is:

to provide the government with a tool for the targeted management of all aspects of the migration program which will be available as the need arises.⁴

This is misleading in that in addition to protection visas, the government also maintains that it is not able to impose a cap in the 457 visa program, either in terms of total visa grant numbers or by particular occupations, as it proposes to do in the GSM.

The CFMEU understands that the government's position is based on its interpretation of Australia's international trade obligations under the 1995 World Trade Organisation General Agreement on Trade in Services (WTO GATS). But this was not mentioned in the government's most comprehensive recent statement on the implications of international trade obligations for the 457 visa.⁵

The CFMEU believes that the Australian government should have the power to impose caps by occupation in the 457 visa, and that the present Bill should apply to that visa subclass.

It would be useful if the Committee could clarify and report on this important issue.

⁴ The Second Reading Speech also states this position.

⁵ The Government's Response (dated 10 September 2009) to the Report of the Joint Standing Committee on Migration, *Temporary visas... Permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program*, pp11/12.<http://www.aph.gov.au/house/committee/mig/457visas/report/gov%20response.pdf>

Further, we note that the Minister has also stated that ‘the Rudd Government has no intention of putting a limit on the number of international student visas issued each year’:

The Rudd Government has no intention of putting a limit on the number of international student visas issued each year, Minister for Immigration and Citizenship, Senator Chris Evans said today.

‘The proposed legislation is designed to provide flexibility in the management of the general skilled migration program and to ensure we are able to get the balance right when it comes to targeting the skilled workers we need.

‘The legislation, which was introduced into Parliament last month, will allow the Government to control the numbers of visas issued in certain occupations if necessary but will not have any impact on students wishing to come to Australia to study.’⁶

The CFMEU understands that the Minister’s statement above is directed to allaying concerns in the international education sector. However, our view is that it is unwise to rule out the option of placing a cap on international student visas in the future, as a whole or in certain categories.

In some circumstances, it may be good policy in Australia’s interests to place such a cap on international student visas.

In fact, it is arguable that had such a cap been placed on international student visas for study in VET cooking and hairdressing courses in 2007 or 2008, then the present fiasco may not have been allowed to develop.

4. The threat of staying on illegally

The CFMEU also notes that some submissions to the Inquiry have argued that the provisions of the Bill applying ‘cap and cease’ to existing visa applicants should not be passed, because ‘the majority’ of these persons who are already in Australia will ignore the new laws and stay on as ‘illegal immigrants’.

Thus as one submission put it:

2) The other definite problem Australia will face is of illegal immigrants. Where the lodged applications will be cancelled, majority of the applicants will not be returning to their country and will stay illegally in Australia. Australia would then become like one of the European countries or America having illegal immigrants. To avoid this problem you should not cancel the applications that have been lodged but should not take any further applications that have not yet been lodged. This will both benefit Australia and the applicants.⁷

⁶ Senator Chris Evans, Minister for Immigration and Citizenship, media release “International students welcome in Australia”, 19 June 2010.

⁷ Submission No 12 to Committee Inquiry into Migration Amendment (Visa Capping) Bill 2010, dated 29 June 2010 (sic), Name withheld.

The threat to stay in Australia and to work as illegal immigrants should be explicitly and strongly rejected by the Committee. Australian migration laws and policy should not be made in response to threats, as a matter of principle.

Illegal immigration threatens the wages and working conditions of Australian workers, and also temporary residents working lawfully in the Australian labour market.

As well, it disadvantages employers doing the right thing and complying with industrial laws and agreements. Illegal workers are vulnerable workers with no bargaining power. Employers of illegal workers can undercut their competitors and gain an unfair competitive advantage.

The CFMEU notes that the Minister has recently commissioned a review of the adequacy of penalties provided under the *Migration Amendment (Employer Sanctions) Act 2007* for employers and labour hire firms using or engaging illegal workers.⁸ Threats such as those quoted above underline the importance of this review and should be brought to its attention.

5. Conclusion

The CFMEU believes this is an important Bill which should be supported, for the reasons outlined.

⁸ Senator Chris Evans, Minister for Immigration and Citizenship, media release, “Illegal hire firms must face prosecution”, 21 May 2010.