16 July 2010

The Director
Deregulation Strategy Section
Department of Immigration and Citizenship
PO Box 25
BELCONNEN ACT 2615

By email: deregulation@immi.gov.au

Dear Director

RE DIAC Discussion Paper 'Simpler visas – Creating a simpler framework for temporary and permanent entry to Australia', June 2010

The Construction, Forestry, Mining and Energy Union of Australia, (CFMEU) welcomes the opportunity to comment on this Discussion Paper.

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 Discussion Paper and accompanying media release say that 'the government will reduce the number of temporary work visas by 50 per cent by 2012', and by 2015, reduce the total number of visa subclasses by 50 per cent.

The Paper says the government is motivated primarily by the desire to make things easier for business and individuals applying for visas, but is determined to maintain the integrity of the visa system.

The Paper outlines three 'examples' of possible visa simplification but states that it does not identify a single preferred solution. We note that a final discussion paper will be released to stakeholders later in the year proposing initiatives to simplify present temporary residence and visitor visa arrangements, prior to the government taking any decisions (Paper, p6).

We have several concerns with this Discussion Paper

1. The Paper is confused about exactly which visas are included in this first stage of the review.

The joint media release from the two Ministers (for Immigration and Deregulation) says the scope of the first stage is 'temporary work visas'.

But the Discussion Paper says (p12) that visitor visas (with no paid work rights) are also included:

> The first phase of the project will focus on the deregulation and simplification of the temporary residence and *visitor visa* group, which will be completed by 2012. The temporary residence and *visitor visa* group

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> allows for people to enter Australia for up to four years for economic, social or cultural purposes. Visa holders are permitted to work for their sponsor in their area of expertise.[1] (emphasis added)

The Paper further adds to the confusion by saying there are currently 20 visas under review that are listed in Appendix B – which does not include any visitor visas. But elsewhere Example 3 (p17) lists 21 visas and does include Visitor visa subclass 676, while Examples 1 and 2 do not.

The CFMEU believes that Visitor visas (with no paid work rights) should not be included in a review of temporary work visas.

The CFMEU certainly rejects any proposal (as in Example 3 of the visa simplification models) that the Tourist visa subclass 676 (with no paid work rights) should be combined with the Business short-stay visa subclass (which does have paid work rights).

In our view, it would be extremely unwise to group the Tourist visa with any visa that has work rights. This would send entirely the wrong signal to prospective visa applicants, and would be counter to the Immigration Minister's efforts to reduce illegal work which is frequently performed by persons in Australia on visitor visas.

The second problem with the scope of this first stage is that it does not include a number of other temporary visas with work rights. For example, visa subclasses:

- 485 Graduate skilled visa, which provides certain overseas student graduates unrestricted work rights in Australia for 18 months;
- 475 (Skilled – Regional Sponsored) and 487 (Skilled – Regional Sponsored) visas who are nominated by a State or Territory government agency.

It makes more sense to include these visas in this current review, rather than in a later review of 'student' visas – because these visas are not for students but are work visas for student graduates.

2. We see little value in the 'simplification' categories set out in the three examples.

In the Discussion Paper, simplification examples 1 and 2 group the existing 20 temporary work visas in 9 or 10 categories respectively.

These may be bureaucratically satisfying but they have few other benefits.

For example, example 1 proposes that Working Holiday (417 or WHM), Work and Holiday (462), plus visas for Government agreement (406) and Foreign government agency (415) be grouped together under the category 'International relations'.

This description might make sense if the description of the WHM visa in the Paper was accurate. The discussion paper says as follows:

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[1] Discussion Paper, p12.

> This visa is to encourage cultural exchange and closer ties between arrangement countries by allowing young people to have an extended holiday supplemented by short term employment, with special focus on regional Australia.[2]

We take issue with this characterisation. This visa has no 'special focus on regional Australia', apart from the incentive it provides for some of the 190,000 WHMs each year to obtain a second WHM visa by working (not holidaying) in designated regional areas.

Further, the WHM visa does much more than allow 'young people to have an extended holiday supplemented by short term employment'. As DIAC well knows, the WHM visa allows the visa holder to legally work for their entire stay in Australia of up to 2 full years and take no holiday at all.

It is clear that in the recent period this visa has increasingly been used by young people from Europe and elsewhere primarily as a work visa.

Further it is misleading to label this visa as 'International relations'. The fact is that this visa has been deliberately used by the government, with the encouragement of the business lobby, as a means of increasing labour supply, through increases in visa numbers and relaxing the visa work (ie, increasing the maximum time permitted with one employer from 3 months to 6 months).

3. Our preferred classification for temporary work visas is Sponsored and Non-sponsored.

We suggest a more accurate grouping of the 20 visas would be into the 2 main categories of **Sponsored** and **Non-sponsored** visas, with subgroups below that if needed.

For example, the Sponsored group could be further classified into 'Employer-sponsored' and 'Other sponsors'. This would be more meaningful and communicate the essential feature of the visa upfront. It could also allow the sponsor obligations provisions of the *Worker Protection Act 2008* to be more easily applied, as they are currently to 457 sponsors.

Within the Employer-sponsored grouping, a further subgroup (if needed) could be Employment only, and Occupational Development/training (eg visas 442 and 470).

4. The Paper does not explain how the integrity of the visa system will be maintained, at the same time as it is 'simplified'.

The Paper claims (p9) that simplification will 'enhance program integrity and program design in such a way as to allow for better analysis and management of risk, fraud and intent'.

This is not further explained, but it is essential and should be.

Without this explanation, the CFMEU does not accept that program integrity will even be maintained at its current inadequate levels, let alone 'enhanced'.

In our view it is not credible that a deregulation exercise such as this, undertaken to reduce the 'burden' on business and individuals, will 'enhance' program integrity for temporary work visas.

[2] Discussion Paper, p21.

The fact is that in 2010, except for the 457 visa, there are negligible resources and effort devoted to the regulation of temporary visas with work rights in Australia – including employer-sponsored visas.

The Paper also states (p5) that 'clients who are currently eligible for a visa will remain eligible for a visa within the simplified visa framework'.

But it does not make clear whether under the proposed new regime, *all* current visa eligibility conditions will remain the same for each individual visa subclass, or whether the current eligibility conditions and/or work rights will be changed, eg up to the most generous of the visas in each proposed grouping.

For example, the Working Holiday visa (subclass 417) and the Work and Holiday visa (subclass 462) currently have very different eligibility conditions and also different stay/work entitlements. The 462 visa is restricted to certain higher risk countries (plus the US), has minimum educational qualifications and English language skills requirements, and requires applicants to have a 'letter of support' from their home government – which the 417 visa does not.

As well, the 417 visa allows visa-holders to be granted a second 417 visa allowing stay in Australia with work rights for another year (maximum of 2 years all up), whereas the 462 visa does not allow a 'second' 462 visa.

In all three examples provided in the Paper of possible 'simplified' structures, the 462 visa subclass is lumped in with the 417 visa, under the category 'International relations' (Examples 1 and 2) or 'Working Holiday' (Example 3).

We believe that the next version of the Paper should clearly explain whether grouping visa subclasses into a single category means any change to existing visa conditions of eligibility etc.

The CFMEU does not support any relaxation of eligibility conditions for any visa subclass which has work rights attached, or any extension of work rights under any visa subclass, without an independent assessment of the impacts of such proposals on the Australian residents workforce.

5. The Paper does not explain the potentially serious implications of bringing another visa subclass into the 457 visa regime.

In the Paper, all examples of visa 'simplification' propose collapsing the 422 visa (Medical practitioner) into the 457 visa, and Example 3 proposes doing this also for visa subclass 419 (Visiting academic).

In fact, it turns out that the government has already done this in regard to subclass 422, effective from 1 July 2010, according to the DIAC website.[3]

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[3] See *Closure of Subclass 422 – Medical Practitioner (Temporary) Visa – Effective 1 July 2010,* www.immi.gov.au/skilled/removal-of-subclass-422.htm>

But the Paper does not disclose that moving from visa subclass 422 to 457 involves Australian citizens and residents losing the right to labour market testing (LMT). According to the description of 422 in the Discussion Paper, LMT applies in the 422 visa:

> Temporary resident doctors must be sponsored by Australian employers to fill *positions that cannot be filled by suitably qualified Australian citizens or permanent residents.*[4] *(emphasis added)*

But the government has refused to include LMT in the current 457 visa regime. It maintains the policy position that it will not re-introduce LMT into the 457 visa while the Australian government's 2005 Doha offer in the WTO GATS (which included the offer to remove LMT from the 457 visa entirely) is on the table.

The CFMEU and the ACTU reject this stance and believe that LMT should be restored to the 457 visa, in line with the ALP Policy Platform taken to the 2007 election. The ACTU Secretary wrote to the Prime Minister in June 2010 firmly re-iterating this position and calling for further consultations with the union movement on this matter.

As well as the ban on LMT in the 457 visa, there are other implications of other visas being brought into the 457 visa regime. They include:

- The difficulty (if not impossibility) of occupations on the 457-eligible list being removed once they are placed on the list, regardless of how much conditions in Australia might change in that occupational labour market (eg a shortage being replaced by a surplus due to increased training effort, as is forecast for medical practitioners).

- 457 visa holders (but not other temporary visa holders) enjoying the protection of 'national treatment' provisions in international trade agreements. According to the Australian government, this means (among other things) that in redundancy situations, Australian workers cannot be given preference over foreign nationals on 457 visas.

6. **The description of the 457 visa (p23) should be amended to reflect the Immigration Minster's statements that this visa is intended for "skills shortages" ie situations where qualified Australian workers cannot be found by employers.**

The description of the 457 visa in the Paper (p23) is that:

> This visa is for employers to sponsor approved skilled workers to work in Australia on a temporary visa.[5]

The following words should be added to this description:

> …where skilled Australian workers cannot be found at market rates.

This would bring the description in line with the requirements of the new *Worker Protection Act* 2008 that came into force in September 2009, and the following public statements on the visa by the Minister for Immigration and Citizenship:

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[4] DIAC Discussion Paper, p22.

[5] Discussion Paper, p23.

Temporary overseas workers on subclass 457 visas are only to be employed if skilled labour cannot be sourced locally.

The Rudd Government recognises the need for industry to access skilled overseas labour where there are demonstrated skills shortages but it is important that the program complements domestic recruitment and is not used to replace local workers.[6]

7. The Paper should pick up the recommendation of the Final report of the Deegan review of the integrity of the subclass 457 visa (October 2008) that the subclass 457 visa be renamed.

The Deegan Report found that the current official name of the subclass 457 visa – the Temporary Business (long stay) visa – was inaccurate and misleading; and recommended the visa be renamed the "Temporary Employment visa".

This would better reflect that it is a temporary work visa for *employees* (not business people), and would be consistent with the Immigration Minister's commitment to greater transparency.

The visa simplification process would be a good vehicle through which to make this change.

Yours sincerely

John Sutton
National Secretary

[6] Senator Chris Evans, Minister for Immigration and Citizenship, 'Employers must put locals first', media release, 2 March 2010. See also 'Overseas workers to supplement not replace local work force', 29 July 2009.