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**Submission of the
Construction Forestry Mining and Energy Union
Construction & General Division**

**to the
Joint Standing Committee on Migration's
*Inquiry into Skills Recognition, Upgrading and Licensing***

June 2005

1. INTRODUCTION

1.1 The Construction Forestry Mining and Energy Union, Construction and General Division (“CFMEU”) believes that any system of skills recognition for migrant workers should properly balance the interests of those workers with the interests of the industry as a whole and the wider economy and society. In this regard, the process needs to be stringent enough to maintain quality workmanship and safe working conditions in the building and construction industry.

1.2 Furthermore, the Government should consider measures to

- protect the industrial rights of migrant workers,
- prevent the abuse of illegal migrant labour,
- facilitate participation by employer and employee associations, and
- create a national vocational training/skills regime to prevent skills shortages.

2. STATISTICS

2.1 A large number of workers in the building and construction industry were not born in Australia. The table below details the proportion of foreign workers in the Australian construction industry as compared to other industries in 2001;

Table 1: Proportion of overseas born workers in the Australian Construction Industry and other industries - 2001

Region of Birth	% of the Australian Construction Industry Workforce	% of the Total Australian Workforce
Australia	75%	74%
UK & Ireland	8%	7%
Europe	8%	5%
New Zealand & Oceania	4%	3%
Asia	2%	6%
Middle East & North Africa	1%	1%
South/Sub-Saharan Africa	<1%	1%
Americas	1%	1%

Source¹.

¹ McGrath-Champ S., Rosewarne S. & Toner P., “Labour Force Challenges in the Australian Building and Construction Industry: Skills Infrastructure and Migrant Workers”, *Working Papers*, School of Economics and Political Science, University of Sydney, p.7.

2.2 Interestingly the proportion of Australian born workers in the construction industry has increased from 70% in 1986 to 75% in 2001.²

2.3 Around half of those overseas born workers in the construction industry are in trades and related occupations. Only a minority are “Professionals or Associate Professionals”.³

2.4 The Federal Government’s “Skilled Occupation List” (Form 1121i) lists those skilled occupations which are acceptable for permanent migration to Australia. The “Tradespersons and Related workers” component of the list includes various occupations relevant to the construction industry. The following Table cross-references these occupations with 2001 data.

Table 2: Number and Percentage of Overseas Born Construction Workers by Occupation - 2001

Occupation	Number of Migrant Workers	% of Migrant Workers	% of Occupation Group Born Overseas
Carpentry & Joinery	11,909	9%	22.1%
Painters & Decorators	11,737	9%	38.7%
Bricklayers	5,845	4%	30.9%
Wall & Floor Tilers & Stonemasons	4,251	3%	39.7%
Solid Plasterers	1,139	1%	45.3%
Roof Slaters & Tilers	1,045	1%	-

Source⁴.

2.5 The CFMEU is concerned at the sudden increase in the skilled migration intake in recent years. According to Budget papers, there will be 97,500 skilled migration places in the 2005-06 financial year. This is out of a total Migration Program of 137,000.⁵ In 1996-97 the number of skilled migration places was just 27,550. By

² *ibid.* p.18.

³ *ibid.* p.11.

⁴ *ibid.* p.13-14.

⁵ Senator the Hon Amanda Vanstone, Budget 2005, Fact Sheet No. 9.

30 June 2006 the total number of skilled migration places since the current Government came to office shall be 440,000.

3 THE IMPORTANCE OF SKILLS ASSESSMENT

3.1 The Australian building and construction industry, particularly the commercial sector, is one of the most productive in the world with a highly skilled workforce.⁶ Properly trained and experienced workers are more productive and generally produce quality work in a safe manner. Inadequately trained or inexperienced workers can be a danger to themselves and their workmates. This is of particular importance given that the construction industry is one of the most dangerous.

3.2 It is important therefore that we retain our currently high standards by ensuring that skilled migrant workers pass suitably rigorous skills testing. This testing needs to fairly balance the interests of both the foreign worker and the construction industry in general. The CFMEU urges the Government to carefully consider these issues when planning any changes to the skills assessment regime.

4 INDUSTRIAL RIGHTS AND ILLEGAL LABOUR

4.1 The Union has found that many foreign workers in the building and construction industry are underpaid or have their industrial rights abused in some other way.

4.2 Those who are working in the industry legally (ie under the correct working visas) are often unaware of their rights under industrial law and accordingly accept whatever wages and conditions their employer provides. The fact that migrants cannot receive social security payments for the first 2 years of their residency exacerbates this problem. Thus we urge the Government to take steps to ensure that migrant workers receive information regarding their industrial rights upon

⁶ See studies such as "Australian Construction Productivity International Comparison", Access Economics and World Competitive Practices Pty Ltd. August 1999, and "Constructing the Future: A Study of Major Building Construction in Australia", Employment Studies Centre, University of Newcastle. August 1999.

gaining permanent residency as well as ongoing support to ensure their employers duly comply.

4.3 “Illegal” migrant workers (ie those who do not have the right to work pursuant to a valid visa) are not only generally unaware of their rights, they also risk deportation if they complain. The CFMEU made extensive submissions on this issue to the parliamentary Review of Skilled Migration in 2003 (see **Appendix 1**). We ask Committee to consider this submission during the current Inquiry and adopt the recommendations contained therein.

4.4 Also attached at **Appendix 2** are various press releases from the Minister for Immigration and Multicultural and Indigenous Affairs touching upon the issue.

5 INDUSTRY ASSOCIATION INVOLVEMENT

5.1 The CFMEU believes that both employee and employer organisations are able to make a valuable contribution to the administration of the skilled migration system. In particular, we recommend that industry associations and relevant trade unions be consulted in the following ways;

- in deciding what occupations should be added or removed from the Skilled Occupation List,
- in assessing whether the state of a particular industry justifies an increase or decrease in skilled migrant numbers for that industry, and
- in assessing the minimum skill level which should be required in particular occupations.

5.2 In this regard the Committee should consider the operation of the *Tradesmen's Rights Regulation Act 1946* (Cth). Under this Act, both employer and employee organisations participate in Trades Committees which help establish standards, policies and procedures for trades recognition and consider applications for pre-migration skills assessment. The CFMEU recommends that this kind of industry

participation be incorporated into the system of skills assessment under the Migration Regulations.

6 ADDRESSING SKILLS SHORTAGES

6.1 The CFMEU is of the strong view that migrant labour should not generally be used to remedy skills shortages in the Australian economy. Currently, more easily obtainable visas such as “Skilled-State Territory Nominated Independent” (Class BN, subclass 137) and “Skill Matching” (Class BR, subclass 134) are used to help address regional skills shortages. The effectiveness of such measures to combat skills shortages is questionable given that the timing of any skills shortage often lags behind the arrival of migrants.⁷

6.2 The dominant focus of governments should be on providing quality training to workers who are already in the country. The fact that the proportion of Australian born workers in the construction industry increased by 5% between 1986 and 2001 demonstrates that we do have workers in the country with the capacity to work in our industry. There needs to be a genuine attempt therefore to create a comprehensive vocational training and skills regime which prevents skills shortages and reduces any substantial need for skilled migrant labour.

6.3 The CFMEU is suspicious of the motives of many employer lobbies who advocate migration as a solution for skill shortages. These are the same lobby groups who openly endorse laissez-faire economic principals which dictate that wages should be reduced when skills are *not* in shortage. The trouble with this approach is skilled persons either leave their vocation or leave the location and therefore skills are often not available when they are needed.

6.4 Skills shortages also occur because many employers are derelict in their responsibility to adequately train workers. The CFMEU submits that employers

⁷ See Shah C. & Burke G., “Skills Shortages: Concepts, Measurement and Policy Responses”, in *Australian Bulletin of Labour*, National Institute of Labour Studies, Vol 31 No.1 2005, p.44 at p.47.

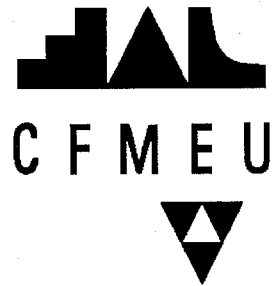
should have a positive obligation to provide and/or sponsor quality training regimes for their workforce.

6.5 Finally, the CFMEU recommends that the Australian Bureau of Statistics regularly conduct in-depth research into the extent of skills shortages in the economy. This data would be invaluable in deciding which occupations should be on the Skilled Occupation List.

7 SUMMARY OF RECOMMENDATIONS

7.1 The CFMEU recommends;

- That any system of skills assessment must ensure that skilled migrant workers pass suitably rigorous skills testing. This testing should fairly balance the interests of both the foreign worker and the construction industry in general.
- That the Government take steps to ensure that migrant workers receive information regarding their industrial rights upon gaining permanent residency as well as ongoing support to ensure their employers duly comply.
- That the CFMEU's recommendations set out at **Appendix 1** be adopted.
- That industry associations and trade unions be consulted in relation to;
 - deciding what occupations should be added or removed from the Skilled Occupation List,
 - assessing whether the state of a particular industry justifies substantial movements in skilled migrant numbers, and
 - assessing the minimum skill level which should be required in particular occupations.
- That the dominant focus of the Federal Government be on providing quality training to workers who are already in the country.
- That there be a genuine attempt to create a comprehensive vocational training and skills regime which prevents skills shortages and reduces any substantial need for skilled migrant labour.
- That the Australian Bureau of Statistics regularly conduct in-depth research into the extent of skills shortages in the economy.



**Submission of the
Construction Forestry Mining and Energy Union
Construction & General Division**

to the

Review of Skilled Migration

April 2003

Summary

The Construction Forestry Mining and Energy Union, Construction & General Division (CFMEU) has taken an active interest in the issue of skilled migration.

In our experience, there are significant numbers of immigrants working “illegally” in the Australian building and construction industry. Those who employ these workers often use the threat of deportation to prevent them from complaining about illegally low wages, conditions and dangerous occupational health and safety standards.

This provides the employer with a cost advantage not open to those employers who do the right thing. As a consequence, law abiding employers lose tenders, Australian workers (and those with adequate visas) lose jobs and Australian wages and conditions are undermined.

The existence of an “illegal” worker is usually not an isolated incident. In the construction industry, the CFMEU has uncovered several large illegal labour rackets operated by employers and involving many workers.

It should be emphasised that the CFMEU respects the rights of all workers, whether they be foreign or domestic, and whether or not they possess the correct working visas. It is the exploitation of such “illegal” workers that the CFMEU objects to and it is the absence of an individual’s working rights that allows such exploitation to occur.

It is our submission that the Committee needs to consider the extent to which the temporary entry program for skilled labour is being, and can be, abused or circumvented. Measures need to be established to protect workers inside and outside the program. To this end, there needs to be a tough penalty regime for those who employ “illegal” migrant labour. The government has talked for too long about a sanctions regime which keeps being deferred presumably because

of political pressure by certain employer interests. Further, the Federal Government should desist with using immigration as an instrument to overcome long term labour market deficiencies (deficiencies of the Government's making). Consultation with industry bodies, including trade unions, should occur to ensure the program is not given priority over long term skills and training initiatives.

The Scope of the Problem

The CFMEU has actively confronted the issue of "illegal" migrant labour for many years. We encourage the Joint Standing Committee on Migration to review the following documentation attached to this submission;

- **Appendix 1** – A small sample of the correspondence between the CFMEU and various politicians on the issue;
 - Letter from John Sutton to The Hon Phillip Ruddock MP dated 18 May 1999
 - Letter from John Sutton to The Hon Phillip Ruddock MP dated 16 February 2000
 - Letter from John Sutton to The Hon Phillip Ruddock MP dated 15 March 2000
 - Letter from Andrew Ferguson to The Hon Phillip Ruddock MP dated 3 May 2002
 - Letter from Andrew Ferguson to The Hon Peter Costello MP dated 1 October 2002
 - Letter from Andrew Ferguson to The Hon Phillip Ruddock MP dated 8 October 2002
 - Letter from The Hon Phillip Ruddock MP to Andrew Ferguson dated 7 November 2002

- **Appendix 2** – the CFMEU's Submission to the *Review of Illegal Workers in Australia*, May 1999

Also attached to this submission are the following recent newspaper clippings and media releases reporting on illegal labour scams;

- **Appendix 3** – Various clippings relating to the Lake Cargelligo tragedy in New South Wales where 2 workers were killed when the roof of a water tower being constructed collapsed. One of the workers who was injured in the accident was hustled back to South Africa afterwards despite needing another 10 days hospitalisation. This worker was allegedly part of an illegal labour scam operated by his employer and was paid only \$100 per month.
- **Appendix 4** – Various clippings relating to the Indian Temple Stonemasons racket in New South Wales. The CFMEU discovered 8 Indian workers who had been employed under a working visa arrangement on the site for 3 years and were living in small site sheds (5 to a room). They were each paid only \$45 per month.
- **Appendix 5** – Various newspaper clippings and media releases relating to the following incidents;
 - In October 1999 five men were charged with fraud over the operation of a an “illegal” worker labour hire scam nicknamed “the bodgie”.
 - In February 2000 five Lebanese workers were found to have been underpaid and forced to work 14 hour days by their work sponsor under the temporary business entry scheme.
 - Also in February 2000, an “illegal” labour scam was found in Sussex Street, Sydney involving Malaysian, Indonesian and Chinese workers.
 - In March 2000 two labour hire companies in Sydney employed over 80 “illegal” workers (many Korean) and paid them only half the legal minimum.

- In April 2000 eight South African workers brought to construct a fertiliser plant in Kwinana, Western Australia were sent home.
- In October 2000 twenty-two suspected illegal Chinese immigrants were found on a building site at Yowie Bay.
- In November 2000 twelve backpackers were exposed to asbestos in New South Wales. They were not given adequate safety equipment.
- In March 2001 between 5 and 8 "illegal" workers were found on a site in Dee Why.
- In September 2001 "illegal" workers were found on the Becton's Honeysuckle hotel site in Sydney.
- In December 2001 the CFMEU uncovered 9 "illegal" workers on a Holdmark Construction site in Strathfield.
- On the Mersey River tunnel project In Devonport, Tasmania, Czech labourers were found being paid just \$35 a day.
- Release by the CFMEU dated 3 September 1999 headed "Building Work for Young Australians – Not Backpackers"
- Release by the CFMEU dated 14 March 2000 headed "Exposed! Major immigration racket in Sydney construction"
- Release by DIMA dated 10 December 2001 headed "Illegals in Construction Industry Detained"
- In September 2002 seven workers were detained by DIMIA after found working on sites in Sydney.
- Also in September 2002, five "illegal" workers were found on a site in Baulkham Hills, Sydney.
- In October 2002 three "illegal" workers were found on a site in Artarmon.
- Also in October 2002, thirty people were arrested on the World Tower Meriton site in the Sydney CBD in a search for illegal labour rackets.

- Again in October 2002, an employer was fined \$132,000 for using backpackers to illegally move asbestos from a building site in Victoria.

- **Appendix 6** – Three newspaper clippings dealing with the issue generally.

Clearly, “illegal” labour poses a significant problem in the Australian construction industry. Unfortunately, our experience suggests that the problem is growing.

The Lesson

In our view, the Committee must remember that whatever form the temporary entry program for skilled labour takes, there are unscrupulous figures within the building industry, and other industries, who will attempt to circumvent or abuse the system for profit. Some employers will seek to use the threat of deportation to prevent “illegal” workers from complaining about wages, conditions and occupational health and safety standards. We urge the Committee to address these issues.

Recommendations

The Committee must balance the need to attract skilled migrants where demonstrable skill shortages exist, with the need to deter “illegal” labour scams. In this regard, internationally competitive entry programs can be a two edged sword.

The CFMEU recommends strong penalties for employers who operate “illegal” labour rackets. As well, basic rights should be afforded to those foreign workers who are exploited by such rackets. Currently employers sponsoring overseas workers must give an undertaking to pay the correct wages and entitlements. Clearly this kind of self-regulation is inadequate. Government inspectors should be deployed to ensure that foreign workers are not underpaid or exploited.

These same inspectors should also actively root out and shut down "illegal" labour scams.

Moreover, employers should be prohibited from using the threat of deportation. Foreign workers who lose their sponsorship should have the opportunity for redress to an independent body such as the Australian Industrial Relations Commission.

Employers should have a positive obligation to ensure that all employees have the right to work in Australia. Tough sanctions should apply where this obligation is not discharged.

In the long run, government should be working toward skills and labour market programs which overcome skills shortages and reduce any need for skilled migrant labour. In New Zealand, government consults with industry bodies, including trade unions, on such shortages. The overarching issue here is that the Australian Government should be putting in place a comprehensive vocational training and skills regime which prevents skills shortages and reduces any substantial need for skilled migrant labour.