

## THE FEBRUARY 2010 REFORMS AND THE INTERNATIONAL STUDENT INDUSTRY

### ■ **Bob Birrell and Ernest Healy**

*In February 2010 the Australian Government announced a set of reforms to the rules governing access to permanent residence visas and the temporary entry graduate skills visa (485) for overseas students who have completed courses in Australian universities and VET colleges. This article provides a history of Australian policy on the issue and an analysis of the likely impact of the new regulations. It concludes that the government has largely succeeded in de-coupling education in Australia from migration selection. As a result, it is likely that enrolments in the VET sector will shrink and that enrolments in the higher education sector will largely be confined to courses where students obtain qualifications that are of value in the country of origin.*

### **INTRODUCTION**

By 2008, there was overwhelming evidence that Australia's permanent entry migration program was in disarray. The core of the problem lay with the very large number of applicants who had come in on student visas, completed Australian qualifications and were succeeding in gaining permanent residence (PR) status on completion of their studies. Paradoxically, these outcomes were a product of reforms in 1999 and 2001 which were intended to deliver migrants with high-level skills, especially in areas where shortages were evident.

The visa categories under review are included under the General Skill Migration (GSM) program, which is part of the skilled migration program administered by the Department of Immigration—subsequently referred to under its present rubric, that is the Department of Immigration and Citizenship (DIAC). DIAC refers to these as supply-driven visas, because they are dependent on the initiative of would-be migrants to apply for a visa. By contrast, those skilled program visas that require sponsorship by an employer or sponsorship/nomination by a state government, are referred to as demand driven.

On 8 February 2010, the Australian Government announced a set of reforms to

the operation of the GSM migration program. This article assesses the implications of these reforms for the overseas-student industry in Australia. The analysis relies primarily on the published DIAC statements about the reforms. However where there was uncertainty about their meaning, immigration officials were consulted in order to verify our interpretation.

Readers familiar with the history of the interface between the overseas student industry and migration selection in Australia may wish to skip our summary of this history. If so, they should go to page 72, where the discussion of the consequences of the new regulations begins.

The reason for recounting the history is that an understanding of where we have come from is essential for an appreciation of the significance of the February 2010 reforms. There are many lessons to be learned from this story about how migration selection mistakes can morph into major crises. Our judgement is that the Labor Government (led by Kevin Rudd) has gone a long way towards cleaning up the mess it was bequeathed by the previous Coalition Government. However, it may soon confront a new crisis, this time of its own making, because of its embrace of an employer and state government driven migration selection system.

## **THE 1999 AND 2001 GSM REFORMS**

There were two key reforms. The first, implemented in 1999, had to do with how changes in occupational labour market demand and supply were factored into the GSM. At the time, there were few skilled labour shortages in Australia. DIAC sought to legitimate its reforms by claiming that they would add to Australia's high skill base. DIAC also wanted to incorporate a control mechanism which would give preference to applicants with high-level skills and those with occupations where there were significant supply shortages. This was accomplished in part by introducing a Skilled Occupation List (SOL). For a GSM application to proceed, the applicant had to have an occupation listed on the SOL. The initial SOL covered most, but not all, professional, managerial and trade occupations. Applications under the GSM were evaluated by a points test and the SOL was divided into 60, 50 and 40-point occupations. The occupations classified within the 60-point category were mostly professional and trade occupations, including cooks and hairdressers. They included occupations where the possession of degree or trade-level qualifications was crucial to carrying out the requirements of the occupation. They were heavily advantaged in the new points test.

DIAC also added a further control mechanism designed to advantage applicants whose occupation was judged by the Department of Employment (in consultation with DIAC) to be in national shortage. This was the Migrant Occupations in Demand List (MODL). Applicants with MODL occupations received extra points in the new selection test as from May 1999.

The second key reform was the establishment, beginning in mid-2001, of skilled visa subclasses for overseas students who had completed trade or higher-education qualifications in Australia. These subclasses

were initially limited to applicants with 60 point occupations. To be eligible, such former students had to apply within six months of finishing their course. Former students were further advantaged by being granted extra points for Australian training and by the waiving of the work experience requirements that offshore applicants had to meet. This innovation seemed justified at the time, since there was evidence that migrants trained in Australia did better in the job market than those trained in the same discipline overseas, especially if the overseas-trained migrants originated from non-English-speaking-background countries.

The reformers did not anticipate the alacrity with which Australia's universities and, after 2005, private sector Vocational Education and Training (VET) providers would set up courses designed to attract international students looking for the cheapest and easiest ways to obtain qualifications in occupations that could lead to permanent residence (PR) in the GSM program. By 2005, there were so many applications for PR from former overseas students that DIAC had to increase the selection system pass mark (in April 2005) from 115 to 120. After this, the possession of a MODL occupation, and the extra points it delivered, became a crucial determinant of PR outcomes.

IT and accounting were to become the study areas of choice for overseas students taking higher education courses who were interested in a PR outcome. All they had to do was complete a two-year Masters course in IT or accounting (with no prerequisite study or experience in these fields needed) at any Australian university and PR was assured. Accounting had been added to the MODL in September 2004, but not the professional computing occupations. Subsequently, accounting dominated the ranks of applicants for GSM visas with Australian university qualifications, while those with IT qualifications fell.

At the trade level, in May 2005 cooking was added to the MODL. According to the Department of Employment methodology this was justified because there was a widespread shortage of trade-level cooks in Australia at the time. As with the decision

to include accounting on the MODL, no questions were asked about whether former overseas students who had trained as cooks in Australia had the skills or motivation to actually take up cooking jobs once they gained PR.

**Table 1: Enrolments by education sector by selected nationality, year-to-November, Australia, 2002 to 2009**

Nationality	2002	2003	2004	2005	2006	2007	2008	2009
Vocational education and training/VET								
India	2,213	1,435	1,608	3,791	10,091	26,403	51,087	79,173
China	5,980	8,367	10,682	13,111	15,358	19,679	26,353	33,754
Nepal	492	374	315	515	1,223	5,284	12,645	18,848
South Korea	4,594	3,777	3,586	4,496	5,994	7,579	9,297	11,574
Thailand	3,636	4,366	4,310	4,818	5,556	6,805	8,465	11,192
Viet Nam	1,072	755	682	813	1,086	1,745	3,439	6,334
Brazil	1,212	1,288	1,578	2,308	3,419	4,322	5,259	5,958
Bangladesh	1,035	1,386	1,942	2,275	2,919	3,967	4,198	4,565
Pakistan	365	378	440	672	1,204	2,344	3,401	4,468
Sri Lanka	967	748	830	1,169	1,762	2,679	3,574	4,208
Mauritius	375	476	565	706	968	1,442	2,853	3,550
Other nationalities	31,360	33,212	31,286	30,453	32,083	36,331	41,782	47,828
All source nationalities	53,301	56,562	57,824	65,127	81,663	118,580	172,353	231,452
Higher Education								
China	16,110	22,489	30,644	40,511	46,724	49,721	53,472	64,493
India	8,823	12,226	17,681	22,045	24,895	26,129	27,318	27,820
South Korea	3,629	4,409	4,917	5,250	5,442	5,799	6,273	6,999
Viet Nam	1,723	1,997	2,157	2,356	2,564	2,925	3,858	5,780
Thailand	4,879	5,593	5,644	5,175	4,828	4,659	4,215	4,114
Nepal	953	824	664	656	1,090	2,457	3,227	3,887
Sri Lanka	2,071	2,187	2,113	2,128	2,412	2,956	3,368	3,711
Pakistan	1,271	1,230	1,290	1,397	1,624	1,957	2,175	2,557
Bangladesh	2,033	2,754	3,338	3,619	3,451	2,881	2,206	2,125
Mauritius	726	884	888	860	899	971	1,103	1,343
Brazil	394	415	428	420	463	498	584	691
Other nationalities	72,588	79,606	80,794	78,130	75,073	73,203	73,424	80,435
All source nationalities	115,200	134,614	150,558	162,547	169,465	174,156	181,223	203,955

Source: Australia Education International (AEI) enrolments data, year-to-November

The inclusion of cooking on the MODL was a decisive moment in recent migration history. The door was thrown open for VET providers to market cooking courses as a secure pathway to PR. Private VET providers flourished in a highly-profitable, but poorly regulated environment. Cooking was one of the few trades (hairdressing was another) where with just one year of full-time training and without any associated on-the-job training, students could obtain a Certificate 111 accreditation. The accrediting authority, Trades Recognition Australia (TRA) was prepared to accept certification from the VET provider that the student had reached trade level without a requirement that there be an independent competency test. In 2005, TRA added an additional requirement, which was that applicants must have completed 900 hours of work experience in their field (though this could be any work like that of kitchen hands, in the case of cooks). TRA accreditation was required by DIAC as one of the threshold attributes that applicants needed before a GSM visa application in a trade area could proceed.

This confluence of events gave VET providers a new and potent marketing tool in order to attract students. They found a huge pool of potential clients in Asia, particularly in the Indian Punjab, who were interested in taking up the opportunity. The message was, complete a cooking qualification and you are assured of a PR outcome.

As Table 1 shows, there was an explosion in enrolments in tertiary education in Australia by overseas students after 2005, particularly in the VET sector, with most of this growth being driven by students drawn from the sub-continent of India. Table 1 shows year to November data, because at the time of writing full year data were not available.

The GSM selection system remained largely intact until 2009 despite increasing evidence and media commentary that the

system had become dysfunctional. There were some modest reforms implemented in September 2007, the most important of which was an increase in the weight accorded English language skills in the selection system for applicants whose chosen occupations required professional-level English (roughly equivalent to scoring 7 on each of the four modules tested in the International English Testing System [IELTS] that is, listening, reading, speaking and writing). In addition, for applicants other than those with trade qualifications, there was an increase in the minimum level of English required on each of the four modules from 5 to 6.

Also, DIAC made an attempt to deal with the high share of GSM visas allocated to accountants. The rules were changed to reduce the impact of MODL points. Few commentators seem to be aware that, after September 2007, the possession of a MODL occupation was no longer decisive for applicants who had obtained their qualifications in Australia. They (as well as overseas applicants) could only gain MODL points if they had completed one years work experience in their occupation. This was defined as equivalent to at least 20 hours per week over the course of a year. Few overseas students with accounting or any other professional qualification could meet this condition.

## **POLITICAL IMPEDIMENTS TO CHANGE**

But otherwise little had changed. As Table 1 shows, overseas student enrolments continued to increase through 2007 and 2008. The scope for reform at this time was limited by the Coalition Government's concerns about the health of the overseas student industry. As senior immigration officials acknowledged privately at the time, DIAC had to move cautiously and needed to offer something in return, even for the limited reforms implemented in

September 2007. This came in the form of a new GSM visa called the Graduate Skills visa (visa subclass 485). After September 2007, the 485 visa allowed former students to stay on in Australia for 18 months with full work rights. All overseas students who had completed a university or VET course in Australia and whose occupation was listed on the SOL as a 50 or 60-point occupation could apply for this visa. All they had to do was prove that they met the new minimum English requirements and that their qualifications were accepted by the relevant accrediting authority.

From the international education industry's point of view, by allowing former students access to Australia's labour market for this period, the new visa added significantly to the attractions of Australia as a study destination. While largely a concession to the industry, the new visa also gave former overseas students time to improve their English, complete a professional year (by taking a course of instruction in the practices of their profession, which included a job placement) or obtaining one years experience in their field with one or several Australian employers. If they successfully completed any of these three options they were virtually assured of gaining a GSM visa.

## THE SITUATION IN 2008

By early 2008, the global economic boom was nearing its apex. The Australia labour market was seriously stretched, with wide-spread vacancies across the skilled and some semi-skilled occupations. The new Labor Government lifted the permanent immigration program for 2008–09 to a post-war record high of 200,000 (including the humanitarian visa categories) of which skilled visas constituted 115,000.

But as Table 2 attests, the new government was intent on shifting the balance towards demand-driven visas and away from the supply-driven. This was despite a strong ALP campaign when in opposition against the 457 visa, the main employer-sponsored skilled temporary visa. The government's revised rationale was that employer and state government sponsors were much more likely to choose migrants who could deliver needed skills than was the case for migrants who obtained GSM or supply-driven visas. We probe this 'demand' attribution later in the paper because the label implies that it is entirely employer-driven. In reality, by giving precedence to employer-sponsored migrants, the Rudd Government has prompted prospective migrants to search for willing sponsors.

**Table 2: Primary and secondary visas issued under the skilled migration program 2004–05 to 2008–09 and planned 2009–10, by visa category**

	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
General skilled migration	55,710	68,920	68,350	70,470	55,098	51,000
Employed sponsored	13,020	15,230	16,580	23,762	38,026	35,000
State sponsored <sup>1</sup>	4140	8020	6930	7530	14,055	14,000
Business skills	4820	5060	5840	6565	7397	8000
Other	190	100	230	210	201	100
Total	77,880	97,330	97,930	108,537	114,777	108,100

Source: Department of Immigration and Citizenship (DIAC), primary and secondary visas issued data 2004–05 to 2008–09, planning level 2009–10.

Note: <sup>1</sup> state-sponsored visas have been separated from the GSM for the purposes of this table.

Notwithstanding the overall increase in the skilled program for 2008–09, the number of permanent entry GSM visas issued fell from 70,470 in 2007–08 to 55,098 in 2008–09. DIAC is planning to reduce the number further in 2009–10 to 51,000 (Table 2). By contrast, the number of visas issued to those sponsored by employers or nominated by state governments increased sharply.

This change in priority did not bode well for the overseas student industry because it implied that the pool of available visas under the GSM was shrinking and thus that the number of GSM visas issued to former overseas students would also decline. Nevertheless, the May 2008 budget announcements for the 2008–09 program did not foreshadow a tightening of the GSM selection rules. This was to change at the end of 2008.

The year 2008 was a bad one for the international student industry. Concerns about the quality of instruction in universities and by VET providers, and about the extent to which students were basing their choice of educational provider on the likely PR outcomes, spread into the mainstream media. The result was a popular image that the industry was about selling education for visas. This perception was shredding its credibility. During 2008, Immigration Minister Senator Evans took a critical stance on the way in which the education industry was shaping the GSM selection outcomes. His stated concern was that, despite the growing number of visas issued to applicants in just a few occupations, including accountants, cooks and hairdressers, there was no sign that these additions were solving the ‘shortages’ in these occupations. Yet, it was on the basis of these ‘shortages’ that the Department of Education, Employment and Workplace Relations (DEEWR) had based its MODL listing recommendations over the past decade.

Nevertheless, as noted, the dilemma for the Labor Government was that any reforms

could damage the overseas student industry. The industry claimed that it was generating \$15 billion in export revenue by 2008, which made it Australia’s third biggest export industry after coal and iron ore.<sup>1</sup> The industry had behind it the weight of the universities, Technical and Further Education institutions (TAFEs), private VET providers, English language colleges and many high schools, plus the backing of State Governments and DEEWR. After the November 2007 election, DEEWR was headed by the Deputy Prime Minister, Julia Gillard. DEEWR has had a long history of prioritising growth in the international education industry and of warding off any reform which threatened this growth. For example, despite evidence of the low English standards of many of the overseas students completing Australian university courses, the Department refused to act to tighten English proficiency standards for those taking on tertiary study in Australia. In the aftermath of a conference of industry leaders convened by DEEWR late in 2007, there was an explicit rejection of any need to require English language testing during or at the conclusion of an overseas student’s university studies.<sup>2</sup>

### THE DIAC VIEW PREVAILS

DIAC, however, took a different view. By the end of 2008, it was apparent that the Immigration Minister’s stance was prevailing within the Labor Cabinet. Our inquiries on this matter confirm the assessment of Peter Mares, in his commentary on the 8 February 2010 announcements. Mares says that:

The outcome represents a significant victory for the Department of Immigration and Citizenship over the much bigger and generally more powerful Department of Education, Employment and Workplace Relations. When the policy was contested in Canberra corridors, the heavyweight departments of Treasury, Finance and Prime Minister and Cabinet all came down on Immigration’s side.<sup>3</sup>

In December 2008, Evans announced on behalf of the government that, from January 2009, applicants sponsored by employers and state governments would be given priority in visa processing within the skilled migration program, followed by GSM applicants with occupations included on a new Critical Skills List (CSL), which contained far fewer occupations than those listed on the SOL or on the MODL. Though cooks and hairdressers remained on the MODL, they were not included on the new CSL. Accounting was included on the CSL, but DIAC indicated that it would only process onshore visa applications from those who could achieve 7 on the IELTS test for all four of the modules tested or for those who had completed the professional year in accounting. Applicants without an occupation on the new CSL were told they might have to wait years before their application was processed.

However, there was one explicit message in the December 2008 announcement, which could be interpreted as a warning, about what was to come and which we return to at the end of this article. This was to encourage potential applicants for PR who had completed a course not on the new CSL to seek out an employer sponsorship for a PR visa. For example, in the course of his December 2008 announcement Senator Evans stated:

International students who are enrolled in courses that are not on the CSL will still be able to apply for a permanent visa without a sponsor. However if they want their applications considered as a priority they will need to focus upon finding an employer to sponsor them.<sup>4</sup>

The direction of policy by 2009, if not the detail as to how a reformed GSM would be structured, was becoming clear. The December 2008 announcement left open many issues. No changes were announced to the existing selection system for GSM visas, except to flag that the English language

threshold for those with trade qualifications would be raised to IELTS 6 from 1 July 2009. The government also announced that a new job readiness test would be introduced for those with trade credentials who applied onshore after 1 January 2010. The question of how the GSM selection system would be reformed to take account of these new priorities remained to be answered. This uncertainty about future policy helps explain why enrolments, particularly in the VET sector, continued to grow during 2009 (see Table 1).

Since there was nothing to stop new university and VET graduates from applying for a GSM permanent residence visa (if they could afford the \$2550 fee) or for a Graduate Skills 485 visa, this situation left open how the Government would deal with the pipeline of lodged applications when these were eventually processed. Similarly, nothing was said about what the transitional arrangements would be for those still enrolled as students, if or when a new GSM selection system was introduced. This probably reflected a concern not to frighten the horses in the overseas student industry, for a scare might have led to a tsunami of GSM visa applications. There was also uncertainty about how far the Government was prepared to pursue reforms to the GSM. In other words, the final battle still had to be won within the Labor Cabinet.

There were some clues given in two discussion papers issued in August and September 2009 respectively, under the auspices of both DIAC and DEEWR. These indicated that some change to the GSM was imminent. The papers explored how the government might better target high-value skills through the GSM program and how the existing MODL, which covered around 100 occupations by 2009, might be replaced with a smaller list. Since it was assumed that employers were to shoulder the main role in meet-

ing short-term labour shortages through permanent and especially temporary employer-sponsored visas, a new rationale was needed to justify the continuation of a GSM program. This was stated to be the recruitment of high-value skills. Issue paper number 2 says that migrants selected under GSM visas should possess 'higher value skills than sponsored migrants', skills that are likely to help 'meet Australia's future skill needs'.<sup>5</sup>

The context, from DIAC's perspective, was that the room to manoeuvre in developing a new selection system was limited. As noted, the priority given to employer and state sponsored migrants meant that the number of visas available under the GSM must shrink. Yet this shrinkage in the GSM was occurring at the same time as the pipeline of potential GSM visa applicants, enrolled in universities and VET courses in Australia continued to grow.

### **THE FEBRUARY 2010 DECISIONS**

The Rudd Government announced a set of decisions on new regulations covering the GSM visa program on 8 February 2010. These laid the groundwork for a tightening of the way in which GSM applicants would be selected. The full architecture has not been revealed, including details of the selection system which will replace the one governing the existing GSM system. However, the main features of the system have been announced. They are sufficient to enable conclusions to be drawn about the immigration prospects of overseas students. We explore these prospects sequentially, starting with those who enrol in higher education or VET courses after 8 February 2010 (new students), those who were enrolled in such courses as of 8 February 2010 and those who have completed courses and are still in Australia on various temporary visas including the 485 visa (transitional students).

### **NEW STUDENTS**

In order to apply for a PR GSM visa, students enrolled after 8 February 2010 will have to meet three new threshold requirements. The first is that their occupation is included on a new Skills Occupation List (SOL)—to be released in April 2010 and to be made effective for applicants after mid-2010. This list will mean the end of the broadly-based SOL introduced in 1999, and of the MODL. The Government abolished the MODL on the 8 February 2010. The new SOL will include fewer occupations than the old SOL. According to Evans, the list will include occupations:

... where the skills take considerable time and diligence to acquire, where there is every likelihood that the skills will be deployed as intended, and where the cost to the economy and local communities of the skill being in short supply is great.<sup>6</sup>

The list will be based on a review by Skills Australia, the Government's advisory body on labour market issues, in consultation with DEEWR and DIAC. Skills Australia gave an indication of its advice on 5 March 2010 when it issued a 'Specialised occupations' list, which it states will be the basis of the new SOL.<sup>7</sup> The list covers 94 mainly professional and trade occupations at the ANZSCO 4-digit level (which encompasses larger numbers of occupations at the most detailed 6-digit level). Most of the professional occupations are the same as those included in the current CSL (which will be abolished when the new SOL is introduced). However, it includes a wider range of trade occupations than the current CSL. These are almost all traditional trades requiring a completed apprenticeship. The Skills Australia list does not include cooking or hairdressing.

The implication is that eligibility for a GSM visa will be far more restrictive than has been the case. Hundreds of occupations that were on the superseded SOL may no

longer be eligible. For example, public relations, human resources and general management professionals are likely to be excluded. The only business professions on the Skills Australia list are accountants, auditors, company secretaries and corporate treasurers and financial brokers. This is important because students completing business courses dominate the ranks of those applying for a GSM visa. As we show below, there are far more potential applicants than GSM visas available. As far as the VET sector is concerned, the main impact will come from the almost certain absence of cooking and hairdressing from the list of eligible trades on the new SOL.

Another very important development from the point of view of the international student industry is that, for new students, the new SOL will also affect their access to the 485 visa. If a student completes a course where the qualification is not applicable to an occupation on the new SOL, they will not be able to apply for the 485 visa. This restriction is likely to apply to those with cooking and hairdressing qualifications and to those with business degrees other than the ones, like accounting, included in the fields listed above.

## **IMPLICATIONS FOR THE OVERSEAS STUDENT INDUSTRY**

### **New students in the VET sector**

The implementation of the new SOL from mid 2010 will, for new students, decouple the GSM selection system from the VET sector. As noted, cooking and hairdressing are the only major trade occupations where overseas students can do a full-time course without a rigorous on-the-job training component and still obtain a GSM visa. This is why these two fields have dominated the provision of VET courses for overseas students. This market will probably no longer exist, because cooking and hairdressing are unlikely to be eligible occupations on the new SOL.

The industry is about to be transformed. Overseas students will still be able to apply for a student visa to study in the cooking or hairdressing fields. However, the PR carrot will be removed, as will the prospect of staying on in Australia (on full work rights) for 18 months on a 485 visa. Apart from the tiny minority who believe that an Australian cooking qualification will enhance their job prospects back home, the only inducement left to those contemplating taking out a VET student visa would be the opportunity to visit Australia and, while studying, to work during the period of the student visa.

This still leaves the option of seeking an employer or state government sponsorship for a skilled PR visa. On the face of it employer sponsorships will be hard to find. Since mid-2009, the minimum salary for a cook or any other occupation has been \$45,220 in the main employer-sponsored PR visa, the Employer Nomination Scheme (ENS) visa. This is well above the award rate for cooks. Also applicants need to have had three years experience. We deal with this issue below when exploring the options that former students may have to get around these obstacles.

### **New students in the university sector**

The outlook for new students in the university sector is mixed. Quality institutions are not likely to be affected much, even where most of their overseas students are enrolled in accounting and other business studies. This is because an accounting degree from a good university will yield a reasonable return in the home country. The outlook is more problematic for those universities that have aggressively pursued the PR market by offering relatively cheap course fees.

Subsequent enrolment levels by overseas students will depend on the extent to which potential students think they have a realistic chance of obtaining PR. This will depend on the number of places available under the new GSM arrangements and

**Table 3: Onshore completions by course type, management/commerce and total 2002 to 2008**

	Total			Management and Commerce			Management and Commerce as proportion of total			
	Overseas student	Domestic student	Total	Overseas student	Domestic student	Total	Overseas student	Domestic student	Total	
2002										
	Postgraduate	16164	45390	61554	6209	13093	19302	38	29	31
	Undergraduate	16216	106162	122378	6809	19766	26575	42	19	22
	Total	32380	151552	183932	13018	32859	45877	40	22	25
2003										
	Postgraduate	19743	47836	67579	8223	13848	22071	42	29	33
	Undergraduate	19125	109167	128292	7666	20231	27897	40	19	22
	Total	38868	157003	195871	15889	34079	49968	41	22	26
2004										
	Postgraduate	20936	50642	71578	8784	14450	23234	42	29	32
	Undergraduate	21359	110980	132339	9115	20284	29399	43	18	22
	Total	42295	161622	203917	17899	34734	52633	42	21	26
2005										
	Postgraduate	25509	51959	77468	11056	14433	25489	43	28	33
	Undergraduate	23300	110856	134156	10492	20542	31034	45	19	23
	Total	48809	162815	211624	21548	34975	56523	44	21	27
2006										
	Postgraduate	27617	53313	80930	12006	13976	25982	43	26	32
	Undergraduate	26165	111027	137192	12623	20753	33376	48	19	24
	Total	53782	164340	218122	24629	34729	59358	46	21	27
2007										
	Postgraduate	28776	54430	83206	14152	13452	27604	49	25	33
	Undergraduate	30472	111370	141842	15772	21401	37173	52	19	26
	Total	59248	165800	225048	29924	34853	64777	51	21	29
2008										
	Postgraduate	33028	57337	90365	17020	13612	30632	52	24	34
	Undergraduate	31936	111691	143627	17314	21185	38499	54	19	27
	Total	64964	169028	233992	34334	34797	69131	53	21	30

Source: DEEWR customised dataset held by CPUJ

on the rigour of the proposed new points-based selection system. In what follows, the prospective supply of and demand for PR places is explored. We then consider the likely structure of the points-based system.

### **THE SCALE OF LIKELY DEMAND FOR PR FROM UNIVERSITY GRADUATES**

As indicated, there will be more potential applicants than visas available under the new GSM program. Perhaps the best way to indicate the size of the prospective logjam is to examine the statistics on the number of overseas students completing university courses in Australian universities. As Table 3 shows, their numbers have grown from 32,380 in 2002 to 64,964 in 2008. By 2008, just over half of these students had completed courses in the Management and Commerce field of study. The attraction of this field is that it includes accounting, which, as we have seen, has offered a relatively easy route to PR.

Our interviews with university staff teaching in management and commerce fields have indicated that most overseas students taking these courses are, at the very least, interested in the PR option. Survey research conducted as part of the 2006 International Student Survey initiated by DEEWR indicated that around two thirds of final year higher education and VET students were considering applying for PR at some time in the future.<sup>8</sup> Other indicators, like the remarkable parallel changes in enrolment patterns by international students following changes to the GSM selection rules, are consistent with this PR aspiration. For example Masters by coursework and undergraduate commencements at Australian universities by international students in the information technology field fell from 10,332 in 2004 to 6,461 in 2006 and 7,848 in 2008. By

contrast, commencements at the Masters by coursework and undergraduate level for management and commerce courses increased from 26,326 in 2004, to 31,000 in 2006 and 45,853 in 2008.<sup>9</sup> This divergent pattern coincides with the addition of accounting to the MODL in August 2004, but not the professional computing occupations.

If just half of the 34,334 overseas students who completed a business and commerce course in 2008 (see Table 3) apply for a GSM visa, this would represent some 17,000 applicants. Several thousand more with engineering, medical and nursing degrees are also likely to apply. Yet, in 2008–09, only 27,496 principal applicants received PR visas issued under the GSM program. The rest of the 55,098 visas noted in Table 2 were issued to dependents of principal applicants. As explained, there will be fewer visas available in 2009–10.

Unpublished DIAC statistics for 2008–09 and the first half of 2009–10 for the 485 visa, and for the two major permanent entry GSM visas limited to overseas students (visa subclasses 885 and 886), give an indication of the scale of interest on the part of overseas students in migration. In the case of the 485 visa, the number of lodgements from principal applicants was 23,850 for the full year 2008–09 and 17,026 for July to December 2009. In the case of the 885 and 886 visa subclasses the total lodgements by principal applicants was 19,629 in 2008–09 and 14,510 in the six months to December 2009.

The logjam of student applications will be exacerbated if overseas experience and qualifications are given more weight in the selection system. As flagged in its 15 February 2010 discussion paper, 'Review of the General Skilled Migrants Point Test', the government may choose to put more emphasis on credentials from top overseas universities and on work experience—whether in Australia or overseas.

The reality is that, short of an increase in the GSM program, DIAC will have to run a severe filter across all applicants, including those with university or VET credentials obtained in Australia.

### **FROM ELIGIBILITY TO GSM SELECTION**

Unfortunately at this point, it is only possible to speculate how much tougher the new filter will be than that currently prevailing. The February 2010 Discussion Paper hints that everything is under review. The government may decide to increase the minimum English standard for some occupations. The current minimum of level 6 on the IELTS test is well below that needed in most professional occupations, which is at least level 7. Alternatively, it may insist that all applicants in professional occupations complete a professional year in their discipline. If this occurs, it would imply that the points currently allocated to applicants for study with an Australian provider, or for studying in a regional location, or from sponsorship for a relative holding a permanent residence visa in Australia, will be given less weight in the selection outcome. Indeed, the Government will have to do this if it wants to leave room to recruit high-quality applicants from abroad.

We conclude that for students contemplating taking an Australian university degree with the purpose of obtaining a permanent entry visa the prospects of success will be lower than under the pre-8 February 2010 rules. Students will have to take on a difficult and expensive course in engineering, in one of the health professions or in the other high-skill occupations likely to be on the new SOL if they wish to be assured of a PR visa under the GSM.

As regards the VET sector, as noted, the government has already decided to toughen the assessment of trade skills. All those who apply onshore for a permanent

entry GSM visa after 1 January 2010 and who hold trade credentials will have to meet the new job readiness test. This test will be far tougher than the previous arrangements described above. The TRA has abolished the 900-hour work experience requirement which students had to complete during their course. Instead, the new job readiness test requires one year's full-time job experience, which it expects will be completed while the student is on a 485 visa, and a competency test, or what it terms a job-ready workplace assessment, to be conducted by a TRA-approved assessor.<sup>10</sup> This is a radical and welcome change. However, it will not have much practical impact because, for the immediate future, the great majority of potential VET graduates will be cooks and hairdressers. Those who are new students will not be eligible for a GSM visa anyway, because their occupation is unlikely to be on the new SOL.

### **STUDENTS IN TRANSITION**

Here the focus is those overseas students who on 8 February 2010 were holding a student visa entitling them to take a higher-education or VET course. This group also includes those who have completed a course and are still in Australia either on a 485 visa or on a bridging visa pending the processing of a permanent residence GSM visa or a 485 visa.

There were several hundred thousand overseas students enrolled in courses prior to the February 8 announcements. As of mid 2009, according to DIAC stock data, there were 386,523 overseas students in Australia on student visas. About 80 per cent of these would have been enrolled in higher-education or VET courses. All of these students can apply for a 485 under the old SOL up to December 2012. This will allow them full time work rights in Australia for up to 18 months. Those with trade qualifications will not have to com-

plete the TRA work readiness test. Instead, TRA will accept the certification from their provider. However, those who obtained a 485 visa without having completed the job readiness test will have to do so if they subsequently decide to apply for a PR GSM visa. Those who obtained their certification from TRA prior to 1 January 2010 are exempted from this requirement. In addition, all applicants in this transition group who hold a trade qualification will have to meet the minimum English standard of IELTS 6 for each of the four modules, both for a 485 visa and a PR GSM visa.

There is one final hurdle for those transitional students who do obtain a 485 visa. If they wish to apply for a permanent entry GSM visa after mid 2010, they will not be able to do so unless their occupation is on the new SOL.

There is one transition group of former students who are in a better position to access a GSM visa. DIAC has been allowing former overseas students to apply for a GSM visa since January 2009, as long as their occupations were on the old SOL and they could meet the language threshold requirements. This has been permitted even if the applicant's occupation was not included on the Critical Skill List in place since 1 January 2009. DIAC has only been processing GSM applications which are on the CSL. For all others, the applicants have been granted a bridging visa with full work rights and indefinite stay in Australia until DIAC decides to process their application. In the eight months from January 2009 to August 2009 some 3472 cooks applied as did 560 hairdressers (unpublished DIAC stats via a freedom of information request by *The Australian*). When they are eventually processed, most will meet the selection rules applicable at the time they applied. Those holding a 485 visa or those who finished their courses at the end of 2009 can still apply for a GSM visa under these arrangements. This concession

will end in mid-2010 when the new SOL is announced.

## CONCLUSION

The party is over. For new VET and university students the Rudd Government has largely decoupled education from migration selection.

For new VET students (those who enrol after 8 February 2010) the carrot of PR will largely be removed, including those enrolling in commercial cookery or hairdressing courses. They will not be eligible to apply for a GSM or a 485 visa after completing their courses. For new university students the PR pathway will be far more difficult than it is currently, in part because of the limited range of occupations that will be eligible for a GSM or 485 visa, and in part because the proposed new selection test will be much tougher than that in place at present.

This means that to sustain and grow their market, educational institutions will have to provide courses which are of value back in the countries of origin of prospective students. This is as it should be.

For students in transition, that is, those who have already applied for a GSM visa and are waiting to be processed, those who have applied for or hold a 485 visa, and those who held a student visa on 8 February 2010, the picture is more complex. There were at least 400,000 in these categories by the end of 2009.

At one level, the transitional arrangements for these students are generous. All those with qualifications relevant to occupations listed under the old SOL will be able to apply for a 485 visa as long as they do so before the end of 2012. Those that obtain the 485 visa will be able to stay in Australia for 18 months with full work rights. This will allow them to recoup some of the costs of their education and repay any loans taken out to finance their education in Australia.

However, the 485 visa will no longer offer a relatively secure pathway to a GSM visa. Those who apply for a GSM visa will have to have an occupation on the new SOL and meet the requirement of the new selection system when it is introduced.

The ramifications of these transitional arrangements will be enormous.

The first concerns future competition for GSM places. For the thousands who have already applied for a PR GSM visa, they will have to be assessed according to the selection rules at the time they put in their application. When their applications are eventually processed, most are likely to succeed. They will add to the competition for the limited number of GSM places available. How DIAC is going to ration these places remains an unresolved puzzle.

The second concerns the implications of the large number of overseas students in Australia's cities. The students who have applied for a GSM visa, as well as those studying, or on a bridging visa waiting for their 485 visa to be dealt with, will remain a huge presence in these cities. Of most concern is their competition, with young unskilled domestic job seekers in the low-skilled job markets of Australian metropolises.

The third ramification concerns the responses of students to the 8 February rules. As the reality sinks in that most of the transitional group of former overseas students will not be able to obtain a GSM visa, this will increase their desperation to find an alternative pathway to PR. One possibility is via state sponsorship. States are coming under intense pressure to provide such sponsorships. Our earlier inquiry suggests that most states will exercise restraint.<sup>11</sup> However, DIAC has stated that it wishes to partly devolve migration selection to the states and several, including South Australia and Victoria, have announced their intention to boost their share of the migrant intake. DIAC will have to exercise

close control over any propensity of these states to sponsor students who would not be eligible under the new GSM rules.

The most likely alternative option for PR for overseas students will be the Employer Nomination visa subclasses. Many of the students affected by the new GSM rules will pursue the suggestion of Senator Evans and his Department, that they find an employer to sponsor them.

There is no doubt that the network of providers, education agents and migration agents that have facilitated the recent enormous growth in student enrolments will be out and about looking, on behalf of their clients, for such employers. Indeed, agents tell us that the search is underway.

Few will succeed via the permanent entry Employer Nomination Scheme (ENS). To be eligible for this visa subclass, an applicant must have had at least three years full-time experience in the occupation for which he or she is sponsored. Students are being advised to first seek out a temporary entry employer sponsorship under the 457 visa category. Almost all trade and above occupations are eligible for 457 visa sponsorship. That is, eligibility will not be restricted by the new SOL when introduced in mid-2010. Also, it is the sponsors of 457 visa applicants who make the decision whether the person seeking sponsorship has the skills or experience necessary for the job. In the case of those with trade skills, there is no requirement to pass a job readiness test, as is now the case for those with trade qualifications who apply for a GSM visa.

Once the student has worked two years in Australia, he or she can then apply for an ENS visa, as long as during one of these two years, the person was employed by the prospective ENS sponsor. If the employer is willing to provide the ENS sponsorship, no job readiness test is necessary and the minimum English standard is just 5 on the IELTS. This is well below that which is

now required for GSM applicants, which is IELTS 6.

Readers may wonder why an employer would be willing to act as a sponsor, given that 457 and ENS sponsors have to guarantee a minimum salary payment of \$45,222 a year. Yet they do. About 80 per cent of all those who currently obtain ENS visas are former 457 visa holders. Many of course, have the skills necessary to justify such payments. But in the case of the hospital-ity industry, which is likely to be under the greatest pressure to provide sponsorships for overseas students, this salary level is well above the award wage. It is also way above what most employers would be prepared to pay an employee who is a former commercial cookery or hairdresser graduate from an Australian VET provider.

From the employer's point of view, the willingness to sponsor an overseas student or a relatively low skilled person from a developing country is likely to be influenced by the power relationship between the sponsor and sponsored person. The person sponsored, initially on a 457 visa, is dependent on the employer's willingness to act as an ENS sponsor after the two years employment is complete. The employer can drive a hard bargain as regards hours, wages and work conditions in return. There will also have to be a willingness of the two

parties to violate the legal requirement to pay the minimum wage of \$45,222.

It would be naïve to deny the possibility of this occurring given that the stakes are so high from the point of view of former students desperate for PR and the commercial advantage for the employer in the hospital-ity industry where margins are low. Given DIAC's limited inspection capacity, those involved in these arrangements probably do not have much to fear. The miserable record of compliance in the VET sector should leave no illusion that some employers and students will be party to non-compliance with the official regulations.

We thus have the situation where the Rudd Government has tightened up the GSM procedures, such that those with cooking and hairdressing qualifications, as well as wide range of business qualifications at the higher education level, are unlikely to be eligible for PR. Yet, at the same time, it is allowing employers to sponsor former students with qualifications in these fields under the 457 and ENS visa category according to selection criteria which are far softer than those incorporated into the new GSM selection system.

This inconsistency should be removed by limiting the range of occupations eligible for employer sponsorship.

## References

- <sup>1</sup> B. Birrell and T. F. Smith, 'Export earnings from the overseas student industry: how much?', *Australian Universities Review*, vol. 52, no. 1, 2010. We argue that the \$15 billion figure significantly overstates the actual figure.
- <sup>2</sup> B. Birrell and E. Healy, 'Migrant accountants—high numbers, poor outcomes', *People and Place*, vol. 16, no. 4, 2008, p. 20
- <sup>3</sup> Peter Mares, 'From queue to pool: skilled migration gets a makeover', *Inside Story*, 10 February, 2010
- <sup>4</sup> Ministerial Statement by Senator Chris Evans, Minister for Immigration and Citizenship, Changes to the 2008–09 Skilled Migration Program, p. 8
- <sup>5</sup> Review of the Migration Occupations in Demand List, Issues Paper no. 2, September 2009, p. 9
- <sup>6</sup> Senator Chris Evans, Announcement of changes to the skilled migration program, 8 February, 2010, p. 10
- <sup>7</sup> Skills Australia, *Australian Workforce Futures: A National Workforce Development Strategy*, Commonwealth of Australia, Appendix 3: Specialised Occupations, p. 83

- <sup>8</sup> DEEWR, Submission to the Inquiry by the Senate Education Employment and Workplace Relations Committee into the Welfare of International Students, September 2009, p. 34
- <sup>9</sup> DEEWR, unpublished higher education enrolment data held by the CPUR
- <sup>10</sup> Trade Recognition Australia website <[www.deewr.gov.au/Skills/Programs/SkillsAssess/TRA/Pages/default.aspx](http://www.deewr.gov.au/Skills/Programs/SkillsAssess/TRA/Pages/default.aspx)>
- <sup>11</sup> B. Birrell and B. Perry, 'Immigration policy change and the international student industry', *People and Place*, vol. 17, no. 2, June 2009, pp. 76–78