

## IMMIGRATION POLICY CHANGE AND THE INTERNATIONAL STUDENT INDUSTRY

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*Enrolments of overseas students have grown sharply, especially in hospitality courses in the Vocational Education and Training (VET) sector. Most VET sector students undertook their studies with the expectation that their qualification would lead to a permanent residence visa in Australia. However, since late 2008, changes to Australia's migration policy mean that few will gain this outcome. This article explores the numbers of students affected and their options for staying on in Australia on a temporary or permanent basis. It argues that to be sustainable, the Australian international student industry must focus on providing qualifications that overseas students can take back to their country of origin with profit.*

Since the Labor Government came to power in late 2007 it has embraced a high migration policy. At the time of its first budget in May 2008, it added a further 37,500 places to the previous Coalition Government's program. This brought the overall program to a record high level of around 200,000 for 2008–09. The government was afraid that labour shortages would contribute to inflationary forces, which the Treasury thought could abort the economic surge unleashed by the minerals boom. To this end the government wanted willing workers—the more, the better. However, at the time of the May 2009 Budget statement the Labor Government announced a slight cut in the overall program for 2009–10 to around 180,000.

On the face of it one might think that Australia's immigration policy is little changed from Coalition days. This is not the case. The overall size of the program remains very high by historic standards, especially given the Labor Government's expectation that the unemployment level will rise. But major changes have been made to the skill selection priorities and procedures. The most significant is the decision, announced on 17 December 2008 and implemented since January 2009, to focus skilled recruitment around employer and state government sponsorships. Since January 2009 the Labor Government has

stopped processing visa applications from applicants with a wide range of qualifications earned in Australia which previously would have made them eligible to apply for permanent residence, including cooking and hairdressing. The only occupations being processed are those included on a critical skills list, which is limited to professional fields in the health, IT and engineering areas, accountancy (where the applicant can achieve 7 on the International English Language Testing System [IELTS] test) and a few trades. Students who complete a professional year in their field (mainly in accounting and IT) are also eligible to be processed. The government has said that it will process applicants with occupations not on the critical skills list, but which remain on the Migrant Occupations in Demand List (MODL), as discussed below, if there are visas available within its program target for 2009–10. Cooking and hairdressing are still listed on the MODL.

It is doubtful whether many such visas will be available. As indicated, the Labor Government has also decided to reduce the size of the skilled migration program slightly during 2009–10. The combination of this cut (see Table 3), along with the priority given to employer and state sponsorships and to those with occupations on the critical skills list means that few, if any, applications from former overseas students

with occupations not on the critical skills list, but on the MODL, will be processed during 2009–10.

The implications of Labor’s policy innovations are profound, especially as they relate to the international student industry in Australia.

**THE IMMIGRATION POLICY BACKGROUND**

Since the early 1990s, the core rationale of the migration program has been the selection of persons with skills thought to augment Australia’s skill base. Successive Labor and Coalition governments have selected a modest number of those with good English, trade or professional credentials recognised for employment purposes in Australia and with relevant work experience. The policy was pitched at the long term in that it was assumed that persons with such high level skills would find employment, and thus that there was no necessity to insist on pre-arranged employment as a condition for selection.

This policy was extended in 2001, when former overseas students who had completed post-school credentials at an Australian university or vocational education and training (VET) college were permitted to apply for skilled permanent residence visas from within Australia in designated skilled occupations, as long as they did so within six months of completing their course. Their applications were treated on a concessional basis. Unlike prospective skilled migrants applying from overseas, those applying on-shore did not have to have had relevant job experience in their nominated occupation and they received extra points on account of their Australian credentials.

The international education industry in Australia has since expanded rapidly, largely in response to the permanent residence opportunities that these innovations presented. Until 2005, most of the growth occurred at the university level, particularly in the business studies and IT fields. Since 2005 the VET sector has expanded much more rapidly, though from a relatively low

**Table 1: Overseas student commencements, India and all nationalities, by education sector, year to December, 2002 to 2008**

Sector	2002	2003	2004	2005	2006	2007	2008
				India			
Higher education	4359	7064	9958	9315	10493	11,197	12,102
VET	818	618	1005	2865	7399	18,612	32,771
Schools	35	18	18	32	31	52	60
ELICOS	75	421	897	1111	2662	8419	14,508
Other	74	85	107	122	251	428	641
Total	5361	8206	11985	13,445	20,836	38,708	60,082
				All nationalities			
Higher education	56,636	60,473	65,089	64,570	66,333	69,716	77,961
VET	29,408	30,230	32,056	37,314	48,461	72,622	105,752
Schools	12,272	12,510	11,320	10,408	11,104	13,599	14,446
ELICOS	42,105	47,050	45,359	49,439	59,052	80,824	99,367
Other	19,824	21,370	21,517	21,957	22,076	22,842	26,076
Total	160,245	171,633	175,3411	183,688	207,026	259,603	323,602

Source: Australian Education International (AEI) student commencements data, unpublished.

Notes: VET stands for vocational education and training and ELICOS for English language intensive course for overseas students.

base (see Table 1). As Table 1 also shows, students from India have been a major contributor to this VET sector growth. India is the largest single source country for the VET sector, with 32,771 commencements in 2008. China was the next largest source country with 15,421 commencements in 2008 (not shown in the Table).

There has been a resultant flow into the migration program as the numbers of completing university or VET courses eligible for permanent residence has increased. By 2007–08, nearly half of the skilled migrants being visaed under Australia's General Skilled Migration (GSM) categories were former overseas students trained in Australia. The GSM visas incorporate all the permanent residence skill selected visas issued by the Australian Government to principal applicants and their dependents, except for those entering under the business skills and employer nomination categories.

The statistics in Table 1 help set the scene for the analysis, but they need to be read with caution. They are based on the Australian Education International (AEI) database. The numbers refer to commencements in courses, not discrete students. This is not a problem for the higher education starts, but it is for the VET sector. This is because VET students tend to enrol in a new course each year. In the case of the hospitality fields examined below, students normally complete their study over two years. In the first year they do a Certificate III level course (or equivalent), which would be recorded as a commencement in, for example, cooking or hairdressing. In the second year they usually do a course in hospitality management, which would also be registered as a commencement, though this time in hospitality management. So an individual student would be counted as a commencing student twice, in consecutive years. In the higher education sector an individual student would normally only be counted as commencing once. This is why Table 1 shows that there were more

commencements in the VET sector in 2008 than in the higher education sector. AEI does publish a limited range of statistics that identify discrete students. These show that for 2008 there were 176,161 overseas students taking higher education courses in Australia and 151,258 VET overseas students.<sup>1</sup>

Despite their limitations, the AEI database is the only source which allows an up-to-date identification of trends in overseas student enrolments. What they show is remarkable. There was an increase of 20.7 per cent in the number of commencements in the higher education sector over the years 2005 to 2008. But in the VET sector, commencements over the same period grew by 183 per cent. This latter figure represents an overall growth in VET commencements of 68,438. Much of this was attributable to just one source country: India. Commencements from Indians grew by 29,906. They accounted for 44 per cent of the growth in VET sector commencements between 2005 and 2008.

As is shown in Table 2 nearly half of the total growth in the VET sector since 2005 has occurred in courses recorded as being in the cooking, hairdressing, hospitality and hospitality management fields of education. This figure is undoubtedly an underestimate of the role of the hospitality sector in VET expansion because some colleges nest their cooking and hairdressing students within the management field of study. When classified in this way, it is difficult to identify students who begin with cookery or hairdressing and then do management subjects.

Until recently, the migration selection rules allowed students who had completed a one year Certificate III (or equivalent) credential in cooking or hairdressing in a full time course at a private college or Technical and Further Education (TAFE) institution to qualify as a skilled migrant for permanent residence under the GSM. This was subject to a Department of Immigration and Citizenship (DIAC) requirement that they

complete a minimum of two years training in Australia. In the case of those doing cooking or hairdressing, as noted above, most did a hospitality management or perhaps a management course in their second year.

Over the last decade, opportunities for permanent residence have been a major driver of growth in international student enrolments.<sup>2</sup> This applies to both the higher education and VET sector. But in the case of the higher education sector an Australian university qualification in accounting or IT does have value in the home country. This is not the case in the VET sector, particularly in the hospitality fields. According to informants in the cooking training field, the cooking skills of a student completing a one year full-time course in these fields are roughly equivalent to those achieved by a second-year domestic apprentice in cooking, or around the level of a semi-skilled

kitchen hand. This is well short of the trade standard expected for domestic apprentices on completion of their apprenticeship.<sup>3</sup> The value added to a student's earning potential on returning to India with a VET cooking credential is minimal. The purpose of the investment in Australian education is to obtain access to the Australian labour market, preferably as a permanent resident.

This background helps explain the surge in VET enrolments since 2005. The timing of the enrolment surge is related to changes in Australia's GSM selection rules. These rules are governed by a points test with applicants gaining points for skills, knowledge of English and so on. In April 2005 DIAC increased the pass mark by ten points to 120 for those applying for the main former overseas student skilled visa category. This increase made it very much harder for a former overseas student to achieve the required

**Table 2: International student commencements<sup>1</sup> in hospitality fields,<sup>2</sup> year to December, by major country of citizenship, 2002 to 2008**

	2002	2003	2004	2005	2006	2007	2008
India	217	161	409	1,735	4,423	11,079	18,269
China	198	429	811	1,636	2,885	4,169	5,896
Nepal	31	27	22	63	353	1,969	4,018
Korea, Republic of (South)	360	401	564	1,039	1,458	1,561	2,189
Bangladesh	36	94	171	365	881	944	1,084
Indonesia	164	225	252	310	478	579	927
Thailand	246	343	401	613	828	809	900
Viet Nam	14	23	45	75	143	337	890
Sri Lanka	46	40	63	135	277	556	774
Mauritius	24	57	88	114	220	363	762
Pakistan	33	32	42	80	185	500	700
Japan	212	356	418	473	487	466	463
Malaysia	86	125	148	213	268	355	457
Other	816	1,123	1,318	1,708	2,414	2,703	3,196
Grand total	2,483	3,436	4,752	8,559	15,300	26,390	40,525

Source: Australian Education International, unpublished

Notes: <sup>1</sup> Data include commencements for Certificate III, Certificate IV, Diploma and Advanced Diploma levels.

<sup>2</sup> Cookery, hairdressing, hospitality and hospitality management

pass mark. As prospective students, migration agents and course providers were quick to appreciate, the key to achieving the 120-point outcome was whether the applicant's qualification led to an occupation listed on the MODL. This was a list prepared by the Department of Employment and Workplace Relations (DEWR, as it was entitled in 2005). The list was based on DEWR's assessment of the job market in Australia. If an occupation was in 'national shortage' it was included on the MODL. Cooking was added to the list in May 2005—hairdressing has been on the list since May 2001.

From April 2005 (until recently) completion of a VET cooking (or hairdressing) qualification virtually guaranteed a permanent residence visa. To enrol in such a course, all that was required was completion of year 12 or equivalent and an average of 5.5 on the IELTS test, which assesses English speaking, writing, listening and reading skills. But both these preconditions could be waived. Applicants aged 21 or over did not have to have completed year 12 and those with less than 5.5 on the IELTS test could still get a student visa as long as they agreed to enrol in a preliminary English language course, usually with the private college or TAFE that would subsequently provide the VET course.

Given this background it will come as no surprise that the surge in commencements has been explosive in the VET hospitality sector. This is shown in Table 2 which includes all overseas students commencing certificate III level courses or above in VET private or TAFE colleges whose courses are labelled within the cookery (including baking and pastry cooking) and hairdressing fields of education and within the hospitality or hospitality management fields of education. Again, these figures must be read with caution because, as indicated above, they underestimate enrolments in the hospitality field. Nonetheless, between 2005 and 2008 commencements in these fields, as

listed, increased 4.7 fold. By comparison there was a 2.8 fold increase in the overall growth in VET commencements (calculated from Table 1). Table 2 also shows that just over half of the growth in these hospitality commencements was attributable to students from India.

The point of this background is to establish the link between the recent rapid growth in the overseas student industry and the evolution of migration selection policy. The hospitality sector has been highlighted because of its size and because the correlation between permanent residence opportunities and data on commencements in courses is so direct. However there are thousands of other overseas students in the VET and university sector who may have an interest in converting their credentials into a permanent residence visa when they complete their qualification. For some it is a matter of taking up the opportunity if the rules allow it. For an increasing minority, as argued, the point of study in Australia is to gain permanent residence.

Whatever the motive, those seeking permanent residence will find that the migration selection landscape (as briefly described in the opening paragraphs) has changed.

## **IMMIGRATION POLICY CHANGE**

The abrupt decision announced in December 2008 to focus migration selection on employer nominations and state sponsorships and to limit processing of GSM visas to those with occupations listed on the critical skills list may look like a sudden change in policy brought on by the global financial crisis.

In fact, for some time there has been concern within DIAC about the skill levels of overseas students trained in Australia. This came to a head in the course of an Evaluation of the General Skilled Migration Categories conducted through 2005 and published in March 2006. Bob Birrell was a member of this Evaluation. The Evaluation concluded

that the available evidence on job outcomes for former overseas students trained in Australia showed that these outcomes were poor. The authors thought that this was mainly attributable to students' deficiencies in English. They were also concerned that the operation of the MODL was warping the onshore program towards just a few occupations requiring university qualifications, particularly accounting and IT. At the time, the boom in VET enrolments was only just getting underway and was not yet seen as a major challenge to the make up of the migration intake.

Most of the recommendations of the Evaluation were implemented by DIAC in September 2007 after Cabinet decisions on a GSM reform package. The most important was an increase in the minimum language requirement for a GSM visa from IELTS 5 to 6 and the allocation of additional points for those who could reach IELTS 7. For immigration purposes, applicants must now score a minimum of 6 for each of the four aspects of English measured. However, the minimum English standard for those with trade qualifications was left at 5. Also, there was a reduction in the role of the MODL in determining the visa application outcome. After September 2007, MODL points ceased to be important. This was because an applicant could only score MODL points if he or she had had one year's work experience in their occupation. This meant that only a minority of former students were likely to reach the 120 pass mark after the September 2007 reforms. To do so they would have had to have reached level 7 on the IELTS test or to have been able to show that they had completed the required one year's work experience in their occupation.

Those students who could not achieve the 120 pass mark were given the option of applying for a temporary 485 visa, which permitted them to stay on in Australia for 18 months with full work rights. In what was an important concession to the international

student industry, DIAC permitted all former overseas students to apply for the 485 visa as long as their trade or university qualification was accredited by the relevant authority and they could prove that they possessed the minimum English standard (5 for trade and 6 for university graduates). This was contrary to the recommendation from the Evaluation, which proposed restricting eligibility for the 485 visa.<sup>4</sup> During the 18 months, if a former student could improve his or her English or gain a year's work experience in their occupation or, in the case of professionals, complete a professional year in their discipline, their chance of successfully applying for permanent residence was good—at least before the December 2008 changes to immigration selection policy. Nevertheless, the new Department of Education, Employment and Workplace Relations (DEEWR) continues to produce a MODL list, which is reviewed every six months. It is now more significant for offshore applicants, but remains one component of the selection test that all GSM applicants must complete. The MODL methodology is currently being reviewed.

DIAC has long been concerned about DEEWR's MODL methodology. This is because the decision to place an occupation on the MODL takes no account of the job outcomes for the migrants whose visa applications have been advantaged by the additional MODL points. Thousands of migrants with qualifications in accounting, cooking and hairdressing have been visaed each year, yet with no apparent impact on job shortages in these occupations. Yet, because DEEWR judges there to be a national skill shortage in each of these fields, the occupations remain on the MODL.

The Labor Government's decision to introduce a separate critical skills list, unrelated to the MODL, was partly based on this concern. As the current Minister for Immigration, Senator Evans, explained to the May 2009 Senate Estimates hearings:

We are looking at the MODL ... We created the critical skills list because we found that the MODL was not a fair reflection of what was going on in the economy. Hairdressers are a good example ... They were in short supply because the wage rates were low. People who come in as hairdressers then go and get jobs doing other things. It did not matter how many hairdressers came in under the previous government and this government—we were still short of hairdressers ... You will notice that on the critical skills list that those occupations are no longer there.<sup>5</sup>

As a result of the implementation of the critical skills list in January 2009, the MODL list has even less relevance for on-shore immigration purposes. Some occupations on the MODL were included on the critical skills list, including those in the health, engineering and IT areas. Only a few trade-area occupations were included. This was partly a political list. The Minister was pressured by the trade unions to leave off trade occupations in the construction and manufacturing industries. The omission of cooking and hairdressing reflected the concerns described above. Despite the political background, the critical skills list makes sense. At a time when young domestic entrants to the labour market are suffering the brunt of the labour market downturn and when Labor is trying to improve their situation by increasing training opportunities, it makes no sense to visa persons with trade or semi-skilled occupations. On the other hand, skill shortages in some of the professions reflect long term neglect of such training in Australia which will take years to rectify. Immigration will have to be part of the skill shortage solution in the short term.

This was not all. In case anyone doubted DIAC's newfound determination to refocus the GSM so that it was no longer driven by the overseas student industry, two further decisions were announced at the time of the May 2009 Budget. Applicants with trade

occupations who were not sponsored by an employer or a state government had to achieve much higher English standards than before. From 1 July 2009 these standards are to be increased from IELTS 5 to IELTS 6. The second decision was that from 1 January 2010 a 'job readiness test' would be introduced for trade-qualified onshore applicants. This is very significant. As we have pointed out in an earlier analysis, DEEWR has sat on its hands on this issue for years.<sup>6</sup>

### **EMPHASIS ON EMPLOYER AND STATE GOVERNMENT SPONSORSHIP**

As indicated, in December 2008 the Labor Government announced that it would prioritise skilled migrant selection around employer nominations and state sponsorships. This too, was not a totally new policy direction. It originated under the Coalition Government in 2005 when, as evidence of skill shortages mounted, DIAC began to extend the opportunities for employers and state governments to sponsor migrants. The argument was that employers and the states were in a better position to judge whether the migrant sponsored had the skills needed in their locality.

As in the past, there are no limits on the number of visas employers or state governments can sponsor. The objective, as stated in the 2009 Budget media release, is 'to shift the balance of the skilled migration program'. In the past, the document says, the employer and state sector were responsible for about 20 to 25 per cent of visas. 'In the 2009–10 skilled migration program, it is likely that the two sponsored streams will represent close to 50 per cent of visa grants, with a corresponding decline in the proportion of non-sponsored visa grants'.<sup>7</sup>

The anticipated outcome for the skilled program in 2009–10 is detailed in Table 3. The overall skill program number is set at 108,100, down from the 115,000 expected in 2008–09. The effect, given that DIAC

expects that the employer nomination and state sponsorship programs will hold up at around 49,000 is to reduce the likely number of visas allocated under the GSM program to around 51,000. As noted, DIAC has decided to give processing priority to applicants with occupations on the critical skills list. All the visa categories under the GSM are affected, including those for people applying from overseas as independent skilled migrants, those sponsored by relatives in Australia and those applying under the various former overseas student visa categories. Preliminary analysis by DIAC indicates that only a minority of these applicants have an occupation on the critical skills list. Those applicants who do have such an occupation will take up most if not all of the visa slots available during 2009–10 under the GSM program.

As a consequence, there will be few, if any, visas available under the GSM program to applicants, including former overseas students, who do not hold occupations on the critical skills list. The fact that cooking and hairdressing remain, for the time being, on the MODL will not help these students gain access to a permanent residence visa.

### **IMPLICATIONS OF THE NEW MIGRATION POLICY**

The GSM doors are closing for former overseas students, just as the numbers in the pipeline doing courses, or who have recently

completed courses, reaches a peak. In aggregate terms there were 370,238 overseas students enrolled in 2007 (across the university, VET, ELICOS and school sectors). In 2008 this number increased to 435,263.<sup>8</sup> For the first three months of 2009 commencements increased yet again, particularly in the VET sector, relative to the first three months of 2008. Apparently, the recruitment grapevine back to the countries of origin has not yet registered that permanent residence is no longer the sure thing that it has been in the recent past.

Meanwhile Australia already has an international incident on its hands, which stems directly from the escalating numbers of overseas students already here. As the upsurge in student enrolments has grown so has the spread of Indian subcontinent youth into the middle and outer suburban low-cost housing areas of the south-western suburbs of Sydney and the western and northern suburbs of Melbourne. There they are competing for accommodation and living space with predominantly low socio-economic status non-English-speaking-background (NESB) communities. This has created a powder keg situation as the newcomers find themselves soft targets for youth gangs with well-established reputations for nastiness. The Indian students, quite rightly, are standing up for their rights. They are now arguing that they have been exploited by the Australian education industry, which, so

**Table 3: Visas issued for the permanent residence skilled program by broad category**

Visa type	2007–08 Actual	2008–09 Planned	2009–2010 Program
General Skilled Migration	70,370	57,900	51,000
Employer sponsored	23,760	38,2000	35,000
State sponsored	7530	11,200	14,000
Business skills	6570	7500	8000
Other	210	200	100
Total	108,540	115,000	108,100

Source: DIAC, unpublished.



they say, is happy to take their money but, in the students' view, has shown little interest in their welfare while in Australia.

This social stew is about to get very much richer as the issue of the fate of the students now in Australia comes into focus. There are many thousands out and about looking at their on-shore migration options, now that the preferred outcome of a permanent residence GSM visa cannot be relied on. Are they just going to placidly go home, with little to show for their investment? We doubt it. In the review that follows we detail their options. They face a tough stand from the Australian government on immediate access to a GSM visa, but loose ends abound elsewhere through the migration system.

## VISA OPTIONS

### **Staying on a temporary basis**

Surprising though it may seem, former overseas students with occupations not on the critical skills list have at least two options for staying on in Australia on a temporary basis. The first option is the 485 visa, discussed above. As noted, this visa was deliberately liberalised in order to add to the attraction of studying in Australia. For a visa fee of just \$195 former overseas students can access the Australian labour market with full work rights for 18 months. During this period they can apply for a permanent entry visa if they wish (discussed below).

DIAC is also permitting a second option. Former overseas students can apply for a GSM visa (at a cost of \$2105) even though their nominated occupation is not on the critical skills list. If they do, DIAC will issue them with a bridging visa while they wait for DIAC to process their application. This visa is even more generous than the 485 visa. The bridging visa provides for full work rights and access to Medicare benefits. The latter is included because the visa they have applied for is a permanent residence visa which, if granted, would include such rights.

The only restriction on lodgement of an application is that applicants reach the threshold requirements (minimum English language and accreditation of their credentials).

Since DIAC is not processing the applications, the department is not culling those who would have no prospects of meeting the pass mark for the GSM visa in question. Thus the bridging visa is an option open to all those whose occupation is not on the critical skills list. All that is required is an occupation listed on the Skills Occupation List (SOL), which includes most managerial, professional and trade occupations (including cooking and hairdressing). This may be an attractive option, since those currently applying (before the increase in the English language standard for the trades introduced in July 2009) will be processed according to the threshold requirements at the time of the application rather than at the time they are eventually processed.

Who knows what will happen if and when processing begins. When DIAC does decide to process the applications, it is not obliged to do so according to the 'time of decision rules' operative when they applied. The threshold requirements are those that must be met if an application is to be accepted (including minimum English language levels). The time-of-decision rules are those that determine whether the applicant achieves the required pass mark for the visa sub-category in question.

The Australian Government has pronounced on many occasions that the completion of a course in Australia does not deliver a right to a permanent residence visa. The rules affecting a visa application decision can be changed to reflect the circumstances of a new day. Indeed, as noted above, the minimum English language level for those with trade occupations was changed at the time of the May 2009 budget announcements. The question of grandfathering new rules is a political one. It may

be that by the time DIAC begins processing those with occupations not on the critical skills list a new selection system will be in place in which occupations like cooking and hairdressing may not be eligible for MODL listing.

It remains to be seen, however, how the Australian courts will react to appeals made by applicants aggrieved about changes to the selection rules after applications were made. It is one thing to change the selection rules while students are studying in Australia but before a visa application is lodged, and another thing to change them after the application has been completed.

Why was this option permitted? DIAC could have changed the migration regulations to stop applicants from applying for visas if they did not have an occupation on the critical skills list. Perhaps DIAC was not prepared to wear the likely criticism that would have come from the international student industry.

All this may seem rather academic in the absence of data on how many former students are or will be taking advantage of these options. This leads to a further crucial question. How many of those completing university and VET courses actually seek permanent residence? Earlier work on this issue showed that about a third of the overseas students completing university courses actually successfully gained permanent residence.<sup>9</sup> It is much harder to track VET completions to permanent residence outcomes. The evidence detailed above implies that the majority of VET students have invested in their training in the expectation that a permanent residence visa would be obtained.

If so, the numbers seeking to stay on in Australia should be building rapidly. In exploring this issue we examine data on the numbers of former overseas students who lodged temporary or permanent resident visa applications in 2008–09. These lodgements are the best indication of the intentions of

overseas students who finished their courses in 2008 to remain in Australia—remembering that they have to apply for a visa within six months of completing their course.

In order to lodge a visa application in 2008–09 former students had to meet certain minimum threshold requirements in English language proficiency and recognition of their credentials. Some would not have reached these standards. But how many? Normally there would be no way of knowing, since they cannot apply if they do not meet these standards. However, there was a brief window on this group after the September 2007 GSM reforms were instituted. For a year, DIAC allowed former students who did not have IELTS certification of their English proficiency to apply for the 485 visa. Many of these applications were subsequently processed in 2008–09. Of the 10,121 applications for 485 visas processed in this year, 1054 were rejected and 1055 were withdrawn. The main reason for these rejections and withdrawals appears to be that the applicants were unable to achieve the IELTS 5 level required for those with trade qualifications or IELTS 6 for those with professional occupations. Many of these students are still in Australia on a bridging visa with full work rights while they pursue an appeal against the rejection of their 485 visa application with the Migration Review Tribunal.

IELTS 5 is rudimentary English, far short of what is required in the normal Australian workplace and level 6, though adequate for social situations, is well short of what is needed for professional work. DIAC is no longer accepting 485 applications from those without the minimum English language requirements. The period after the September 2007 reforms allows a brief peek into the extent to which former overseas students struggle to meet Australian English language standards. This information suggests that there are probably thousands of former overseas students who complete their courses

each year and who would have applied for a temporary or permanent residence visa if their English had been better.

The following estimates are for the numbers who applied to stay on in 2008–09 and who were able to meet the minimum English language and credential assessment requirements. The data are derived from unpublished visa lodgement data for the year to 31 May 2009 provided by DIAC. By far the largest group have pursued the 485 visa option. In the year 1 July 2008 to 31 May 2009 there were 22,475 principal applicants for the 485 visa.

Over the same period there were 9792 principal applicants for the 885 visa, the main onshore permanent residence visa subclass for former overseas students, which replaces the previous 880 visa subclass. This visa does not involve any family sponsorship. There were a further 5625 principal applicants for the 886 visa. This permanent entry visa subclass is also for overseas students, where they have eligible relatives living in Australia who are prepared to sponsor them—it replaces the old 881 visa subclass. This means that a total of 15,417 persons applied for a 885 or 886 visa in the year to 31 May 2009. Clearly, thousands are taking the costly (\$2105) option despite most not having an occupation on the critical skills list (see below).

These three visa categories add up to 37,892, implying that for the full year 2008–09 there will be well over 40,000 visa applications from principal applicants who were former overseas students.

A few will get permanent residence visas. Preliminary data from DAIC indicates that only 10 to 20 per cent of those applying for a 885 or 886 visa in 2008–09 and whose applications have not been processed have an occupation on the critical skills list. The outlook for the rest, given the thrust of the Australian government's skill selection policy, is, at best, uncertain. A minority of those applying for the 485 visa hold account-

ing and IT qualifications and thus do have occupations on the critical skills list. Most would have applied for a 485 visa because they did not have the English language skills or work experience needed to meet the 120 pass mark for an 885 visa application. They, like the rest of the 40,000 principal applicants hold a limited right to temporary residence in Australia, though with full work rights while their temporary visa remains valid.

But this is not the end of the story. There remain two further skilled visa options for obtaining permanent residence. The first is to gain a sponsorship by an employer under the permanent entry Employment Nomination visa subclasses. The second is to gain sponsorship from a state government. So far, very few former overseas students have obtained an employer sponsorship. But as the following analysis suggests, the numbers could be large in future. In the case of state sponsorships, former overseas students have had some success via this route. This is detailed below.

### **Employer sponsorships**

As noted, the Labor Government has given first priority to migrants sponsored by an employer. There is no limit on the numbers sponsored, nor are employers constrained by the critical skills list. Almost all trade, professional and managerial occupations are eligible, including cooking and hairdressing. Nor do the sponsoring employers have to prove that there are no locals available to do the work.

In addition, the selection criteria for applicants holding the eligible occupations are more liberal than is the case for GSM applicants. In particular, those sponsored do not have to have their credentials assessed by the relevant assessment authority. All that is required is that the onshore applicant must have two years work experience in Australia in the skilled occupation in question, one of which must be with the sponsoring employer.

Why would an employer want to go to the trouble of such a sponsorship, especially at a time when labour shortages are diminishing? Up until 2007–08, most of those being sponsored for permanent residence on the basis of an employer nomination were already in Australia on temporary 457 visas.<sup>10</sup> Very few former overseas students used this route to permanent residence, mainly because they did not have to. During the boom years when there were severe skill shortages, it suited employers to sponsor persons on 457 visas because it was relatively easy to bring migrants here on this temporary visa. Once here, the sponsored migrant had to stay in the designated job for the duration of the sponsorship—up to four years. If the employer wished to employ the sponsored migrant on a long-term basis they could then sponsor the migrant under the permanent entry employer nomination visa category.

But if skilled vacancies are diminishing, why would employers continue this practice? As has been documented elsewhere by Commissioner Barbara Deegan, who conducted an integrity review of the 457 visa, the motive is connected to the fact that a growing minority of the 457 visa-holders have been drawn from low-wage countries.<sup>11</sup> For some employers there may be a continuing commercial advantage to keep such migrants in their employ because they may be prepared to work on terms and conditions unacceptable to local workers. For the migrants, there appears to be a tacit bargain. They accept sub-standard conditions under the expectation that they will be rewarded when their employer subsequently sponsors them for a permanent entry visa to Australia.

The Labor Government has increased the requirements imposed on employers who sponsor a migrant on a 457 visa, and some of these provisions also apply to employers who sponsor a migrant under the permanent residence employer nomination category (see the accompanying article by Maria

Jockel). It is very likely, therefore, that the flow of 457 visa-holders from low-wage countries will contract.

But in their place there is going to be a surge of former overseas students entering the Australian labour market. They are extremely vulnerable to exploitation by employers. As indicated, if they are to gain an employer nomination visa they will have to notch up two years experience as a cook or hairdresser or whatever occupation they have trained for. Cooks and hairdressers can count the 900 hours work experience required during their study here as one year. The other year will have to be with a sponsoring employer. Employers in the hospitality industry will be able to take their pick of the thousands of former students desperate for such work where this is associated with a promise of an employer nomination for a permanent visa at the end of the process.

The balance of power in setting the terms and conditions of employment in this transaction is all in favour of the sponsor. There is already ample anecdotal evidence of students working for next to nothing during their work experience requirements. As is well known, margins in the hospitality industry are low and competition for business fierce. Employers facing these circumstances have a motive to take advantage of the situation of overseas students.

At this point it is hard to estimate the outcome. While the conditions described do seem to be wide open for exploitation, as noted, the rules affecting employer sponsorships have been tightened in the aftermath of the changes to the 457 regulations. Employers who do undertake an employer sponsorship will leave themselves open to DIAC inquiries about the terms and conditions of the employment contract they pursued while the former overseas student completes the minimum work time requirement with the potential sponsor.

This situation could be easily handled if the government restricted the range of oc-

occupations eligible for employer sponsorship by removing those, like cooking, which are potentially vulnerable to exploitation.

### **State government sponsorship**

Former overseas students can also seek a permanent entry visa sponsorship from a state government. In the case of the state sponsorship system there is usually no requirement of a firm job offer for the sponsored migrant. Nor are the states constrained by the critical skills list. If they want to sponsor cooks or hairdressers they can. The Commonwealth Government leaves it up to them to decide which occupations they want to focus on—though they are limited to occupations at trade level or above.

The main visa category is the state government Skilled-Sponsored (176) visa. This provides a permanent residence visa allowing the sponsored person to settle anywhere in the state. Former overseas students still in Australia are eligible for this visa, as long as they meet the occupational, English proficiency and work experience requirements that the respective state puts on such sponsorships. There is also a state-government Skilled Sponsored (886) Graduate visa scheme—which includes both university and VET level completions—specifically tailored to former overseas students. Depending on the individual state, that visa may require a firm job offer or evidence that the former student has actually found work. This is a permanent residence visa. There is also a provisional state-sponsored visa for former overseas students (visa category 487). This visa requires the overseas student to live and work in a regional area for three years, after which the person can apply for a permanent residence visa.

It was assumed that there would be a surge of applications for such visas from former overseas students after the announcement of the government's processing priorities in December 2008. According to state authorities (see below) this has proved

to be the case. The states have sponsored a minority of these applicants. DIAC records indicate that the total number of principal applicants sponsored by the states in the year to 31 May 2009 under visa category 886 was 2501 and under visa category 487 there were 628 sponsorships. Some former overseas students would also have been included within the ranks of those sponsored under visa category 176. We conclude that the state sponsorship route has so far provided a minor outlet for the permanent residence aspirations of former overseas students.

This outlet is unlikely to become a flood, at least to judge from our inquiries with the state governments. The states have been delegated the right to bestow permanent and temporary residence visas. They are given no guidelines by DAIC as to what would be a reasonable number to issue. It is 'as many as you like', as one state government official put it. There are grounds for concern here, since the South Australian and Victorian governments, in particular, have made it plain that they want to encourage overseas migration because they see it as a means of promoting economic activity in their states.

Despite this autonomy, most of the states provide no publicly available information on the numbers of sponsorships or the occupations of those whom they are sponsoring. Each of the state agencies was contacted and requested to provide the information. Western Australia and NSW were willing to provide the data but did not have it in an accessible form. Victoria did provide sponsorship data, but not the detail on individual occupations. South Australia refused point blank to reveal anything, not even the total numbers sponsored in recent years.

Nevertheless a reasonably clear picture emerged from the inquiry. All the states acknowledged that there had been a sharp increase in inquiries and applications from former overseas students for sponsorship after the decision to stop processing GSM

applications for those with occupations not on the critical skills list. All have increased their rate of sponsoring. For example, in Victoria, there were 1,344 state sponsorships in 2007–08 and 2,560 for the year to 2008–09 (to 5 June) for principal applicants.

But with the exception of Western Australia the states have not opened their doors

wide to applications from overseas students, including those with VET credentials in hospitality. In Western Australia, the government will sponsor former overseas students if they have been trained in a Western Australian university or VET college and if their qualification is applicable to a job on the Western Australian Occupations in Demand

**Table 4: Selected eligible occupations and English requirements for state sponsorship**

Occupational area	ACT	New South Wales	Northern Territory	Queensland	South Australia	Victoria	Western Australia
Cook	Yes IELTS 5.5 speaking	Yes, some regions IELTS average 5.0–5.5	Yes IELTS 5.5 average	No	No	No	Yes IELTS 5 average
Baker	Yes IELTS 5.5 speaking	Yes, several regions IELTS average 5.0–5.5	Yes IELTS 5.5 average	Yes IELTS 6 all components	Yes IELTS 5 minimum all components	Yes minimum 4 years experience	Yes IELTS 5 average
Pastry cook	Yes IELTS 5.5 speaking	Yes, several regions IELTS average 5.0–5.5	Yes IELTS 5.5 average	No	Yes IELTS 5 minimum all components	Yes minimum 4 years experience	Yes IELTS 5 average
Hairdresser	Yes IELTS 6 speaking	Yes, several regions IELTS average 5.0–5.5?	Yes IELTS 5.5 average	No	No	No	Yes IELTS 5 average
Accountant	Yes IELTS 6.5 speaking	Yes, some regions IELTS 7 all components	Yes IELTS standard not specified	Regional only	Yes IELTS 7 average; minimum 6 each component	No	Yes IELTS 6 average
Finance manager	Yes IELTS 7 each category	No/unclear	No	No	Regional only IELTS 6 minimum all components	No	No
Public relations officer	Yes IELTS 6.5 speaking	No/unclear	No	No	No	No	No
Applications and analyst programmer	Yes IELTS 6.5 speaking	Unclear—all IT require IELTS 7.0 minimum all components	No	Regional only IELTS 6 all components	No	No	No
primary teacher	No	No	unclear	No	No	No	No
Motor mechanic	Yes IELTS 5.5 speaking	Yes, some regions IELTS 5.0–5.5	Yes IELTS 5.5 average	Yes IELTS 6 all components	Yes IELTS 5 minimum all components	Yes	Yes IELTS 5 average
Bricklayer	Yes IELTS 5.5 speaking	Yes, some regions IELTS 5.0–5.5	Yes IELTS 5.5 average	Yes IELTS 6 all components	Yes IELTS 5 minimum all components	No	Yes IELTS 5 average
Carpenter	Yes IELTS 5.5 speaking	Yes, some regions IELTS 5.0–5.5	Yes IELTS 5.5 average	Yes IELTS 6 all components	Yes IELTS 5 minimum all components	No	Yes IELTS 5 average
Tree surgeon	Yes IELTS 5.5 speaking	No	Yes IELTS 5.5 average	No	Yes IELTS 5 minimum all components	No	Yes IELTS 5 average

Source: Various state migration centre websites and sponsorship documents

Note: ‘Yes’ means that the state government will sponsor if applicants meet certain conditions. The table indicates language proficiency requirements. Some states also specify work experience requirements. Also some states will sponsor for a regional visa, but not a statewide visa.

list. This is a very extensive list. It includes accountants (who only need to have IELTS 6) as well as cooks and hairdressers. The latter do not need any work experience if they have recently finished courses in WA. The Western Australian Migration Centre expects to sponsor some 3,500 applicants for the 176 visa category in 2008–09, double the number for 2007–08. Not surprisingly, the Western Australian State Migration Centre informed us that the main occupations sponsored are accountants, cooks and hairdressers.

In the case of Victoria, there was a surge in the number of 886 skilled, state-sponsored graduate visas sponsored in 2008–09. However, this came to an end after January 2009, when the Victorian migration authorities were alerted to issues related to the validity of education certificates, work references and job offer documentation on the part of some former overseas students. Since 15 April 2009 the Victorian Government has suspended the processing of all applications from those with trade occupations for the 886 visa program.

Table 4 lists the states and territories' rules on eligibility for thirteen selected occupations, including cooking, hairdressing and accounting. The rules relate to all the state sponsorship visa subclasses, including those specifically targeting former overseas students. Cooking and hairdressing are not on the eligible lists in South Australia, Victoria and Queensland. In South Australia cooks were taken off the list of eligible occupations in early 2009 and hairdressers are not currently on the list. In NSW where regional bodies make the decisions on sponsorship some do list these occupations. However, according to the NSW Department of State and Regional Development, there has been an avalanche of applications from cooks and hairdressers which has prompted the regional bodies to withdraw or strictly limit the number of sponsorships in these occupations. In any case the total number of sponsorships for all occupations

in NSW is only expected to be around 370 in 2008–09.

These findings are reassuring. On the other hand, the variability of state rules is a matter of concern. The states are offering sponsorships in trade occupations not on the critical skills list. Their English language requirements also tend to be soft. In the case of accounting, level 7 IELTS is required for the critical skills list. Yet for several of the states a lower English standard is required for accountants.

## CONCLUSION

The international student industry in Australia has reached the crossroads. The number of overseas students studying here has reached a very high point, fuelled in recent years by rapid growth in enrolments in the VET sector. At this end of the market, a major driving factor has been the prospect of obtaining permanent residence after completing the VET qualification. However, there has been a growing recognition within the Australian Government that the skills overseas students emerge with fall well short of the skill requirements sought under the skilled migration program administered by DIAC.

The Australian Government has decided to make a stand. In what should have constituted an unmistakable message to all those involved in the international student industry, in December 2008 DIAC announced the government's decision that, from 1 January 2009, it would limit its processing of GSM visas to applicants with occupations on a new critical skills list. Cooking and hairdressing were pointedly not included on this list. On 16 March 2009 the government announced that it was removing nearly all other remaining trade occupations from the critical skills list. Furthermore, at the time of the May 2009 budget the government announced that if and when processing did re-commence for occupations not on the current critical skills list the rules would be

tightened. The English language minimum requirement for trade occupations is to be increased from IELTS 5 to IELTS 6 from mid-2009 and from January 2010 a skills test is to be instituted for those with trade occupations.

The implications of this new stand do not seem to have got through to the international student industry. There was a further surge in overseas student enrolments in the three months to March 2009 relative to the same period in 2008, much of which was in the hospitality fields of study within the VET sector.

The outcome of the surge in enrolments over the past few years is that there is now a huge overhang of former overseas students looking for permanent residence—just at a time when their chances of achieving it have diminished. The preceding analysis indicates that well over 40,000 former overseas students applied for a temporary or permanent residence visa during 2008–09. The great majority are in a permanent residency limbo, either on a temporary resident 485 visa or on a bridging visa pending the eventual processing of their application for a GSM visa.

How this will play out as far as the permanent residence aspirations of these former students are concerned remains to be seen. It is unlikely they will leave Australia without a fight.

In the meantime, the around 40,000 former overseas students who obtained temporary visa status during 2008–09 have full work rights. They are concentrated in the low- to semi-skilled labour markets of Melbourne, Sydney and Brisbane. They are adding to these labour markets at a time when new domestic entrants to the labour market are taking the brunt of the employment downturn since late 2008. The Australian Government is taking appropriate action in encouraging local job-seekers to take on trainee positions, including in the hospitality industry. But in doing so, these job-seekers are confronting competition from thousands

of overseas students looking for opportunities to gain the 900 hours of work experience required by Trade Recognition Australia as a condition of their accreditation for immigration purposes, and from those looking for employment in the hospitality industry as a prelude to a permanent residence employer sponsorship.

There is no simple solution to this situation. But the Australian Government can start by making all of its messages to the international student industry consistent with its clearly stated processing priorities. The government should announce that henceforth it will:

1. Stop accepting applications for GSM visas for those whose occupations are not on the critical skills list.
2. Not permit employers to sponsor persons with trade occupations who are regarded as lacking the skills needed to meet trade level standards in Australia. These would include former overseas students with qualifications in cooking and hairdressing.
3. Increase the minimum English language requirements for those seeking a student visa for a VET course from IELTS 5 to IELTS 6 so as to match the standard now required for those with trade qualifications who apply for a GSM visa.

The international student industry must be put on a sustainable basis. For this to occur the industry must accept that things have changed. Maybe this will only occur when the government provides a consistent message that the providers, migration agents, international recruiters and prospective students engaged in the international student industry can understand.

Those providers who have built their business around marketing a credential that will lead to permanent residence must refocus their business. They need to sell skill credentials that overseas students believe they can take back to their country of origin with profit.



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