



CFMEU SUBMISSION TO THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

RE Inquiry into the Human Rights and Anti-Discrimination Bill 2012 – Exposure Draft Legislation

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1. Introduction

The Construction, Forestry, Mining and Energy Union, (CFMEU) welcomes the opportunity to make this submission to this Inquiry. The CFMEU consists of three Divisions, namely the Mining and Energy Division, Forestry and Furnishing Products Division and the Construction and General Division. We are the major union in these industries and represent approximately 110,000 members.

2. Focus of submission

Our union has a very firm commitment to strong anti-discrimination laws that meet the challenges of our changing society.

The focus of this CFMEU submission is the issues of:

- Discrimination in employment on the basis of visa status or residency status, i.e. Australian permanent resident versus temporary resident status.
- Discrimination based on the proposed protected attribute of 'industrial history' (Clause 17)

3. Discrimination in employment on the basis of visa status or residency status

3.1 CFMEU position

The CFMEU position is that neither Commonwealth nor State anti-discrimination laws should make unlawful certain discrimination in employment on the basis of visa status or residency status.

Specifically, it should not be unlawful for an employer¹ to discriminate in favour of Australian permanent residents over temporary visa holders (temporary residents) in redundancy or recruitment situations, or for training or promotion or other work-related matters.

On the other hand, anti-discrimination laws should not permit an employer to discriminate in favour of temporary visa holders (temporary residents) over Australian permanent residents in work-related matters including recruitment and redundancy.

This means that in recruitment/hiring situations, it should be not be unlawful in terms of anti-discrimination laws for employers to give preference to hiring workers who are Australian residents over all temporary visa holders, with the single exception of New Zealand citizens in Australia on temporary visas.²

¹ The term 'employer' is used here as shorthand for all employment and work situations. That is, it is intended to cover more than employer-direct employee relationships eg entities engaging labour as ABN workers or independent contractors, and entities other than those engaging labour directly, eg labour supply and labour referral entities such as covered by the *Employer Sanctions Act 2007*.

² NZ citizens on special category visas have unrestricted work and residency rights in Australia, under the terms of the 1983 Australia- New Zealand Closer Economic Relations (CER) Trade Agreement and previous arrangements. This should be referenced in the consolidated anti-discrimination legislation.

Likewise, that in redundancy situations, it should be not be unlawful in terms of anti-discrimination laws for employers to give preference to retaining in employment workers who are Australian residents over all temporary visa holders, with the single exception of New Zealand citizens in Australia on temporary visas.

Similarly, in respect of promotion or training opportunities provided for employees or other workers, it should be not be unlawful in terms of anti-discrimination laws for employers to give preference to workers who are Australian residents over all temporary visa holders, with the single exception of New Zealand citizens in Australia on temporary visas.

In summary, our view is that Commonwealth and State anti-discrimination laws should explicitly provide that discrimination by employers in favour of Australian citizens and permanent residents not be prohibited by the consolidated legislation..

Detailed reasons for this view are set out in Section 5 of this submission.

However, it should be noted here that in 2009 the then Minister for Immigration and Citizenship advised the CFMEU that some State anti discrimination laws may not permit discrimination in favour of Australian workers over one class of temporary visa holders:

In addition, in relation to anti-discrimination laws, my Department has received legal advice that requiring Subclass 457 visa holders to be made redundant ahead of Australian workers may potentially breach some State anti-discrimination laws.³

3.2 Visa/residency status in the Exposure Draft legislation

There is no explicit reference to visa status or residency status in the Exposure Draft.

There are two proposed protected attributes which appear related to 'visa or residency status', but are not the same as 'visa or residency status'. These are 'Immigrant status' and 'Nationality or citizenship'.

In relation to "Immigrant status", the Explanatory Note (paragraph 88) reads as follows:

88. Immigrant status: *immigrant status is defined as the status of being an immigrant. This preserves the effect of section 5 of the RDA. Immigrant status is intended to cover situations in which a person who is born in Australia is treated differently from a person who was not, solely on that basis. That is, treating a naturalised citizen differently from a citizenship by birth. It is not intended to be read as 'visa status'—that is, it does not prohibit differential treatment between people who have a temporary visa from those who have a permanent right to remain in Australia.* (emphasis added)

The AGD also confirmed to the CFMEU that the term 'Immigrant status' had no broader meaning in the Exposure Draft than in the current CW Racial Discrimination Act:

³ Chris Evans, Minister for Immigration and Citizenship, letter to CFMEU National Secretary, dated 15 September 2009.

The term 'immigrant status' is defined to reflect the current prohibition on discrimination on this basis in section 5 of the Racial Discrimination Act. It prohibits treating different Australian citizens differently on the basis of how they became citizens. We consider this to be the ordinary meaning of the term, the same meaning as in section 5 of the RDA.⁴

With regard to 'Nationality or citizenship', the Explanatory Note (paragraph 94) reads as follows:

*94. **Nationality or citizenship:** discrimination on the basis of nationality, although covered by the AHRC Act equal opportunity in employment provisions, is not unlawful at the Commonwealth level. However, it is prohibited by all State and Territory anti-discrimination laws. The Bill will make it unlawful to discriminate on this basis in work and work-related areas. Exceptions for conduct required by other Commonwealth laws (clause 28) will ensure there is no impact on citizenship policy, the Australian Public Service or Defence employment policy, or the provision of work-related benefits to Australian citizens or permanent residents.*

The CFMEU requested clarification from AGD of the meaning and implications of this proposed new protected attribute and the AGD advised as follows. First, as to its meaning:

'Nationality or citizenship' refers to a person's current nationality or citizenship, while 'national origin' refers to that person's country of origin. The Bill defines 'race' to include 'national or ethnic origin', preserving the protection for that attribute which is currently in the RDA. Protection for 'nationality or citizenship' in relation to work is in addition to, not in place of, the protection for 'national origin'.

The term 'nationality or citizenship' is a single term used to more accurately describe the attribute (recognising that some countries refer to a person's 'nationality', while other countries refer to a person's 'citizenship'). It is not intended or expected to change the meaning of 'nationality' as used in the State and Territory anti-discrimination laws.⁵

Second, as to whether 'Nationality or citizenship' includes 'visa status' or 'residency status', the AGD reply was as follows:

'Visa status' is not a protected attribute for the purposes of the Bill. Complaints have been made under the RDA on the basis that 'immigrant status' extends to prohibit people discriminating on the basis of a person's visa status – that is, distinguishing between holders of permanent and temporary visas, or visas with work rights and visas without. This has never been the intention of the RDA (and courts have upheld this interpretation).

However, to assist understanding, the Explanatory Notes include the statement in paragraph 88 that the Bill does not prohibit distinguishing between people on this basis. We did not include a similar clarifying statement in paragraph 94 because no similar argument had been made in relation to the ground of 'nationality or citizenship'.

⁴ Email dated 14 December 2012 from Paul Pfizer, Director Human Rights Reform Section, Human Rights Policy Branch, Attorney-General's Department to CFMEU National Research Director.

⁵ Ibid.

Essentially, prohibiting discrimination on the basis of 'nationality or citizenship' means an employer cannot refuse to hire a person simply because he or she is a citizen of a particular country. It does not prohibit basing an employment decision on whether a person has a right to work in Australia or not, provided that distinctions are not made between citizens or nationals of different countries, but with the same work rights.

*As noted above, the rationale for including 'nationality or citizenship' is to maintain the current ability to make complaints to the Australian Human Rights Commission on this basis, noting that such discrimination is already prohibited in every State and Territory.*⁶

Third, the CFMEU asked the AGD to clarify beyond doubt whether the proposed protected attribute of 'nationality or citizenship' will permit or prohibit discrimination by employers:

1. in favour of Australian citizens and permanent residents over those who are not Australian citizens or permanent residents but who are holders of temporary visas (which confer a right to work in Australia); or
2. in favour of those who are not Australian citizens or permanent residents but who are holders of temporary visas (which confer a right to work in Australia) over Australian citizens and permanent residents,

in recruitment and redundancy situations or other work-related areas?

The AGD response to this specific question was that:

The proposed new protections are not intended to cover the situations you have referred to, provided that all permanent residents and temporary residents are treated the same regardless of their nationality/citizenship. That is, the situations you have highlighted draw distinctions based on whether a person has a right to remain in Australia permanently or only temporarily, rather than of what country the person happens to be a national/citizen, and therefore not amount to discrimination on the basis of 'nationality or citizenship.'

However, the Act is intended to cover situations where an employer distinguishes between two permanent residents (or two temporary residents) on the basis of their nationality or citizenship (eg between two permanent residents, one who is a US citizen and one who is Canadian, or between a temporary resident from China and a temporary resident from India). It is intended that discrimination on this basis would be unlawful, as it already is under State and Territory anti-discrimination law.⁷ (emphasis added)

The CFMEU remains concerned that the inclusion of the protected attribute of 'nationality and citizenship' may, without further clarification, present problems particularly in work-related

⁶ Ibid.

⁷ Email dated 18 December 2012 from Paul Pfizer, Director Human Rights Reform Section, Human Rights Policy Branch, Attorney-General's Department to CFMEU National Research Director.

circumstances where the competing interests of Australian resident workers (i.e. Australian citizens and permanent residents) and temporary visa holders are concerned.

The concepts of permanent residency and citizenship have some interrelationship which may not always be easily separated. Australian citizenship confers a right to permanent residency. However a person can hold citizenship of another country and also be a permanent resident of Australia, and an Australian citizen can also be a citizen of another country under dual citizenship laws. In the former case, distinguishing or discriminating between these two would appear to be caught by the present version of the Bill because their residency status is the same and the only relevant attribute on which they are distinguishable is citizenship. The CFMEU supports the Bill prohibiting discrimination on the basis of citizenship in that situation.

However, when the comparison is between an Australian citizen (with a right to permanent residency by definition) and a non-citizen without permanent residency rights (ie a temporary resident) then it needs to be made clear that discrimination in favour of the former over the latter ***is not caught by the 'nationality and citizenship' attribute*** and therefore prohibited but rather is expressly permitted whether on the basis of their residency rights or visa status or some attribute other than citizenship, even where their citizenship status differs and may in fact be determinative of, or at least a factor in, their residency or visa status.

It appears that the effect of the draft Bill, as clarified by AGD reply above, is that the Exposure Draft as it currently stands does not explicitly permit discrimination by employers in favour of Australian permanent residents over temporary residents (temporary visa-holders) or prohibit discrimination by employers in favour of temporary residents (temporary visa-holders) over Australian permanent residents.

This is not acceptable.

3.3 CFMEU Recommendation

Australian permanent residency status should be a protected attribute in the Anti-discrimination Bill.

In the alternative, the Bill should be amended to make it clear that the 'nationality and citizenship' attribute (or any other part of the proposed legislation) does not prohibit discrimination by employers in favour of Australian resident workers in employment situations. One option would be to amend the proposed s. 28 to make that clear.

4 Discrimination on the basis of industrial history

4.1 CFMEU position

The CFMEU strongly supports the inclusion of provisions which protect individuals from adverse treatment on the basis of the exercise of their right to membership of industrial organisations and their participation in the activities and affairs of those organisations. These are fundamental rights which are enshrined in various international instruments to which Australia is signatory, including ILO Conventions such as the Freedom of Association and Protection of the Right to Organise Convention 87, 1948 and the Right to Organise and Collective Bargaining Convention 98, 1949.

Members of the CFMEU across all of the industries which the union represents are regularly subject to discriminatory and adverse treatment on the basis of their industrial history, affiliation or activity and it is important that appropriate statutory remedies are available and accessible for workers in that situation.

As a single example of the extent to which industrial discrimination can have an impact on workers, we draw the Committee's attention to the recently exposed 'black-list' that operated in the construction industry in the United Kingdom for many years.⁸

5. Reasons for our position

5.1 Introduction

The CFMEU believes that Commonwealth anti-discrimination laws should recognise and be consistent with the principle that Australian resident workers (ie permanent residents and Australian citizens) have the primary right to Australian jobs.

As the Explanatory Note for the Exposure Draft points out, this principle is already enforced in Australian public service employment in relation to recruitment. Under the *Public Service Act 1999*, Australian citizens and permanent residents can be treated preferentially in terms of recruitment to the Australian Public Service. The Exposure Draft legislation proposes that this preference be maintained and protected (paragraphs 94 and 178, Explanatory Note; and Clause 28, Exposure Draft).⁹

178 Clause 28 is a new provision that provides an exception for conduct in accordance with Commonwealth laws on the ground of nationality or citizenship. As nationality or citizenship

⁸ <https://www.ucatt.org.uk/blacklisting#history> and

<http://www.guardian.co.uk/business/2012/mar/03/blacklisted-building-workers-court-hopes>

⁹ Commonwealth legislation regarding social security benefits and legislation 'analogous to social security legislation' (such as the *Fair Entitlements Guarantee Act 2012* similarly distinguish between persons with the right to reside permanently in Australia and those with a right to temporary residence only.

is now a protected attribute, and a number of Commonwealth laws treat citizens and non-citizens differently (such as employment in the public service or Defence Force), this exception is intended to clarify that this conduct is not unlawful discrimination.

Our present submission asks no more (in relation to recruitment) than that Australian citizens and permanent residents in private sector employment should have a corresponding right to preferential treatment as that which the Commonwealth has legislated in its own employment area.

The current ALP National Platform recognises ‘the primary right of Australian workers to Australian jobs’. Paragraph 66 in the Platform calls for:

“...a skilled migration program that -

- has the necessary tests and checks, and resources to ensure the integrity of the system and recognise the primary right of Australian workers to Australian jobs
- is underpinned by rigorous safeguards to ensure that employers have made all possible efforts to fill positions locally in order to protect the primary rights of Australian workers to Australian jobs and ensure that migrants are not filling the jobs that Australians could be undertaking.”

Similarly, the Australian Greens Party introduced a Bill in 2012 which embodies this same principle in relation to Enterprise Migration Agreements (EMAs) in the resources sector, Regional Migration Agreements and Labour Agreements generally.¹⁰

5.2 Issues

The main considerations are:

- There has been a huge growth in the number of temporary visa-holders in Australia who are working, both lawfully and unlawfully – and numbers are likely to grow further in the future.
- Some employers (in their hiring and redundancy decisions) are prepared to discriminate against Australian resident workers in favour of temporary visa-holders, because the latter are seen by employers as more compliant and more willing to accept substandard wages and working conditions.
- The residency and work rights attaching to temporary visas vary by visa subclass, but in all cases (except for New Zealand citizens) they are less than the work rights of Australian permanent residents which are unrestricted.
- The primary purpose of most temporary visas is usually not to perform work in Australia, but to undertake some other activity (eg study or a holiday) and permitted work is a secondary or ‘incidental’ purpose and generally subject to specified restrictions.

¹⁰ Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012.

- Even where the primary purpose of the temporary visa is to perform work in Australia (eg, as with the subclass 457 visa or Temporary Business Skilled visa), the Commonwealth Government has clearly stated that the intention is that these visas should only be granted when there are no suitably qualified Australian workers available to do the work – ie, that in hiring situations, employers should give preference to Australian workers over potential temporary residents ie 457 visa workers.

A very clear statement of this underlying principle was provided by the then Immigration Minister in 2010:

The Rudd Government does not support any employer who seeks to use the temporary skilled migration program as a substitute for local labour.

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

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

Our priority is to provide training and job opportunities for Australians.

A range of measures introduced by the Rudd Government in consultation with industry and unions last year ensures that temporary skilled overseas workers on subclass 457 visas are not employed ahead of local workers or used to undermine Australian wages and conditions.¹¹

- It follows that in redundancy situations when there are both suitably qualified Australian workers available to do the work as well as 457 visa-holders in the same classifications, employers should give preference to retaining the Australian workers and the 457 visa-holders should go first.
- It is therefore unexceptional that Australian resident workers should have a primary right to employment in Australia relative to temporary visa-holders.

Some comments follow on several of these issues.

Number of temporary visa-holders and likely growth

Since the introduction of the RD Act in 1975, there has been a huge growth in the number of temporary visa-holders in Australia, some with work rights and others with no work rights as determined under the *Migration Act 1958* and associated Regulations.¹²

¹¹ Senator Chris Evans, Minister for Immigration and Citizenship, 'Employers must put locals first', media release 2 March 2010.

¹² The Immigration Minister already 'discriminates' between various classes of temporary visas by attaching different work conditions to each visa subclass, including the condition of 'no work permitted'.

In June 2012, there were 1.637 million persons in Australia on temporary visas, an increase of 9% on June 2011 and a 72% increase on June 2000 numbers (DIAC data). Of these, an estimated 1.2 million persons in Australia on temporary visas in June 2012 were of working age and had some work rights plus several hundred thousand more persons on temporary visas with no work rights, some 50,000 of whom may be working unlawfully at any one time.¹³

- This represents close to 10% of the total Australian workforce in November 2012, and an even higher proportion in some industries.

This growth in the size of a temporary migrant workforce (working legally or unlawfully) was simply not envisaged in 1975 when the RDA became law.

The sheer size of this workforce, together with their vulnerability to employer exploitation, and the willingness of some to accept substandard wages and conditions (often to secure a permanent residence visa) pose real issues in today's labour market where some employers are only too keen to exploit this situation.

Categories of temporary visa-holders or temporary residents

It is useful to distinguish 3 categories:

1. NZ citizens here on a temporary visa
2. 457 visa holders
3. Other temporary visa holders, eg Overseas student visa holders, Working Holiday Makers (WHVs or visa subclass 417).

New Zealand citizens are the only temporary visa-holders who enjoy the exact same residency and work rights as Australian permanent residents. These New Zealand citizens have unrestricted work rights and unrestricted rights to reside (stay) in Australia.

Some limited categories of 457 visa-holders can enter and work in Australia, without the need for 'labour market testing' or establishing that there are no Australian resident workers who can do the work, under international trade agreements; and these foreign nationals must be accorded 'national treatment'. The 1995 World Trade Organisation General Agreement on Trade in Services (WTO GATS) specifies these categories as intra-company transfers of executives or 'specialists' (persons with trade, technical or professional skills) of foreign (not domestic) firms in specified services industries who also meet other designated criteria such as 2 years employment with the foreign firm.¹⁴

¹³ Report of Review of Employer Sanctions Act 2007 (July 2011), by Stephen Howells (the Howells Review).

¹⁴ Australia currently has no legally binding international trade obligation to waive 'labour market testing' and provide 'national treatment' for 457 visa-holders in general, only these specific categories of 'intra-company transfers' listed; plus 'Thai chefs', under the Thailand- Australia Free Trade Agreement (TAFTA).

Temporary visas (other than 457 visas) are not affected by the specific and limited international trade-related obligations implemented via the 457 visa, described in the preceding paragraph.

The size of the temporary visa-holder population in Australia is likely to grow, for several reasons. The growth in international trade in services is the main factor, since provision of these services (eg education and tourism) requires the presence in Australia of large and growing numbers of temporary visa-holders under present policy.

As well, successive Australian governments have given increased priority to employer-sponsored temporary and permanent skilled visa programs over permanent visas for independent (non-sponsored) migrants.

The CFMEU has a proud history of fighting for the workplace interests of all our members and for justice in our society, including the fair treatment of all vulnerable workers in the industries we cover. Temporary migrant workers in Australia including those on 457 visas have been a most vulnerable and exploited group of workers, especially those from developing countries.

Our union has played a leading role in fighting for and securing many more workplace rights and protections for the more than 100,000 temporary 457 visa workers¹⁵ in Australia, and other temporary migrant workers.¹⁶ Without our efforts and those of others in the Australian union movement, these 457 migrant workers would not have today the benefits of the *Migration Legislation Amendment (Worker Protection) Act 2008*. This Act provides for the right to be paid the same as an Australian worker in the same workplace, and protection against employer threats of immediate deportation if 457 visa workers stand up for their workplace rights, among others.

Employer preference for temporary visa-holders over Australian workers

The reason why some employers have this preference were well-documented in the Deegan Review of the 457 visa program.¹⁷

Deegan found that many 457 visa workers (especially from developing countries)¹⁸ were more compliant and more willing to accept substandard wages and working conditions – especially when their ultimate goal was a permanent residence visa for Australia and they were banking on their employer sponsoring them for this PR visa.

¹⁵ 457 primary visa holders only, in October 2012 – 457 secondary visa holders have unrestricted work rights and number an additional 100,000.

¹⁶ For example, the CFMEU is currently undertaking a major project to raise reduce the risk of labour trafficking in our industries and to advocate for victims of labour trafficking; and the CFMEU's 2011 major report on sham contracting (*Race to the Bottom*, March 2011) drew attention to temporary migrant workers as a high-risk group for sham contracting exploitation, and recommended ways to combat the practice.

¹⁷ Commissioner Barbara Deegan, *Report of the Visa Subclass 457 Integrity Review*, November 2008, DIAC.

¹⁸ This problem is not confined to temporary visa workers from developing countries, but extends to temporary visa workers from the UK and Ireland who equally want to remain working in Australia (because there are no jobs back home) and qualify for Australian PR visa.

This deliberate policy of encouraging 457 visa workers to seek employer sponsorship for PR visas not only creates a pool of captive and compliant workers. The Federal Government in July 2012 increased the period of employment for 457 visa workers to qualify for employer-sponsored PR visas from 12 months to 2 years. This creates a further perverse incentive for employers to make Australian workers redundant ahead of 457 workers, so that 457 visa holders retain their eligibility on the road to PR status.

In addition:

- a KPMG survey in August 2009 found that 75% of employers surveyed said they would retrench Australian workers before their 457 visa workers.¹⁹
- The CFMEU and other unions have provided Commonwealth Ministers with many specific examples of employers retrenching their Australian workers and retaining 457 visa workers – in some cases, even replacing the redundant Australian workers with 457 visa workers.

The CFMEU is also aware of numerous examples of overseas students on temporary visas:

- Working for low wages (eg \$4/hour) and in some cases for no pay at all, in order to clock up the hours of 'work' or 'work experience' needed to obtain the qualification necessary for PR.
- Actually paying the employer for the job and working for no pay, for the same reason, ie to acquire the documentation needed to support the claim to a qualification and/or PR visa.
- Engaged in sham contracting arrangements, working with an ABN as an independent contractor when in fact and in law they were employees²⁰.

In the case of foreign nationals on WHVs (Working Holiday visas), current government policy is itself directly providing incentives to employers to employ WHVs ahead of young Australian workers. WHVs can qualify for a 'second year' WH visa by performing 3-months work in designated industries (eg agriculture, construction and mining) in regional areas – including by working as an 'independent contractor' or by performing 'unpaid' work in these industries!

The DIAC website was boasting in August 2011 that:

"Working Holiday visa holders who conduct construction work in eligible regional areas of Australia following disasters can count the work as specified work. This work may be paid or **unpaid work.**"
(emphasis added)

¹⁹ KPMG, 'Effects of the financial crisis on skilled migration under the 457 visa program', August 2009.

²⁰ Examples of the first two abuses were reported by VET instructors of international students in Birrell, Healy and Kinnaird, 'Cooks galore and hairdressers aplenty', *People and Place*, Vol 15, no 1, 2007, pp30-44; and 'The cooking-immigration nexus', *People and Place*, Vol.17, no.1, 2009, pp63-75. For sham contracting, see above, this section.

In June 2012 there were 137,000 WHVs currently in Australia – a 22% increase in just 12 months - and around 30,000 second year Working Holiday visas are granted each year, entitling the visa-holder to stay and work in Australia for a further year (DIAC data).

These practices all provide multiple incentives for employers to give preference to temporary visa workers over Australian workers – and the regulatory authorities are overwhelmed by the sheer scale of the temporary migrant workforce and the myriad abuses.²¹

Purpose of temporary visas and work rights

New Zealand citizens are the only temporary visa-holders who enjoy the exact same residency and work rights as Australian permanent residents. These New Zealand citizens have unrestricted work rights and unrestricted rights to reside (stay) in Australia.

All other temporary visa-holders have restrictions on the amount of time they can lawfully stay in Australia and the amount or type of work they are permitted to undertake in Australia.

For example, two of the main temporary visas are those for overseas students (various visa subclasses) and Working Holiday Makers (WHV or visa subclass 417).

In both cases, the primary purpose of the visa is ‘study’ and ‘holiday’ in Australia respectively.

The work rights attached to the visa reflect this purpose. In the case of student visas, visa-holders are permitted to work for no more than 40 hours per fortnight during term²² but unrestricted hours outside of term.

In the case of WHVs, work is lawful for the entire duration of the visa but the maximum period of stay with one employer is limited to 6 months.

Our argument is that where the ‘primary purpose’ of these temporary visas is something other than work, eg study or holiday and work rights have been restricted accordingly, it is unexceptional to treat such persons differently (in anti-discrimination law terms) to Australian permanent residents who enjoy unrestricted residency and work rights and who usually need work to earn a living and to support their family.

It is equally unexceptional and logically consistent to permit employers to discriminate in favour of of Australian residents with unrestricted work rights, over such temporary visa-holders, in hiring and redundancy situations, among others.

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²¹ The Fair Work Ombudsman Overseas Workers Team has 13 officers Australia-wide in December 2012. DIAC accepts no responsibility for monitoring temporary visa holders in employment other than employer-sponsored visa holders (ie 457s and a small number of other such visa subclasses).

²² Previously the restriction was 20 hours per week during term. The change to 40 hours per fortnight was announced in 2011 following the Knight Review.