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## THE COOKING–IMMIGRATION NEXUS

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

*There has been a meteoric rise in enrolments of overseas students in cooking courses in Australia from around 1019 in 2004 to 8242 in 2008. All are trained in full-time courses conducted mainly by private providers – rather than via the apprenticeship system as is the case for Australian-trained cooks. Most of the overseas students who have finished these courses have subsequently gained permanent residence as cooks. Cooking is now the second largest occupation, behind accounting, among those gaining permanent entry visas under the onshore former overseas student visa subcategories. This article examines the rules governing the training and subsequent visaing of these cooks. It concludes that there are serious gaps in the rules governing their training and the assessment of their competency. In large part because of these deficiencies, only a minority obtain employment in Australia as trade level cooks.*

This is the second time we have reported on the links between overseas student enrolment in cooking courses and the migration process. The first report ‘Cooks galore and hairdressers aplenty’ was published in March 2007.<sup>1</sup> That report showed that the number of permanent resident visas issued to cooks, pastrycooks and bakers (henceforth referred to as cooks) was rapidly expanding, and that most were former overseas students who had taken cooking courses in Australia. Our interest was stimulated by a raft of anecdotal evidence that an explosion in enrolments in cooking and hairdressing courses was occurring and that this was being fuelled by a burgeoning industry of migration agents and private education providers. The overseas students were prepared to pay for this instruction, so it was alleged, because it led to a permanent residence (PR) visa.

Our analysis in 2007 confirmed this anecdotal picture. It also projected that there would be a sharp increase in the number of visas issued to migrants with cooking and hairdressing qualifications if the immigration rules were not changed. The implication was that Australia’s migration program was being driven by the migration industry. This would have

mattered less if the cooks and hairdressers being visaed had achieved skills equivalent to Australian trade standards (that is, equivalent to those of domestic apprentices on completion of their indentures). Our conclusion was that this was probably not the case, because the overseas students in question were receiving their training via an institutional pathway involving full-time training conducted by a provider. This could be a Technical and Further Education (TAFE), or more often, a private provider, whose business was dependent on student fees for its income. Our review of training standards offered by these private providers indicated a widespread view that the training outcomes varied, often falling well short of those expected of Australian trainees who had completed a cooking indenture.<sup>2</sup>

It was not possible to be certain about this skill judgement. This was because Trades Recognition Australia (TRA), the agency delegated by the Department of Immigration and Citizenship (DIAC) to determine whether applicants for PR who held trade qualifications had actually achieved trade standards, was not empowered to conduct any independent competency testing of applicants, whether of cooks or of any other trade.

The present report examines the response of the various regulatory authorities responsible for the training and assessment of cooks for migration purposes in the light of the recent public debate on the issue. The focus is on cooks, because of the sharply increasing scale of the intake of onshore migrants claiming this qualification.

### ENROLMENT AND VISA LEVELS

The prediction in the 2007 paper that enrolments in cooking courses would increase, as would the subsequent flow on to PR visas, has proved to be correct. Table 1 shows the number of enrolments in cookery (and pastrycooking and baking) on the part of overseas students over the years 2004 to 2008. These increased eightfold from 1,019 in 2004 to 8,242 in 2008. These statistics are drawn from unpublished Australian Education International (AEI) statistics. Some background is required to interpret them.<sup>3</sup>

Overseas students who enrol in cookery do so in two stages. In their first year they complete units in the various cooking skills that the relevant Skills Council specifies that they should possess on completion of the course. These skills are described in the Training Package prepared for each skill by the Skills Council. The skills are intended to match those achieved by an apprentice cook who has completed his/her apprenticeship. Most providers teach this training package in a year. The enrolments in cookery detailed in Table 1 were for overseas students enrolled in courses designated as Certificate III or diploma level in the cookery, baking and pastrycooking fields of education. Students cannot apply for PR after completing this one year of training, despite the expectation that

they have achieved trade standard skills during this year. This is because DIAC has specified that applicants for PR who are educated in Australia must complete a minimum of two years of instruction before they apply. In the case of cooks, most do an advanced diploma in hospitality after their first year of training in cookery. This advanced diploma does not cover specific cooking skills. These second year course enrolments are not included in Table 1.

The enrolment figures in Table 1 are conservative. There has also been a surge of overseas student enrolments in hospitality management at the diploma and advanced diploma level. It is likely that many of these courses include instruction in the certificate III cooking training package. Unfortunately, it is not possible to identify these enrollees from the AEI database.

The figures in Table 1 indicate that, at least until 2007–08, most of those who complete their two years training have successfully applied for PR as cooks, pastrycooks or bakers. This can be seen by matching the number of enrolments against the number of visas issued to cooks under the three onshore student skilled visa categories (subclasses 880, 881 and 882) in the migration program after the

**Table 1: Overseas student enrolments in cooking and visas issued to these former overseas students, 2004 to 2008**

	Enrolments	Visas issued	
		Year	Number
2004	1019	2005–06	951
2005	1716	2006–07	1797
2006	3421	2007–08	3251
2007	5454	2008–09	not available
2008	8242		

Source: enrolments, AEI, unpublished; Visas issued, DIAC, unpublished.

elapse of the second year of training. Since students are required to apply within six months of completing their two years of training, almost all would be visaed by the middle of the year following this training. For example, most of the 1019 students who completed their first year at the end of 2004 would have taken an advanced diploma in 2005, and have been eligible to apply for PR in 2005–06. These figures are consistent with the analysis in our first report, which was that almost all the overseas students taking cooking courses did so with the expectation that it would serve as a pathway to a permanent residence visa.

The scale of growth of visa numbers is indicated in Table 1. In just two years the number of visas issued to former students with cooking qualifications increased from 951 in 2005–06 to 3251 in 2007–08. By 2007–08 only accounting, with 6152 onshore visas issued exceeded cooks. The only other trade occupation with significant numbers was hairdressing with 492.<sup>4</sup>

### **WHAT IS THE PROBLEM?**

Unfortunately there are no precise figures available as to the employment outcomes for former overseas students in cooking who gain PR. This is despite the huge numbers granted visas—nearly 6000 in the last three fiscal years (Table 1), as well as the concerns raised in our March 2007 article about their skill level and motivation to work as cooks. This prompted our call for DIAC to commission research on their employment experience after obtaining their PR visa. But to our knowledge, DIAC has not commissioned any research specifically into this issue.

Our recent inquiries indicate that their situation is still similar to that reported in 2007, which is quite different from that of Australians completing an apprenticeship in cooking. The latter are in demand, and can readily find positions as cooks. However, industry informants (representing

employers of cooks and training providers) report that a high proportion of the overseas students who complete cooking courses and who actually want to be cooks tend to take on semi-skilled kitchen hand positions. This is because of the limitations of their training.

There are far more kitchen hands than there are cooking jobs. According to *Australian Jobs*, there were more than 109,000 kitchen hands in employment by November 2007 and their numbers grew by 12,200 in the five years to November 2007.<sup>5</sup> Thus, to the extent that former overseas cookery students enter the restaurant industry, they can find work at the semi-skilled level as kitchen hands. As explained below, cooking students are required by TRA to complete 900 hours of work in the industry, which most do in their second year of training. Many also work part-time in the industry on arrival in Australia. As a result they are playing an important role in filling semi-skilled roles within the industry. For this reason, the industry is anxious for more.

However, this is not what the migration program is supposed to be about. It is for skilled workers.

These comments help explain why, despite the huge influx of migrant cooks, there remain chronic shortages in the industry. By November 2007, there were about 38,000 employed cooks in Australia. The number employed grew by 6,200 over the previous five years.<sup>6</sup> Yet in 2007–08 alone, there were 3,251 visas issued to cooks applying under the former overseas student visa subcategories (Table 1), another 656 were visaed under the other skilled migration visa categories<sup>7</sup> and 2,305 domestic apprenticeship completions in cooking in 2007.<sup>8</sup> The addition of some 6,000 migrant and domestic cooks to the labour market in just one year ought to be sufficient to meet employer needs. Yet cooking has been on the Migrant Occupation in Demand List (MODL) since May 2005 and is still there.

The catering industry continues to assert that employers are desperately short of qualified cooks.

This paradox is explored via an analysis of recent developments in training standards for cookery, the ways in which these training standards are monitored and enforced and, finally, the procedures by which international students who complete cookery via the institutional pathway are assessed for migration purposes. The subject is extraordinarily complex. There are a multitude of agencies involved, some of which do not want to talk to probing academics, and there is little coordination between these agencies. We begin with the setting of cookery teaching standards.

### **SKILLS COUNCILS AND THE SPECIFICATION OF TRAINING PACKAGES**

The specification of the training required for a Certificate III course is ultimately the responsibility of the Commonwealth Department of Employment, Education and Workplace Relations (DEEWR). It finances and oversees appointments to the Skills Councils set up to prepare the cookery training package (and other training packages). In the case of cookery, the relevant Skills Council is Service Skills Australia. The staff of these councils are advised by boards drawn from industry, training providers and state government departments. Since 2005, all training packages have had to be approved by the National Quality Council, another body appointed by the Commonwealth Government. This council is a peak organisation with representatives from government, industry and training providers.

Training packages are currently in place at various training levels across a wide variety of skills. They cater for Australian residents and for overseas students. They evolved out the former Labor Government's desire in the early 1990s to open

up the Vocational Education and Training (VET) training market, which was then monopolised by TAFEs. The intention was to promote the entry of private providers into the training market. This objective was supported by the Coalition Government after 1996. Private providers have succeeded in making some inroads at the trainee level (below Certificate III). But, for most traditional trades, the apprenticeship system still dominates, with classroom-based work done in the TAFE system.

The chief exceptions, at the Certificate III level, are cookery and hairdressing where all of the overseas students enrolled in cookery do so on a full-time basis, usually with private providers, though a minority do so with a TAFE. In these trades, Service Skills Australia has deemed that full-time training offered by Registered Training Organisations or RTOs (TAFEs and private providers) accredited to teach the training package can deliver in one year the skills equivalent to those attained by cooking apprentices over an indenture lasting several years. As discussed below, RTOs can only offer this training if accredited to do so by state authorities. The Skills Councils have no role in this accreditation.

From the private provider or TAFE point of view, the incentive to enter this market is that overseas students are prepared to pay around \$10,000 per year (\$20,000 over two years) for the training required. Few local students are prepared to pay such fees.

In the case of cookery, Service Skills Australia introduced a new Certificate III training package in mid-2007. This is SIT07: Certificate III in Hospitality SIT30807 (Commercial Cookery). The RTOs providing training in the field are required to implement this training package by mid-2009. The training package is similar to its predecessor, with a couple of important exceptions. One is that the new package, for the first time, details

the equipment requirements that RTOs must provide. For example, they must provide one commercial oven for every two students and two burners per student. These requirements are not retrospective. However, they will make it very much more expensive for enterprises wishing to enter the cooking instruction field in future. The second is that RTOs are required to ensure that trainees complete some 300 hours of food service in a functioning restaurant setting. This too, was not required in the previous training package.

The SIT07 training package specifies the units trainees must complete and the competencies they must master. These units and competencies detail the roles a trade level cook must be able to perform, such as the preparation of appetisers, salads, stocks, sauces and soups. There are no prerequisites for trainees. The nominal hours specified for the completion of all the required units add up to around 40 to 50 weeks full-time instruction.

There is nothing in the voluminous literature from the Commonwealth Government, the National Quality Council or the Service Skills Council that explains how trainees can, after one year's institutional training, achieve the skill level of apprentice cooks on completion of their three to four year indenture. All the experts in the field we consulted indicated that the skills of those completed a cooking apprenticeship are far in advance of those completing a one year full-time course with an institutional provider. As one informant, who is a member of the Service Skills Advisory Council put it, it is like comparing 'chalk and cheese'.

The problem of limited experience in a functioning restaurant was articulated in the one major audit recently completed within the cooking field. This was completed under the auspices of the National Training Quality Council, the predecessor of the National Quality Council. This audit, which was

published in 2005 concluded:

It was generally accepted that for institutional based delivery and assessment to be successful industry work placements for students were necessary. The degree to which these arrangements were in place varied across the audit sample.<sup>9</sup>

The authors go on to declare that:

Disappointingly, jurisdictions also reported that some RTOs did not have any industry relationships and did not encourage students to seek any industry employment and experience. As one jurisdiction reported, where work placement does not occur in industry the graduates for these qualifications are not going to have realistic expectations of what is required to work in the hospitality industry.<sup>10</sup>

### **WHO GUARANTEES TRAINING STANDARDS? THE ROLE OF STATE GOVERNMENT REGULATORY AGENCIES**

There would be less concern about this matter if the Skills Councils had some mechanism in place to ensure that trainees who complete the training package actually demonstrate that they possess the competencies listed in the training package. However, there is no such mechanism. Service Skills Australia has no role in assessing the competence of the RTOs or the students they have trained. Instead, the function of ensuring that the RTOs are properly staffed and equipped to deliver a training package, and that students who complete the training courses have trade-level skills, has been delegated to state government education authorities. In Victoria, the responsible organisation is the Victorian Registration and Qualifications Authority (VRQA), which is a branch of the Victorian Education Department. In New South Wales it is the NSW Vocational education and Training Accreditation Board, which is within the NSW Department of Education and Training.

If a private or public agency (usually a TAFE) wishes to provide a Certificate III course, it must seek registration from the state regulatory body as a Registered Training Organisation (RTO). To do so it must comply with the specifications of the respective training package, in regard to the required staff and facilities. For example, it will be the regulatory authority's task to determine if an RTO meets the new capital equipment standards for commercial cookery described above. The regulatory authority is also required to check that 'trainers and assessors, a) have the necessary training and assessment competencies as determined by the National Quality Council or its successors and, b) have the relevant vocational competencies at least to the level being delivered or assessed'.<sup>11</sup>

Once the RTO begins operation, however, the task of assessing whether the trainees reach the required skill outcomes is left to the RTO itself. In other words it is a self-regulated system. The only qualification to this statement is that the state regulatory authorities have an obligation to audit the performance of RTOs. However, because of their limited staff such audits are a rarity other than at the beginning and end of the registration period. Otherwise, audits are undertaken on a 'risk management basis' during the five-year period of the registration. This means that an audit may occur if someone complains.

Some of the TAFEs and private providers of cooking training that we have encountered are serious about providing quality instruction to their overseas student clientele. But as noted, there is no external authority tasked to ensure that they do so. This means that, to the extent there is any externally validated quality assurance, it rests with the authority responsible for assessing trade qualifications for immigration purposes. This is Trade Recognition Australia (TRA).

## **TRADE RECOGNITION AUSTRALIA AND ACCREDITATION FOR IMMIGRATION PURPOSES**

TRA is a branch of DEEWR. TRA has been delegated by DIAC to decide if applicants for migration with trade credentials meet Australian standards in the trades (including cooking). Without TRA's endorsement, applicants for permanent visas with trade qualifications cannot pursue a permanent entry application under the points tested skilled-migration program. The benchmark TRA uses in making this judgement is 'whether the trade training and work experience [is] equivalent to that of an Australian apprenticeship-trained tradesperson'.<sup>12</sup>

This sounds reasonable. However, TRA is compromised in exercising its judgement. TRA is required, by legislation, to assume that students who have completed an Australian Certificate III level training package from a properly registered RTO, have reached trade level standards. TRA has no input into what is specified in the training package and no authority to test the competency of those who complete a commercial cookery Certificate III level course. Nor can it investigate the quality of the training provided by the RTO in question. The question of standards—as we have seen—is left to the relevant Skills Council and the state government-based regulatory authorities.

Yet, TRA is routinely making positive judgements about the credentials of those completing Australian full-time certificate III programs, the quality of which it has no power to investigate.

Notwithstanding these constraints, TRA has taken unilateral action which has influenced the requirements overseas students in the trade area must complete before TRA will accredit them for immigration purposes. In 2005, it introduced a requirement that those completing the

full-time, one-year certificate III course (whether in cookery, hairdressing or related fields) must have 900 hours work experience in the relevant industry. Trainees have to be able to produce a certificate from an employer (or employers) to this effect. In response, many RTOs offered this experience themselves, sometimes without payment to the trainee. In this tit-for-tat game, TRA has responded by stipulating that, from September 2008, this work experience must be for paid work and must be at arms length from the RTO providing the training itself.

The regulation makes sense, since it at least ensures that overseas students have some genuine exposure to cooking workplaces. However, in most cases it will have little impact on the skill level of the student, since our inquiries indicate that when students are fulfilling their 900 hours they are usually assigned to kitchenhand work or to waiting work without any systematic training component in cookery.

**THE IMMIGRATION INDUSTRY AND RTOs**

The situation described is tailor-made to encourage entrepreneurs to enter the VET training field. Cooking instruction is obviously an attractive business, to judge from the number of new entrants to the field (see below). Providers have flourished because of the explosion in enrolments in cookery from overseas students. The attraction is that cooking provides a relatively inexpensive and undemanding pathway (compared with a university course) to PR. An Australian PR visa is highly valued in low wage countries because it unlocks the door to an income level and way of life vastly superior to that available in such countries.

There is a network of immigration agents in Australian and overseas whose business depends on linking those aspiring for a better life and pathways to PR in

Australia to training providers where they can obtain the necessary trade accreditation certification. Anecdotal evidence indicates that the network is particularly active in the Punjab region of India. This network is linked with training institutions in Australia. The relationship may be indirect, as in the case of some of the longer established private providers and TAFEs, or quite direct as in the case of some training providers who have close links with, or are owned by, migration agents.

As a consequence, there has been a flood of new entrants to the ranks of RTOs in the cooking field over the years 2001 and 2006. There is also vigorous competition to attract and, if necessary, poach students from RTOs which are serious about standards and therefore have to charge relatively high fees.<sup>13</sup> Our investigation covering the years since 2006 shows that the number of new entrants continued to expand, particularly in Victoria. In Victoria, as the following Table documents, there were eight new RTOs registered to offer Certificate III level courses in cooking in 2007 and 23 in 2008. A minority of these providers were TAFEs. In NSW the regulatory authority appears to have taken a tougher stand, since only a few new entrants there have been registered recently.

**Table 2: RTOs adding a Certificate III (Commercial Cookery) to their CRICOS scope Victoria, 2007 and 2008**

Provider status	2007	2008
Existing providers	1	9
New providers	7	14
Total	8	23

Note: The qualification is listed under two NTIS codes—THH31502 and SIT31502

## GOVERNMENT AWARENESS OF THE PROBLEM

When Kevin Andrews was Minister for Immigration in the last years of the Coalition Government, he and his staff were aware of the dramatic growth in enrolments in cooking and the anecdotal evidence that this growth reflected student awareness of the pathway it opened to PR.

Internal documents drawn from a freedom of information request pursued by Guy Healy, a Higher Education reporter with *The Australian*, provide a window on the response. In August 2007, Andrews decided to remove cooking from the MODL. He did this in part because, by 2007, it was becoming evident that the influx of migrant cooks was not providing a solution to the shortage of cooks. Yet, MODL listing was supposed to be a part of the solution to such shortages. In addition, Andrews noted in his letter to the then Minister for Employment and Workplace Relations (Joe Hockey), that:

This is occurring at a time when anecdotal evidence suggests that a substantial proportion of overseas students undertaking vocational courses in Commercial Cookery and Hairdressing do not intend to work in those occupations upon completion of their training.<sup>14</sup>

As it turned out, this decision was never implemented. Cooking and hairdressing remain on the MODL to this day.

When the issue of MODL listings were first reviewed under the new Labor Government in March 2008, the Government decided to keep cooking on the list. However, behind the scenes, Andrews' concerns about cooks received a further airing. In the course of briefing the Minister for Employment and Workplace Relations (Julia Gillard) on the results of the MODL review, DEEWR officers offered the following comments:

Concerns have been raised in the media and by some academics that MODL is being exploited to enable permanent resi-

dence for poorly qualified and low skilled migrants in occupations such as chef/cook and hairdresser. It is recommended that cook/chef and hairdresser be retained on the MODL as a result of our discussions with employers and the continuing difficulty they are having in filling vacancies for these occupations.

The concerns that have been raised are being addressed by Trades Recognition Australia (TRA). TRA now undertakes face-to-face and telephone interviews, using a more systematic and targeted approach than previously, with applicants who have studied in Australia, to tighten the assessment process in these occupations. TRA is currently reviewing its assessment criteria and will brief you about their proposed revised criteria shortly. Finally TRA is working with a number of other areas in the department regarding the appropriate recognition of Australian training and the registration of training providers for international students. You will be briefed in due course as these matters are progressed.<sup>15</sup>

For her part, Minister Gillard subsequently advised Senator Chris Evans, the new Minister for Immigration, that:

The occupations of cook/chef and hairdresser are again recommended for inclusion on the MODL despite reports in the media that a number of migration agents are assisting overseas nationals to achieve permanent residency by offering training programs which target these occupations but which are of a poor standard. This poor quality training is a source of concern as it is unlikely to yield a supply of suitably qualified workers to address the skill shortages experienced by employers. However, concerns about the exploitation of these occupations through MODL are being addressed by Trades Recognition Australia.<sup>16</sup>

We asked the Group Manager of TRA what the organisation had done or was in-

tending to do about the matter. The Group Manager promised to provide the information, but despite further inquiries, there has been no response. As of March 2009, cooking and hairdressing remain on the MODL and TRA continues to accredit applicants for permanent-entry visas on the basis of unverified certificates granted by their RTO that the applicants have completed all the requirements of the training package.

## **REFORM OPTIONS**

There are two broad approaches to dealing with the issues raised above. The first is action to ensure that institutional training actually produces people with skills equivalent to the trade level. The second is a tightening of immigration selection procedures to ensure that only those with genuine trade skills are visaed. We deal with these two approaches in turn.

### **Tightening training standards**

As our account indicates, there has been some action to improve standards from the various DEEWR agencies responsible for institutional training in cooking. The new cookery skills package has toughened up the kitchen standards for new RTOs and added a requirement for restaurant experience during training. In addition, TRA has required a minimum of 900 hours work experience (at any level) with an employer in the field, which must be at arms length from the institutional training provider. But DEEWR, which has the overall responsibility for the matter, has not acted to fill the serious competency-assessment vacuum. There is still no independent agency tasked to assess the competency of cooks who complete institutional pathway training.

Perhaps TRA should perform or at least oversight this role. TRA has a long history of assessing the skills of tradesmen in the metal and electrical trade fields, including migrants who have work experience in these fields, but who have not completed

a formal apprenticeship. This assessment sometimes involved competency tests.<sup>17</sup> Alternatively, the appropriate agency could be the Service Skills Council. Either way, it is urgent that this vacuum be filled if the institutional pathway in cooking is to regain credibility.

If trainees are to reach the skill standards of those who have completed an Australian apprenticeship they will need to have more skilled practical experience in the restaurant or related settings. As noted, at present they are only required to complete one year of training in cooking skills. All of our informants agreed that they need far more than this. As the situation stands at present, trainees normally do a second year of training at the advanced diploma level in order to meet DIAC's two-year minimum requirement. This is usually in hospitality management or a related field, but can be in almost any field at all as far as DIAC is concerned. Students just have to complete two years of training. According to one leading provider, it is not unusual for students who complete their Certificate III course, to then move to a cheaper provider to do a Certificate IV course.

The obvious reform would be to extend the Certificate III level training requirement to two years and to include a substantial mandatory period of restaurant experience within this two years.

### **Tightening the immigration selection criteria**

If former Minister Andrews' decision to remove cooking from the MODL had been implemented in 2007, this would have led to a sharp reduction in the number of cooks being visaed. His action reflected DIAC frustration that the increasing tide of cooks was not achieving the goal intended, which was to help deal with the chronic shortage of cooks in the Australia.

Instead, in September 2007, DIAC opted to reform the migration selection

procedures so that most former overseas students were no longer able to obtain a PR visa on completion of their VET or university course. In sharp contrast to the situation prior to September 2007, the additional points previously available to those with MODL occupations were removed. An applicant for PR requires 120 points. This policy change appeared to put the 120 target out of reach of most overseas student cooking (and other) applicants.

However, this was not the end of the matter. Under the new rules, former overseas students seeking permanent residence could take up a new (since September 2007) transitional visa (visa subclass 485), which allowed them to stay in Australia for 18 months, during which time they had full work rights. If they wished to apply for permanent residence while on this visa they could do so. There were two main ways they achieve this result. One was if they could achieve a score of 7 on the International English Language Testing Service (IELTS) test, in which case they received 25 points, compared with 15 for those who only achieved the minimum requirement of 6. The other was via the completion of a professional year in their field or the completion of a year's Australian work experience in their nominated occupation or a closely related occupation—in which case they would receive an additional 10 points, which would normally be enough to achieve the 120 pass mark.

Since few cooks are likely to be able to achieve 7 on the IELTS test, the implication was that most would have to gain a year's work experience in cooking before being able to obtain PR. This would have represented a significant improvement on the pre-September 2007 situation. As long as DIAC rigorously assessed the evidence base for the cooking experience, the effect would be to deny PR to those who had completed Certificate III in cooking yet did not have the skills necessary to obtain skilled

employment as cooks, or who were not interested in taking up work in the field.

As it has turned out the reform measures have largely not been applied to those with trade credentials acquired onshore.<sup>18</sup> In a bizarre turn of events, there was a loophole in the migration post-September 2007 regulations which allowed DIAC to treat the 900 hours work experience requirement by TRA (to qualify as a tradeperson) as sufficient to meet the one year Australian skilled work experience option. Applicants since September 2007 have been allowed to double count this work experience, once to meet the TRA requirement and a second time to meet the Australian 'skilled' work experience requirement under the assessment grid for a PR visa application. This is despite the fact that the work experience would not normally be at the trade level, but rather at the semi-skilled level, including as a kitchen hand. The 10 points allocated for this Australian skilled work experience factor is usually enough to get former overseas students who have a Certificate III qualification in cooking over the 120-point line for a PR visa.

The way the loophole has worked is that to be deemed as Australian work experience, the work experience has to occur after the Certificate III qualification has been achieved. Providers are well aware of this situation and, since September 2007, it has become normal practice for overseas students to do their 900 hours in the second year of their training in Australia.

Since 1 January 2009, the situation has changed yet again, this time in ways that potentially debar former overseas students in cooking (and hairdressing) from gaining PR. From this date, first processing priority will be given to applicants with professional or trade qualifications seeking permanent residence under the skilled-migration program who are sponsored by Australian employers or state governments. Second priority will be given to applicants

who are not sponsored, but whose skills are listed on a Critical Skills List. This list is mainly composed of professional occupations in the health, engineering and some IT specialties. Cooks and hairdressers are not on this list. There is a third-priority category, which is applicants whose occupations are listed on the MODL. This does include cooks and hairdressers.

At the time of the announcement on 17 December 2008, Senator Evans left the impression that there was no guarantee that applicants with occupations not on the Critical Skill List would be processed after 1 January 2009. Senator Evan's subsequent statement on 15 March that the skilled migration program will be cut for the remainder of the 2008–09 program year leaves little doubt about the issue. If so, those with occupations not on the Critical Skill List—including cooks—will have to pursue the one PR option left to them, which is sponsorship by an employer. This is what the Government is telling them to do. The 17 December 2008 Ministerial Statement says in reference to international student graduates that: 'if they want their application considered as a priority ... [they] will need to focus on finding an employer to sponsor them'.<sup>19</sup>

### **THE EMPLOYMENT NOMINATION LOOPHOLE**

Under the current rules former overseas students with cooking credentials have a good chance of obtaining an employer nomination. The great majority of onshore cooks will be eligible for the 485 visa (described above), which gives them unrestricted work rights in Australia for 18 months.

During this 18 months most are likely to seek an Australian employer prepared to offer them work prior to a subsequent sponsorship. The onshore versions of the employer-sponsored permanent visas, the Employer Nomination Scheme (ENS)

and the Regional Sponsored Migration Scheme (RSMS) require a sponsored person to have completed two years work in Australia including 12 months work with the sponsoring employer. There is currently no requirement for an employer wishing to sponsor a cook (or any other occupation) to labour market test, that is, to establish that no local workers are available to do the work at market rates. There are a wide range of eligible occupations listed under ENS Skilled Occupation List (or ENSOL), which includes most trade occupations (including cooking) as well as professional, associate professional and managerial occupations. The fact that an occupation (again, like cooking) is not on the Critical Skill List does not debar an employer sponsorship in the occupation.

In the case of cooks, as the current rules already treat their 900 hours work experience as one year's 'skilled work experience', onshore cooking graduates may only need to clock up only another 12 months work to satisfy the two year Australian work experience requirement. The 18-month 485 visa provides ample opportunity for them to do this. Furthermore, since there is only minimal regulation of wages in the 485 visa, 485 visa holders can take on employment at low wages as an incentive for employers to sponsor them after they obtain the two years work experience. From the employer's point of view, 485 visa holders are a more attractive option than the 457 visa holders, since under the latter, the sponsoring employer must pay a minimum salary (currently \$43,240 a year) and meet certain administrative and compliance costs, which are not required under the 485 visa.

In 2007–08 there were 8,264 visas issued to principal applicants under the employment nomination visa categories, 89 per cent of which were for onshore applicants. Only 376 of these principal applicants were chefs or cooks.<sup>20</sup> The

numbers are likely to escalate. Thousands of former overseas student graduates in cooking will be looking for employers over each of the next two years, first to gain the required extra one year's work experience while on the 485 visa, then to achieve a PR sponsorship. Why would employers cooperate? The answer is that the hospitality industry works on low margins and, for some employers, the opportunity to take on a former overseas student willing to work on terms and conditions less than domestic workers would accept, provides a competitive advantage. Unfortunately, it is well documented that some migrants are being exploited by employers prepared to take advantage of this situation.<sup>21</sup> Equally, in regard to the 900 hours work certificate that trainees must present to satisfy TRA, there is plenty of evidence that in order to procure this certificate, some overseas students are prepared to work for as little as \$4 an hour or no pay at all, and some even to pay the employer to take them on.<sup>22</sup>

## CONCLUSION

The immigration selection process for cooks is a mess. It make no sense for DIAC to establish a Critical Skill List of occupations eligible for permanent entry visas, and then allow employers to employ and sponsor persons for PR in occupations not on this list (as is the case for cooks). This is a loophole that must be closed.

For the longer term, if cooks and hairdressers do become eligible again for permanent entry under the various points-

tested skilled migration visa categories the selection rules need to be thoroughly reformed. As argued, eligible institutional pathway courses in cooking should involve at least two years instruction, including extensive hands on restaurant experience, but only with effective safeguards to protect Australian wages and jobs. In addition, there should be an external competency test to ensure that the skills achieved are equivalent to those of a completed Australian apprentice in the field.

However, given the current employment situation, the Australian government's priority should not be the resuscitation of the overseas student visa program in cooking or hairdressing but of engaging young Australian students in the area. As noted above, the number of overseas student completions in cooking currently dwarfs the number of completed domestic apprenticeships in the area. The Australian government has shown an admirable commitment to increasing trade training opportunities, by vastly expanding the number of VET trainee places and by expanding VET training facilities across the secondary school sector. Given the decline in the workforce in some traditional trades, especially in manufacturing, it is important that trade opportunities are opened in the service sector—including cooking. This will not happen while thousands of overseas students flood the market, depressing both wages and conditions in the sector and crowding out potential young Australian entrants.

## References

- <sup>1</sup> B. Birrell, E. Healy and B. Kinnaird, 'Cooks galore and hairdressers aplenty', *People and Place*, vol. 15, no. 1, 2007
- <sup>2</sup> *ibid.*, pp. 37–39
- <sup>3</sup> The statistics are for the year to November. At the time of writing year to December figures were not available for 2008. Since very few students enrol in December the figures are a close approximation to full-year enrolments for each year listed in the table.
- <sup>4</sup> Department of Immigration and Citizenship (DIAC), unpublished visa issued statistics, 2007–08
- <sup>5</sup> *Australian Jobs 2008*, Department of Education, Employment and Workplace Relations (DEEWR), 2008

- <sup>6</sup> *ibid.*, p. 34
- <sup>7</sup> DIAC, unpublished visa issued statistics, 2007–08
- <sup>8</sup> National Centre for Vocational Education Research, unpublished Australian vocational education and training statistics
- <sup>9</sup> National Strategic Industry Audit of Training in the Hospitality Industry, *National Report, 2005*, p. 29
- <sup>10</sup> *ibid.*, p. 30
- <sup>11</sup> The Australian Quarterly Training Framework 2007, *User Guide to the Essential Standards for Registration*, Department of Education, Science and Training, Canberra 2007, p. 7
- <sup>12</sup> DEEWR, submission to the Joint Standing Committee on Migration: Inquiry into Skills Recognition Upgrading and Licensing, June 2005, p. 10
- <sup>13</sup> Birrell et al., 2007, *op. cit.*, pp. 36–37
- <sup>14</sup> Kevin Andrews, MP, Minister for Immigration and Citizenship, *Letter to the Hon Joe Hockey, MP*, Minister for Employment and Workplace Relations, 10 May 2007
- <sup>15</sup> DEEWR Briefing No. JEG200802406, *Migration Occupations in Demand List (MODL)*, 20 March 2008, unpublished
- <sup>16</sup> Julia Gillard, MP, Deputy Prime Minister, *Letter to Hon Chris Evans*, Minister for Immigration and Citizenship, 8 April 2008
- <sup>17</sup> R. Birrell, ‘Employment and the occupational system since the Second World War’, in James Jupp, (Ed.) *The Australian People*, Angus and Robertson, 1988, p. 884
- <sup>18</sup> The scale of this outcome will not be known until DIAC processes visa applications from cooks and releases the results. However, unpublished DIAC data indicates that only 488 cooks, bakers and pastrycooks were granted 458 visas between 1 September 2007 and 31 December 2008. The implication is that most onshore visa applicants who nominated cooking as their occupation over this period are likely to gain a 880, 881 or 882 visa.
- <sup>19</sup> Media Release, Senator Chris Evans, ‘Migration program gives priority to those with skills most needed’, DIAC, 17 December 2008, p. 7
- <sup>20</sup> B. Birrell, E. Healy and B. Kinnaird, *Immigration and the nation building and jobs plan: CPUR Bulletin*, February 2009, p. 5
- <sup>21</sup> *ibid.*, p. 5
- <sup>22</sup> Birrell, et al., *op cit.* p. 40