

CPUR

Research Report November 2012



Immigration Overshoot

Bob Birrell

Ernest Healy

Contents

Summary	4
Introduction	6
<i>Government job growth projections and current employment realities</i>	7
<i>The current immigration policy mindset</i>	9
The practice of migration policy: The employer sponsored visa subclasses	10
<i>The temporary entry 457 visa subclass</i>	10
<i>Industry and location of 457 visa holders</i>	12
<i>The permanent- entry employer sponsored visa subclasses</i> — <i>the Employer Nomination Scheme (ENS)</i>	13
<i>The Enterprise Migration Agreement pathway</i>	15
The points-tested visa subclasses	18
<i>The Skilled Independent and Skilled Australian Sponsored visa subclasses</i>	18
<i>State/Territory Sponsored visa subclasses</i>	20
Temporary migrants and access to the Australian labour market	21
<i>The size of the temporary migrant influx</i>	21
<i>Visa churning – the case of overseas students</i>	23
<i>Visa churning for WHMs and visitors</i>	25
<i>Can the domestic workforce compete?</i>	26
Recommendations	28
<i>The economic setting</i>	28
<i>Recent developments in the EMA debate</i>	29
<i>Recommendations for EMAs</i>	30
<i>Recommendations for reform of the larger 457 program</i>	31
<i>The State/Territory sponsored visa subclasses</i>	32
<i>The points-tested skilled migration visa subclasses</i>	32
<i>Visitors, students, WHMs and other temporaries</i>	33
References and notes	35

Acronyms

ACTU — Australian Council of Trade Unions
AWU — Australian Workers' Union
CFMEU — Construction, Forestry, Mining and Energy Union
DIAC — Department of Immigration and Citizenship

EMA — Enterprise Migration Agreement
ENS — Employer Nomination Scheme
IELTS — International English Language Testing Scheme
SOL — Skilled Occupation List
WA — Western Australia

List of tables

Table 1 Employed persons by industry, August quarter 2007 to August quarter 2012 and annual change in employed persons 2007-2008 to 2011-12.....	8
Table 2 Employer Nomination Scheme (ENS), principal applicants visaed, 2011-12, by ENS visa subclass and selected occupations.....	14
Table 3 Skilled visa outcomes from 2007-08 to 2010-11 and planning levels for 2011-12 to 2012-13.....	19
Table 4 Principal applicants visaed, Skilled Independent and Skilled Australian Sponsored categories, 2011-12, by selected occupations.....	19
Table 5 Numbers of principal applicants invited to apply for visas by visa subclass and language score from 1 July 2012 to 21 September 2012.....	21
Table 6 Stock of temporary entrants as at 31 December 2009, 2012 and 2011 by major visa group.....	22
Table 7 Visa destinations of those with student visas who obtained a new visa in Australia, 2010-11 and 2011-12.....	24
Table 8 Labour force status of Australian-born persons 15-19 years and 20-24 years, July 2006 to July 2012.....	27

Summary

Australia has been in the grip of a boom mentality over the last decade. As in other such booms, governments and business enterprises seem to lose the capacity to reality-test claims, such as those from the Australian Workforce and Productivity Agency, that Australia faces enormous growth in the demand for workers.

Immigration policy settings have been adjusted to accommodate this boom ethos. The permanent migration program for 2012-13 has been set at the record high figure of 210,000. The Government's 457 temporary-entry visa program is also running at record high levels. Opportunities for other temporaries, including visitors, students and Working Holiday Makers (WHMs) most of whom have work rights in Australia, have also been opened up.

The immigration program is set on full throttle, whereas the net growth of the employed workforce in Australia has slowed to a crawl.

The net growth in the employed workforce in Australia was just 58,000 between the August Quarter for 2011 and the August Quarter 2012. Yet, in the past year, at least 100,000 migrants arrived who found employment in Australia (pp 6-7).

Inevitably, domestic job aspirants are being crowded out, particularly young people seeking to enter the workforce. Australian-born youth unemployment has increased (Table 8) and, as of August 2012, there were 666,830 unemployment benefit recipients, up from 626,969 in August 2011 (pp 25-27).

This report argues that the immigration intake is too high. It shows that under the current employment conditions several of the major visa subclasses need to be culled.

The Government has put an increasing emphasis on outsourcing the selection of migrants to employers, who it claims are the best judges of Australia's skill needs.

However, most of the migrants sponsored by employers for permanent and temporary entry have nothing to do with the resources industries. More than half of those visaed under the permanent-entry visa subclass in 2011-12 did not have an occupation listed on the Government's own Skilled Occupation List – which lists occupations in short supply in Australia. This includes cooks. Yet, in 2011-12, this was by far the largest single occupation under this program, with 3,055 principal applicants visaed (Table 2).

Most of those sponsored under the permanent-entry employer-sponsored visa subclass are 457 visa holders already employed by the sponsor. These migrants do not have to possess professional-level English proficiency or to undergo an assessment of their credentials by the relevant Australian occupational authority.

As a result, employer sponsorship is increasingly being used as a backdoor entry method, which allows some employers to get a competitive advantage and some migrants to evade the much tougher entry rules applied to points-tested migrants.

This is also why the temporary-entry 457 visa program continues to expand despite the recent slow-down in employment creation. In July-August 2012, the number of 457 visas increased by 20.6 per cent compared with the same months in 2011. The top occupation visaed was cooks (p. 31).

The Enterprise Migration Agreement (EMA) issue has brought the 457 visa program to public attention. On 25 May 2012, the Government announced that the Roy Hill venture would be allowed to sponsor some 1,715 workers under the 457 visa subclass. Two key concessions were granted. Most were to be semi-skilled and all of those sponsored, whether semi-skilled or skilled, could possess only rudimentary English. Like other 457 visas, Roy Hill did not have to give Australian workers an opportunity to apply for the jobs.

The EMA arrangements have been based on claims that domestic workers are unwilling to work in remote settings. Yet, by October 2012, some 27,500 job seekers had registered an interest for such work on the Government's Resources Sector Jobs Board (p. 29).

At the time of writing, the Government continues to negotiate the Roy Hill EMA. It has conceded that all EMA holders will have to use the Resources Sector Jobs Board in order to satisfy DIAC that domestic workers have been given access to the work. However, no detail has been released as to how this provision will be implemented (p. 16 and pp. 29-30).

The most serious implication of migration for domestic workers is the huge presence of migrants on temporary visas in metropolitan lower-skilled labour markets. Though allegedly here for various educational, holiday and cultural exchange purposes, large numbers are primarily in Australia to work. The surge of Working Holiday Makers is a prime example. For example, the number of Irish citizens visaed under the WHM program increased from 14,790 in 2009-10 to 25,827 in 2011-12 (p. 25).

Our analysis shows that the current rules regulating temporary entry are excessively generous. Once in Australia, tens of thousands then extend their presence in the labour market by churning from visa to visa. For example, in 2011-12, some 26,671 overseas students already in Australia were granted a tourist visa (Table 7).

The paper concludes with recommendations for policy change.

Employers should only be permitted to grant visas under the 457 visa subclass in the following circumstances:

Where the Australian Government establishes that there are skill shortages in the occupation sponsored in the capital city or region where the employer is located.

Where the 457 applicant receives a positive skills assessment from the relevant occupational authority and, in the case of professionals and managers, achieves level 6 on the IELTS test (as is the case with all applicants for points tested visas).

Projects seeking an EMA should only be allowed to sponsor semi-skilled migrant workers after domestic workers have first been offered the opportunity to take on the work and provided with the necessary training.

The State/Territory Sponsorship visa subclasses should be abolished.

The WHM program should be capped according to the state of the domestic labour market.

There is an urgent need for a review of the temporary-entry visa subclasses, which examines the impact on young domestic workers of the flood of migrants competing with them for available jobs.

Introduction

Net Overseas Migration (NOM) is expected to be around 207,300 in 2011-12. The Department of Immigration and Citizenship (DIAC) is projecting that, given current immigration policy settings, NOM will increase from 171,300 in 2010-11 to 207,500 in 2011-12, 222,400 in 2012-13 and to 229,400 in 2013-14.¹ This level is well above the Treasury projections which caused so much controversy when they were released as part of the 2010 Intergenerational Report. The Treasury's mid-range projection anticipated that NOM would be maintained at an average of 180,000 per year. This became known as the 'Big Australia' outlook. It implied an Australian population growing from 22.3 million in mid-2011 to around 36 million by the year 2050.

These very high migration numbers are partly a consequence of the Labor Government's decisions over recent years to increase the permanent skilled migration program. The permanent-entry migration program, which delivered 158,630 permanent residents in 2007-08, was increased to 185,000 in 2011-12 and to a planned level of 190,000 in 2012-13. In 2012-13, the humanitarian program (which is additional to the migration program) was also increased from around 13,000 to 20,000. The resulting total of 210,000 permanent visas to be issued in 2012-13 is a record high level.

Much of the growth in permanent migration has occurred within the skilled program, which in 2012-13 will make up 129,250 of the total (a figure which includes dependents as well as principal applicants). This is composed of a range of visa subclasses, the selection criteria for which have been changed significantly. The trend is towards delegating the function of selecting migrants to employers and to States and Territories with very little DIAC control over their choice.

The Labor Government has also facilitated employers' access to the recruitment of migrants on the 457 visa subclass, which allows employers to sponsor migrants for temporary work in jobs for up to four years. The 457 program is uncapped. In 2011-12, there were 68,310 visas allocated to such employer-sponsored 457 primary applicants – up from 48,080 in 2010-11. The introduction of Enterprise Migration Agreements (EMAs) will add to the 457 visa numbers. The first of these was announced on 25 May 2012 with Roy Hill Holdings, an entity within the Hancock Prospecting Group. Under the EMA arrangements, giant resource projects can receive up front approval for their contractors to sponsor skilled workers who do not meet the standard requirements of the 457 program, and semi-skilled workers, also on 457 visas.

The current high NOM is also a consequence of the Government's permissive stance on allowing the largely uncapped programs for students, Working Holiday Makers (WHMs) and other temporaries to prolong their stay in Australia by churning from one visa to another. DIAC expects that the numbers in these visa subclasses, resident in Australia, will continue to grow.² Most enter low-skilled job markets. They are providing ferocious competition for available work, to the detriment of domestic employment opportunities, especially for young workers. This situation is examined in the second part of the study.

The core issue is that this expansion of immigration is occurring at a time when the resources boom, which has propelled the Australian economy, has gone off the boil. Partly as a result, the overall rate of growth of employment in Australia has fallen sharply. In our view, there need to be major changes in immigration policy. Otherwise, the interests of domestic workers, or aspiring workers, will continue to be prejudiced.

In developing this argument, we first spell out the employment assumptions on which current immigration policy is based. These are then juxtaposed to recent employment outcomes. The Australian Government justifies its immigration policy on the basis that it is supplying scarce skills to key industries. This claim is put to the test through a detailed review of policy and outcomes for each of the major visa subclasses.

Government job growth projections and current employment realities

Australia has been in the grip of a boom mentality over the last decade, fed by the surge in resource industry investment. It has all the hallmarks of previous property and minerals booms when governments and business enterprises seemed to lose the capacity to reality test claims about their impetus to employment growth. Straight line projections tend to dominate, where it is assumed that the growth rates of the recent past will prevail into the distant future.

For example, Skills Australia, the Australian Government's advisory body on workforce training, stated in its 2010 *National Workforce Development Strategy* that it expected an expansion of 4.8 million jobs over the next fifteen years as a result of projected economic growth.³ This projection was based on modelling done by Access Economics, which incorporated Skills Australia's extreme (and preferred) assumptions about the determinants of economic growth in Australia, including extremely high net overseas migration and high labour productivity.⁴ The projection implies an average annual growth in employment of 320,000.

By 2012 Skills Australia (now called the Australian Workforce and Productivity Agency – AWPA) had backed off from these projections. Based on recent modelling, its most optimistic scenario has employment growing by an annual average of 181,400 between 2011 and 2015.⁵ The latest projection from the Department of Education, Employment and Workplace Relations latest projection is also more modest. Nevertheless, it has employment in Australia increasing by 829,300, or about 165,000 a year between November 2011 and mid 2016-17.⁶ The resources industry alone has repeatedly claimed that hundreds of thousands of workers will be needed during the construction phase of the mining boom.

Employment growth on this scale would be well above the underlying growth in the Australian workforce in the absence of high immigration.⁷ As a result, the Government has assigned DIAC the role of augmenting the Australian workforce so as to fill the expected gaps.

The consequence of all the various migration flows facilitated by DIAC, including temporaries, is that there is currently an enormous influx of migrant workers. The best available overall measure derives from the ABS Labour Force Survey. The Survey includes all migrants who meet the ABS definition of a resident, that is, a person who has been in Australia for 12 out of the 16 months following their initial arrival. As such, it does not include the many thousands who are in the workforce, but whose stay is of a shorter duration. On the other hand, this statistic is not a measure of the overall impact of NOM on the workforce because it does not take account of persons leaving Australia during the period.

The July 2012 ABS Labour Force Survey estimates that were 188,100 overseas-born persons who had arrived in Australia since January 2011, who were in the workforce as of July 2012, and who met the

above definition. Of these, 166,400 were estimated to be employed.⁸ At this rate, migrants are adding over 100,000 persons a year to the employed workforce.

These migrants are entering the Australian workforce just as employment growth in Australia is stalling. The ABS estimates that the employed workforce grew by 307,000 between the August quarters of 2007 and 2008. Then, after a GFC-induced lull between 2008 and 2009, employment growth shot ahead again by 340,000 between the August quarters of 2009 and 2010 (Table 1). It has declined since then, from 141,000 between the August quarters of 2010 and 2011 to just 58,000 between the August quarters of 2011 and 2012. The downturn in employment growth according to ABS estimates (Table 1) is consistent with trend data on job vacancy rates. The ANZ series, which covers newspaper and internet vacancies, shows a 15 per cent decline in the year to October 2012.⁹

If employment growth were to stabilise at the 58,000 level for a few years, there would be little need to augment the workforce through immigration at all (assuming for the moment that Australian workers possess the skills required by employers). Workforce projections produced by the Centre for Population and Urban Research indicate that the Australian workforce will grow by at least this level in each of the next few years.¹⁰

Table 1

Employed persons by industry August quarter 2007 to August quarter 2012 and annual change												
Employed persons 2007-2008 to 2011-12												
	August Quarter 2007	August Quarter 2008	August Quarter 2009	August Quarter 2010	August Quarter 2011	August Quarter 2012	Change 2007-08	Change 2008-09	Change 2009-10	Change 2010-11	Change 2011-12	
	Persons (000s)						Persons (000s)					
Sydney	2,177	2,216	2,238	2,280	2,323	2,344	39	22	42	43	21	
Melbourne	1,936	2,002	2,017	2,109	2,125	2,121	66	15	92	16	-4	
Perth	842	893	873	918	924	971	51	-20	45	6	47	
Remainder of Australia	5,581	5,732	5,735	5,896	5,972	5,966	151	3	161	76	-6	
Australia	10,536	10,843	10,863	11,203	11,344	11,402	307	20	340	141	58	

Source: Australian Bureau of Statistics, Employed persons (ST E10_May 01_ANZSIC06) by sex, Industry Capital City/Balance, Usual Hours Worked Categories - from May 2001

There would be less to worry about if recently-arrived migrants were locating where employment growth is still strong. This is predominantly in Perth. Some 47,000 of the net growth in employment in Australia of 58,000 between the August quarters of 2011 and 2012 occurred in Perth. However, employment increased by just 21,000 in Sydney and actually fell in Melbourne by 4,000 over the same year. Yet, around half of all migrants coming to Australia (permanent and temporary) are locating in Sydney and Melbourne. According to the 2011 Census, of those migrants arriving in Australia between 2006 and 2011 who were still in Australia at the time of the Census, 25.3 per cent were resident in Sydney and 24.6 per cent in Melbourne.

This is demonstrated most starkly for North Asian and South Asian migrants. By 2011-12, the share of Australia's permanent migration program deriving from the Indian sub-continent had increased to 23.7 per cent and that from North Asia to 20.9 per cent.¹¹ According to the 2011 Census, there were 156,321 persons born in India who arrived in Australia between 2006 and 2011 and 124,064 persons born in China. They are making a minimal contribution to resolving skill shortages in the resources industries, if residence in the 'Rest of WA' (that is, not Perth) can be taken as an indication. In 2011, there were just 880 recently-arrived India-born migrants who were enumerated in the Rest of WA (compared with 39,236 in Sydney) and 747 Chinese-born (compared with 42,957 in Sydney).

The current immigration policy mindset

The Australian Government and business-sector favour high immigration on account of its contribution to aggregate economic growth in Australia. This is because of the impetus new migrant households give to consumption and to the investment needed to cope with the larger population. For most businesses, this translates directly to the bottom line via increased sales.

However, in the current weakening economic situation, the justification for the immigration program has focussed on its role in meeting skill shortages. As the current DIAC Minister, Chris Bowen, acknowledges, we have a patchwork economy, but with areas of the country where skill shortages still exist. 'If these jobs continue to go unfilled, work goes undone, putting the handbrake on economic growth'.¹²

Some measures have been introduced in order to better target the migration program towards skills in demand in Australia. These have included reform of the points-tested visa subclasses and a greater focus on migrants sponsored by employers.

Until 2010, the points-tested permanent visa subclasses were dominated by applicants from overseas students who had completed educational qualifications in Australian universities and Vocational Education and Training (VET) institutions. The Government accepted DIAC's reform proposals regarding students, which were essentially to weaken the link between completion of a VET or University course in Australia and the granting of a permanent resident visa in the skill program. It was this connection which had been the main factor in the surge of overseas student enrolments over the years 2004 to 2009.¹³ As a result, since 2010, the number of overseas students visaed offshore has plummeted.

The outcome of these reforms, according to Kruno Kukoc, the head of migration policy planning in DIAC, is that 'the government has re-established the "temporary nature" of Australia's temporary visa program'.¹⁴ The March 2012 issue of DIAC's *The outlook for Net Overseas Migration* puts this objective clearly. It states that:

*There has been an increase in temporary migrants some of whom have sought to then stay in Australia permanently. A key driver of this desire to settle in Australia is income disparities between the Australian population and many of our major migration source countries. As a result, DIAC is implementing a Long Term Migration Planning Framework to ensure that Australia's future immigration levels are guided by the genuine economic needs of the country, rather than just by the desire of prospective migrants to live in Australia.*¹⁵

The Australian Government wants a continued high level of NOM, but not just any migrants. Rather, it wants those with skills valued by employers. As Kukoc puts it, 'Australia is focussed on attracting the best and brightest from around the world, to match Australia's unique labour force needs while boosting productivity'.¹⁶ The strategy is to outsource the selection of migrants to employers and to State Governments, on the grounds that they are the best judges as to whether the sponsored migrants provide the required skills.

We explore the implementation of this strategy below, beginning with the employer nomination program, including the controversial EMA arrangements. The focus then turns to the points-tested and State-sponsored visa subclasses.

The practice of migration policy: The employer sponsored visa subclasses

Over the past two decades, the Australian Government's employer sponsorship policies have focussed on the temporary entry 457 visa program. More recently, the Government has given increased priority to employer sponsorship in the permanent entry skilled program as well. However, as the following account makes clear, most of those sponsored for the permanent entry program were first sponsored as 457 visa holders. Any weaknesses or strengths of the latter will transfer to the former.

The temporary entry 457 visa subclass

The 457 visa program was deregulated in 1996, such that employers could sponsor skilled workers without the need to labour market test (that is, without a requirement to establish whether local workers were available) and without any caps on the numbers sponsored. In the 1990s, the program was primarily used by European, Japanese and US companies for short term intra-company transfers. For example, companies would send specialists to install new equipment or software and to train locals in its use, after which the specialist would return. From the Australian Government's point of view at the time, the advantages were that the sponsoring firm would shoulder all the specialist's settlement costs (for health etc) and local firms or multinational branches would benefit from the skill transfer. All this would occur with minimal long-term immigration implications.

The 457 program has since been transformed. As well as the functions just described it has also become a conduit for migrants seeking a permanent residence outcome. By the 2000s, about half of those originally visaed as 457 visa holders, have, after five years, obtained a permanent residence visa,¹⁷ the great majority of whom were sponsored by the original employer. Former 457 visa holders now dominate the permanent entry employer sponsorship program.

The Australian Government facilitated this outcome in 2005 by allowing employers to sponsor a 457 visa holder under the permanent-entry sponsorship program on concessional terms. These concessions were further extended for employers sponsoring a 457 visa holder for permanent entry after mid-2012. Currently those sponsored for a 457 visa only have to attain level 5 on each of the four modules in the IELTS test (reading, writing, listening and speaking). This is way below professional level English. Under the post mid-2012 rules governing permanent entry employer sponsorship, the 457 visa holder does not have to undergo another English test or an assessment of their credentials by the relevant occupational authority in Australia. All that is required is that the 457 visa holder has been employed for two years by the sponsoring employer. The employer has no obligation to first offer the position to an Australian worker.

By contrast, migrants seeking permanent residence via the other skilled visa subclasses have to have a skills assessment and must achieve at least a minimum score of 6 on the IELTS English test.

This outcome is of particular concern because the Government has increased the share of the permanent skilled program allocated to migrants sponsored by employers. Their number (including primary and secondary applicants) increased from 15,226 in 2005-06 to 44,120 in 2010-11 (Table 3). Migrants sponsored by employers have also been given top priority in the processing of permanent-entry applications.

These changes have occurred in a context where more Australian employers have links to Asian countries and to Asian relatives, friends and countrymen who are highly motivated to obtain permanent residence in Australia. As noted, nearly half the migration program is now drawn from the Sub-continent of India and North Asia. With the massive expansion of higher education in Asia, and large numbers of graduates looking for career opportunities, access to the Australian labour market is highly sought after. Many begin the process by first entering Australia on a student or some other temporary visa.

There is a network of agents within these regions capable of brokering movements to Australia on 457 and other temporary visas. Many clients are willing to apply for a 457 visa in the expectation that, after two years work with the sponsoring employer, they will be sponsored for permanent residence. During this time, the visa holder is in effect a hostage to the employer – required to work on the employer's terms in return for being sponsored for permanent residence. From the employer's point of view, this arrangement offers the potential to gain a competitive advantage by employing 457 visa holders on substandard terms and conditions favourable to the employer, relative to those prevailing amongst competitors without such captive labour.

This is not to say that these linkages dominate 457 recruitment. The visa is still being used for the transfer of skills via intra-company transfers. Rather, it is to argue that an increasing share of the growing 457 program is being used as the entry point for an eventual permanent entry visa. This is occurring across a wide spectrum of occupations, including medicine, with thousands of doctors being recruited via 457 visas each year, including some where the employer appears to be using their recruitment to gain a competitive break in the lucrative and largely publicly-funded General Practice medical market.¹⁸

These arrangements have generated a critical reaction, especially from trade unions, whose members are employed in businesses like construction, which must compete with employers utilising 457 visa holders (and other temporaries like WHMs) in blue-collar occupations. In 2008, the Labor Government legislated in response to a report on the 457 program investigating these concerns.¹⁹ Under the Worker Protection Act 2008, the Government increased the obligations of sponsors, including mandating some training obligations for domestic workers. From September 2009, the Government also stipulated that employers must pay the 'market salary rate' to all new applicants for 457 visas and, from 1 January 2010, to all other 457 visa holders. The market rate is defined as the wages paid to the 'equivalent Australian worker employed at the same workplace', provided that the rate is above a minimum threshold (currently \$49,300 in 2011-12).

In 2009, the Government also increased the English requirement for all new 457 visa holders from 4.5 on the IELTS test to 5. Few applicants with trade skills were likely to achieve level 5, especially on the reading and writing modules, if they originated from non-English-language-speaking countries like China.

These were important reforms, especially given the subsequent panic in 2010 and 2011, as the resources boom took off again after a brief contraction in 2009. The revival followed the Chinese Government's decision to launch a massive program of infrastructure and housing investment at the end of 2008. The panic derived from mounting shortages of skilled labour in the resource industries after 2009, as the pipeline of new projects expanded. Yet, by specifying that market rates must be paid to 457 visa holders, the Government prevented resource industry employers from importing

workers from developing countries at the low rates paid by international construction companies in Africa and the Middle East. This situation helps explain the pressure from the resource industries for the concessionary 457 visa arrangements which led to the establishment of Enterprise Migration Agreements in 2011.

Industry and location of 457 visa holders

Only a minority of those sponsored as 457 visa holders are employed in the resources industry. The rules established by the 2008 Worker Protection Act on 457 eligibility did not limit the range of employers eligible to sponsor a temporary worker. Employers in any industry and any location in Australia can still sponsor a temporary migrant on a 457 visa under the standard program, as long as the migrant has the experience or qualifications which the employer decides are adequate for the job to be filled, and as long as the employer attests that the job is to be at trade level or above.

As far as 457 visas are concerned, there is no equivalent to the Skilled Occupation List (SOL), prepared by AWPA, which specifies occupations deemed to be in medium-to-long-term shortage. Applicants for a points-tested visa must possess an occupation on this list. The only occupational limitation for the 457 (or permanent-entry employer nominated visas) is that the applicant must have an occupation listed on the Consolidated Sponsored Occupation List. This is an indiscriminate listing of a vast range of skilled occupations which takes no account of the state of the labour market. It includes such occupations as goat farmer, cafe manager, print journalist, university tutor, cook and gardener. As a result, there is nothing to stop employers sponsoring persons for a 457 visa (or a permanent-entry sponsored visa) where there is a surplus of local workers in the occupation. As with the rules prior to the 2008 reforms, there still is no mandatory labour-market testing for the sponsoring employer which might protect domestic workers from foreign competition. Nor is there anything to stop an employer retrenching Australian workers and replacing them with 457 visa workers.

The Government's new requirements on market rates of pay have not slowed the recruitment of 457 visa holders. The number of visas issued to primary visa holders (not including accompanying family) increased from 48,080 in 2010-11 to 68,310 in 2011-12. This was at a time when the net growth in the employed resident workforce between the August quarters of 2011 and 2012 was just 58,000 (Table 1). Readers may conclude that this could be because most of the visas in question were issued for jobs in the resources industries where locals could not be found. However, this was not the case. Only 15,620 (or 23 per cent) of the 457 visas issued in 2011-12 were for persons sponsored by employers in the construction and mining industries. Though the share issued to employers in WA has increased, by 2011-12 only 24 per cent went to employers located in Western Australia. Over half of all the 457 visas issued in 2011-12 were to persons sponsored by employers in NSW (33 per cent) and Victoria (20 per cent).

Large numbers of 457 visas were issued to professionals in the health and engineering areas. This outcome reflects longstanding deficiencies in the level of training in these fields in Australia. But, there were also thousands issued to persons with occupations arguably not in short supply and not even on Skills Australia's SOL. They included 2,150 project administrators, 1,560 visas issued to cooks and 1,440 to marketing specialists.²⁰ Other major occupations with large numbers of visas issued in 2011-12 were Developer Programmers with 2,030 visas issued, and Software and Applications

programmers with 1,130 visas issued. Though these occupations are on the SOL, the market for such professionals is soft.

This prompts the question: why would employers go to the trouble of sponsoring 457 visa holders in occupations which do not appear to be in short supply if those sponsored have to be paid the same rate as locals? One possibility is that they may not actually be paying these rates. DIAC has only a very limited capacity to inspect 457 workplaces. There were just 37 inspectors available for the purpose in 2011-12, who visited less than four per cent of those employing 457 visa holders.²¹ The same point applies to the conditions (hours of work, rosters and so on) that the visa holder is required to work. To the extent that pay and conditions do not meet local standards, it is likely to be because, as noted earlier, there are many migrants willing to accept these arrangements in order to gain access to Australia's labour market, especially if the 457 visa leads to permanent residence. From the sponsor's point of view, the sponsorship may represent the fulfilment of obligations to relatives or community as well as allowing the employer to recruit staff on terms which give the enterprise an advantage relative to competitors.

It is difficult to dig deeper into the firms, industries, occupations and locations of 457 visa holders because DIAC does not publish the detailed information which would allow such an investigation. To find out more about these occupations, we have to turn to information about those sponsored under the permanent-entry employer sponsor program. DIAC has provided detailed occupation data for this program.

The permanent- entry employer sponsored visa subclasses — the Employer Nomination Scheme (ENS)

As noted, these visas are DIAC's main recruitment priority in the permanent-entry skilled program. Minister Bowen's claim that the program is now better tuned to meet areas of skills shortages depends on whether those sponsored actually do fill such vacancies.

The Employment Nomination Scheme consists of two major components; one, which confusingly is also referred as the Employment Nomination Scheme (ENS) and the other, a Regional Sponsored Migration Scheme (RSMS). They have similar requirements, though the latter is only available for employers in regional, remote or low population growth areas of Australia. Perth has been recently added to this list. Under the RSMS all occupations at the trade level are above are eligible – that is, even the minor restriction of the Consolidated Sponsored Occupation List does not apply. The Government has recently increased the share of visas within the program going to the RSMS scheme. For 2012-13 the RSMS component is be 16,000 out of a total ENS program of 47,250 (Table 3).

A good starting point is a headline statistic provided by DIAC. This is that, of the 20,512 principal applicants visaed under the ENS program in 2011-12, well over half had occupations which were not on the SOL during 2011-12.²² Since the SOL includes all the professional and trade occupations central to the construction phase of the resources boom, this statistic gives a good indication of the poor fit between the ENS program and crucial skill needs in Australia.

Table 2 provides selected data on the occupations of those visaed. It allows some probing of the occupations being sponsored. It lists the occupational data by the six visa subclasses within the overall ENS program. Subclasses 856 and 857 dominate. Respectively, these are the onshore ENS

(856) and onshore RSMS (857) visa subclasses. As noted, the great majority of those sponsored in these subclasses previously held 457 visas and were working for their sponsoring employer at the time of the sponsorship. Categories 119 and 121 are the offshore counterparts of these onshore visa subclasses and are relatively small.

Many of those being sponsored who are not on the SOL are managers. Table 2 shows that there were 2,059 managers visaed in 2011-12. Though not shown in Table 2, those without occupations listed on the SOL included 150 cafe and restaurant managers, 106 hotel and club managers, 125 retail managers and hundreds of other assorted managers. Professionals dominated the list of occupations sponsored, including most of those whose occupations were listed on the SOL – notably the engineers, nurses, doctors and IT specialists detailed in Table 2. However, there were hundreds of other professionals visaed whose occupations were not on the SOL. They included 435 marketing specialists, 196 management consultants, 191 recruitment consultants, hundreds of sales representatives and, getting closer to home, 436 university lecturers.

In the trades area, 8,078 principal applicants were visaed under the employment sponsorship program in 2011-12. The largest group were the 3,055 bakers, butchers, cooks and chefs, none of whose occupations were on the SOL. This group far exceeded the 728 construction tradespersons visaed. Almost all the occupations in the tradespersons group were listed on the SOL in 2011-12.

Table 2

Employer Nomination Scheme (ENS), Principal applicants visaed, 2011-12, by ENS visa subclass and selected occupations							
	visa subclass						
	119	120	121	855	856	857	Total
MANAGERS	204	27	83	0	1,199	546	2,059
Accountant (General)	20	0	36	0	166	46	268
Engineering	35	0	33	0	975	101	1,144
Medical (not including nurses)	15	0	32	5	352	233	637
Nurses	76	24	158	51	1,163	594	2,066
Commputing and ICT	35	0	68	0	807	48	958
Other Professionals	247	7	316	44	2,765	558	3,937
PROFESSIONALS (Total)	428	31	643	100	6,228	1,580	9,010
Motor Mechanic (General)	179	0	19	0	215	222	635
Diesel Motor Mechanic	25	0	1	0	55	38	119
Construction trades	83	0	46	0	402	197	728
Electrician	6	1	12	0	87	48	154
Bakers, cooks and butchers/small goods makers	793	0	222	0	843	1,197	3,055
Hairdresser	59	0	30	0	72	63	224
Other Technicians and trades	396	7	104	0	1,813	843	3,163
TECHNICIANS AND TRADES (Total)	1,541	8	434	0	3,487	2,608	8,078
COMMUNITY AND PERSONAL SERVICE	189	11	26	2	138	199	565
CLERICAL AND ADMINISTRATIVE	42	1	40	0	364	104	551
SALES	2	0	0	3	5	48	58
MACHINERY OPERATORS AND DRIVERS	3	1	0	0	18	99	121
LABOURERS	3	0	0	5	1	50	59
Occupation Unknown	0	0	0	4	7	0	11
GRAND TOTAL	2,412	79	1,226	114	11,447	5,234	20,512

Source: DIAC, visa issued data set, 2011-2012, held by CPUR

This outcome indicates that the ENS program is poorly targeted to fill the skill gaps in the resources industries that state and industry groups have proclaimed are most in need. Instead, it is mainly filling longstanding gaps in Australia's professional workforce, particularly in the health area. It is also providing opportunities for migrants in such diverse occupations as club managers, consultants, marketers and sales representatives, where there is no demonstrated case that the skills are in short supply in Australia.

There is a darker aspect to this program, which our data on the number of cooks being sponsored by employers, highlights. Some 2,000 of the 3,055 cooks were onshore applicants. Unpublished data provided by DIAC indicate that nearly 1,000 had held a student visa at the time of their sponsorship under the ENS. The same salary payment rules apply for those employed under the ENS program (but not the RSMS) as for those applying for 457 visa holders. All the sponsoring employers of cooks would have had to commit to pay a minimum annual rate of \$49,300. This rate is well above the award rate that most cooks or chefs would receive for a standard working week. According to the Department of Education, Employment and Workplace Relations, the median earnings of cooks was located within the second bottom decile for all occupations.²³

It seems likely that some employers are conniving with overseas students and other temporary migrants by providing them with a desperately sought pathway to permanent residence. It is very unlikely that employers would be paying the stipulated minimum rate. The Government is in no position to know because DIAC does no monitoring of salaries paid to ENS visa holders once the visa has been granted.

The Enterprise Migration Agreement pathway

In 2011, the Australian Government put in place a new variation in the 457 visa subclass, called Enterprise Migration Agreements (EMAs). This action was based on recommendations from the National Resource Sector Employment Taskforce which reported in July 2010. The Taskforce proposed that large resource projects be granted upfront approval for and rapid access to migrants with skills not eligible under standard visa programs.²⁴ The EMA rules subsequently specified by DIAC stated that the category of occupations 'that are not eligible for standard migration programs'²⁵ included semi-skilled workers.

The Roy Hill EMA proposed for its WA iron ore mine was the first to be considered by the Australian Government. The project owner wanted its contractors to be able to recruit 1,715 temporary workers on 457 visas over a three-year period via individual Labour Agreements' with each contractor. Thousands more were to be employed on the project. It was implied that these would be recruited within Australia — though there is nothing to stop Roy Hill contractors from sponsoring more 457 visa holders outside the EMA or from bringing on to the project 457 visa holders already employed by them.

Minister Bowen announced that the Government had reached an agreement regarding the Roy Hill proposal on 25 May 2012. He stated that:

The EMA will allow Roy Hill to sponsor up to 1,715 workers for the three-year construction phase through the 457 visa program where they cannot find Australians to fill the position. It will cover occupations like electricians, mechanical fitters, scaffolders, and boilermakers.²⁶

Bowen added that:

Of course, the Government is committed to ensuring jobs arising from the project are filled locally. To this end, the Government will establish a Jobs Board and expects that foreign workers are only recruited after genuine efforts to first employ Australians.²⁷

These statements were misleading. The Government has established a Resources Sector Jobs Board. It was released on 10 June 2012. It is available for use by all resource companies, whether eligible for an EMA or not. The Government states that, since August 2012, the Jobs Board has consistently displayed around 2,200 resource sector jobs at any point in time.²⁸ At the end of October 2012, the largest occupational category was for geologists and geophysicists (389 vacancies listed) and for mining engineers (327), though only a small number of jobs for semi-skilled workers were listed. However, there was no requirement that a company list its job vacancies, including ones that are part of an EMA. Bowen's statement implied that Roy Hill, if it had 'genuinely' tried to first source local workers, would have been required to list its vacancies on this board and consider applications before sponsoring migrants. There was no such requirement in place at the time of Bowen's announcement.

The Roy Hill EMA had two parts, the details of which have had little public disclosure but have been confirmed by DIAC. The first concerned semi-skilled workers. About 60 per cent of those to be recruited were in this category, like riggers, scaffolders and heavy equipment drivers.²⁹ The project also requested that the English language requirements should be lowered to an average of 4.5 on the IELTS test for both the semi-skilled and skilled workers it proposed to sponsor. This is rudimentary English, sufficient for limited social interaction, but well short of any capacity to communicate in English about technical or safety issues on high risk construction sites or to read technical manuals or safety guides. This concession rings alarm bells for the trade unions because it is common practice on the part of the international companies like Bechtel, who are engaged in the construction phase of resource projects, to move groups of construction workers from project to project across national borders. The Chinese, in particular, have utilised such teams, particularly in Africa and will surely do so in Australia on their many resources projects here if permitted.³⁰

Under the EMA regulations, proponents are required to make out a case, based on analysis of the prospective labour market, as to why they need to recruit semi-skilled migrants. The case presented by Roy Hill was based on a consultant's report, which provided projections claiming that there would be significant shortages of some of the semi-skilled and skilled workers that the project needed. Roy Hill was not required to, and did not provide, any documentation of the alleged shortages, for example, by providing evidence of the shortages being claimed in other mining projects under development. In this respect, as well as its failure to list the vacancies on the jobs board, the Roy Hill proposal fell well short of meeting the tests of 'demonstrated shortage' and 'genuine efforts to first employ Australians' provision stated by Bowen.

The rest of the Roy Hill project concerned tradespersons, particularly in the metal fabrication and electrical fields relevant to establishing mining infrastructure. The project would not have to make a case for why these workers could not be recruited from the Australian workforce if it was not seeking concessions to the minimum standard 457 visa requirements. However, as indicated, the project was asking for a language concession which was to reduce the English-language requirement

for all those sponsored (both semi-skilled and skilled), to an average of 4.5 on IELTS test, rather than 5 on each of the modules tested, as is the case for the standard 457 visa sponsorship.

All these requests had been accepted by the Government at the time of Bowen's May 25 announcement. However, the announcement generated a furore of protest. On the morning of May 25, several union leaders representing workers potentially covered by the Roy Hill EMA met with the Prime Minister. They expressed their hostility to the EMA to the Prime Minister and subsequently to the media. They highlighted the absence of any opportunity for domestic workers to compete for the jobs in question before 457 visa workers were recruited.

As of early November 2012, the Roy Hill EMA still does not have an official go-ahead. Rather, the Government is 'in negotiation' with Roy Hill about its particulars, including the English language concessions. This is because the Government has changed its policy on EMAs.

The Prime Minister was reported to be furious about Bowen's May 25 announcement. On May 28 she laid out the Government's new position as follows:

We will be making it contingent that companies look to the jobs board and if there is an Australian able and willing to do the work, then that Australian gets the work.³¹

This was a major hardening of EMA provisions relative to Bowen's May 25 announcement. Further pressure for change has come from the Labor Caucus. At the end of May, a Labor caucus sub-committee was set up, the 'Spreading the benefits of the resources boom sub-committee', to investigate the matter. In addition, the Greens senator, Adam Bandt initiated a Senate Bill which, if passed, would require employers, among other protections for local workers, 'to advertise jobs to locals before they can get an EMA'.³²

On September 13, the ACTU along with the major unions affected (including the AWU and the CFMEU) stated in a submission to the Senate subcommittee considering Bandt's Bill that:

The starting point for unions with EMAs is that Australian workers (citizens and permanent residents) must have enforceable first rights to all jobs on major resource projects.

The submission further declared in terms similar to those articulated by the Prime Minister that:

If major project owners and employers covered by EMAs wish to make use of 457 visa labour and other forms of temporary migration they should first have to demonstrate they have made every possible effort to employ locally to fill vacancies.³³

These developments add up to the first serious challenge since 1996 to the rights of employers to sponsor as many 457 visa holders as they want whether as part of an EMA or not, without first providing local workers with the opportunity to take the work in question, 'if they are able and willing to do the work' – as the Prime Minister put it.

This story was still breaking at the time of writing. The Labor Government appears to have made further concessions to critics of the EMAs. These are discussed in the Recommendations section of this paper.

The points-tested visa subclasses

There are two groups of points-tested visas. One involves State or Territory sponsorship. The Government has increased the number visas in this category, on the grounds that States and Territories are good judges of the skills needed within their jurisdiction. The other group consists of the Skilled Independent and Skilled Australian Sponsored visa subclasses. No State or Territory sponsorship is involved though, in the case of the Skilled Australian Sponsored visa subclass, a sponsorship from an Australian relative is required. This second group of Independent and Australian Sponsored visas was supposed to fall in numbers in favour of employer and state sponsored migrants, but for reasons canvassed below this has not occurred (Table 30). The two groups have in common that applicants must first complete a points test.

The Skilled Independent and Skilled Australian Sponsored visa subclasses

Major reforms were announced to the points test in February 2010. These included the establishment of a new points test for those applying from 1 July 2011. This new test puts more emphasis on English-language skills and work experience. New applicants must also have trade-level skills or above which have been accredited by the relevant Australian occupational authority, must have a minimum level of English (6 on each module of the IELTS test) and their nominated occupation must be listed on the SOL. The new system also abolished the lower pass mark threshold previously available to those sponsored by a relative under the Skilled Australian Sponsored visa subclass. This will sharply reduce the importance of sponsorship by a relative in the final outcome of the application.³⁴ The SOL announced in May 2010 did not include cooking or hairdressing, thus removing any link between training in these fields and permanent entry via the points-tested visa subclasses.

Starting from July 2012, a new *Skill Select* system has been introduced, the main innovation being that prospective applicants (including those hoping to be sponsored by a State or Territory) must first lodge with DIAC an *Expression of Interest* detailing their occupation and other qualifications relevant to the points test. The prospective migrant can only proceed to a formal visa application in the case of the Skilled Independent and Skilled Australian Sponsored visa subclasses if invited by DIAC, or by a State/Territory Government in the case of State-sponsored visas. Those with the highest aggregate scores get invited first. DIAC also intends to keep track of the numbers invited by occupation so that there will be no repeat of the past pattern, where a few occupations like accounting dominated the visa-issued numbers.

These initiatives are consistent with the rationale behind DIAC's *Long Term Migration Planning Framework*. Also, by favouring applicants with the highest scores, they select (in Kukoc's terms) the 'best and the brightest'. As noted, DIAC's long-term planning framework is supposed to lead to a contraction in the points-tested categories in favour of persons sponsored by employers. But, as Table 3 shows, the number of visas issued in the Skilled Independent subclass surged in 2010-11 and the plan is to keep them at a high level in 2012-13.

Table 3

Skilled visa outcomes from 2007-08 to 2010-11 and planning levels for 2011-12 to 2012-13*						
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Employer Sponsored	23,762	38,026	40,987	44,345	46,000	47,250
<i>Points tested visa subclasses</i>						
Skilled Independent	55,891	44,594	37,315	36,167	44,350	45,550
Skilled Australian Sponsored	14,579	10,504	3,688	9,117	4,100	4,200
State/Territory Sponsored	7,530	14,055	18,889	16,175	24,000	25,650
Total points tested	78,000	69,153	59,892	61,459	72,450	75,400
Business skills	6,565	7,397	6,789	7,796	7,200	7,400

Source: DIAC,
* Includes Principal Applicants & accompanying family

In the case of the Skilled Independent and Skilled Australian Sponsored visa subclasses, the recent high number of visas issued in 2011-12, and which DIAC intends to issue in 2012-13, is a consequence of the 'grandfathering' rules announced on 8 February 2010, when the reforms were articulated. Those affected by the grandfathering rules included thousands who had applied for a visa prior to 8 February 2010 and whose applications had not been processed. They are being evaluated under the rules in existence before the announcement (when people with occupations like cooking and hairdressing were eligible to apply). They also include thousands of former overseas students (near half of whom were former VET students) who held a Graduate Skill visa or who had applied for such a visa up to 8 February 2010. They were given until the end of 2012 to make an application for a permanent residence points-tested visa. Like others benefiting from the grandfathering rules, they too are being evaluated under the previous points test rules.³⁵

DIAC officers hoped (without much conviction) that many of those grandfathered would go home before the deadline for applications at the end of 2012. This has not happened. DIAC has increased the quota of places allocated to these visa subclasses in order to begin clearing a growing backlog of applicants. This is why, two years after cooks and hairdressers were removed from the SOL, their numbers were so high in 2011-12 (Table 4).

Table 4

Principal applicants visaed, Skilled Independent and Skilled Australian Sponsored categories, 2011-12, by selected occupations				
Occupation	Skilled Independent		Skilled Australian sponsored	
	offshore	onshore	offshore	onshore
Bakers & Pastry cooks	4	266	0	78
Cooks	9	1720	0	424
Hairdressers	37	204	1	110
Accountants	1427	3860	453	511
Mining Engineers	10	9	1	1
Geologists	1	3	0	0
Geophysicists	0	1	0	0
Fitters and machinists	10	535	6	32
Construction trades	6	216	4	147
Electricians	1	138	1	46

Source: DIAC, Visa issued data sets, 2011 to 2012, held by CPUR

It is easy to see from the detail of Table 4 why DIAC has decided that the Skilled Independent and Skilled Australian Sponsored visa subclasses have little to do with Australia's current skill needs and therefore why the numbers of visas issued under these subclasses should be reduced. According to the Resources Sector Jobs Board listing cited above, geologists, geophysicists and mining engineers were the occupations most in demand by resources companies. Yet Table 4 indicates that numbers visaed with these occupations in 2011-12 were negligible. Likewise, the number of construction tradespersons selected is small relative to the number of accountants, bakers, cooks and hairdressers.

State/Territory Sponsored visa subclasses

The rise in the numbers visaed shown in the State/Territory Sponsored category shown in Table 3 is consistent with the Government's policy objectives. Under this visa subclass, applicants must meet the same minimum standards as for the other points-tested visas discussed above.

The Government has tightened up the administration of this program. The number of visas allocated to each State or Territory is now based on a plan that each government negotiates annually with DIAC regarding the number it wants, the occupations it believes are needed within its jurisdiction, and a quota for each of these occupations. Within the boundaries of this plan, each State and Territory then invites from the range of eligible expressions of interest, those it wants to take up permanent residence within their borders.

Despite these reforms, this program still lacks credibility. One might imagine that States/Territories sponsoring a migrant are confident that there is a relevant job opening within their jurisdiction for those invited. But no such job offer is implied or guaranteed, nor is there any legal obligation on the part of the migrant to stay in the particular State or Territory for the main visa subclass 190 within the State and Territory category of visas. There is a residence requirement for the smaller 489 visa subclass – see Table 5.

There is a wide variety of occupational skills being selected, few of which are vital to the resource industries. Very little information has been put into the public arena as to the occupational plans proposed by the States and Territories nor is the rationale for the overall quota of visas allocated to each State and Territory explained. The program is heavily political, with South Australia and Victoria being enthusiasts, mainly because both States see population expansion as a key element in their prosperity, because of its effect on aggregate GDP.³⁶ These two states have been issued with large quotas.³⁷ We do not know what the quotas are for 2012-13 because DAIC has not yet released them.

DIAC has provided some data from the Skill Select data base on how the program is proceeding for 2012-13. Table 5 shows the number of principal applicants who have been invited to apply for a visa under the State/Territory nominated visa subclasses by the language score of the applicants when they put in their expressions of interest. Parallel numbers for the two points-tested visa subclasses discussed above have also been included.

Table 5

Numbers of principal applicants invited to apply for visas by visa subclass and language score from 1 July 2012 to 21 September 2012				
	State/Territory visa subclass		Skilled Independent visa subclass	Skilled Australian sponsored visa subclass
IELTS score	190	489	189	489
6	600	119	53	48
7	472	24	590	55
8	94	3	331	6
9	6	0	16	1
Total	1172	146	990	110
Source: DIAC, unpublished data				

The good news is that, at least for the Skilled Independent visa subclass, most of those invited to apply have professional level language scores (that is, 7 or above on the IELTS test). The bad news is that the majority of those sponsored by the States and Territories only achieved 6 on the IELTS test. Since most of those sponsored under the latter schemes appear to be professionals, this means that they are not properly equipped to perform professional roles and, indeed, will probably not be able to find professional work because of this language deficiency. It is not clear how this situation could have arisen since most of the Australian accrediting authorities, as for accountancy, IT and the medical fields will not accredit an applicant unless he/she achieves a minimum of 7.

One other notable point about the operation of the State/Territory visa subclasses is that, as in the past, the South Australian Government has been the most active in issuing invitations to apply. In August 2012, States and Territories nominated some 732 principal applicants of whom South Australia nominated 342, followed by 151 from Western Australia and 125 from Victoria.³⁸

Temporary migrants and access to the Australian labour market

The size of the temporary migrant influx

The focus here is on migrants in Australia on short-term visas who are participating in the Australian labour market. Apart from those on 457 visas, there is no regulation of the industries, occupations and locations of their employment.

Yet, the numbers are enormous. As Table 6 shows, there were just over one million persons on temporary visas who were resident in Australia as of 31 December 2009 (approximately five per cent of the Australian population). This total excludes New Zealand citizens who do not require visas. Of the visa groups listed in Table 6, all except the visitors have work rights in Australia. This is the case for students and for Working Holiday Makers (WHMs). Students are not supposed to work for more than 40 hours a fortnight. However, there is no limit on the amount of work WHMs perform or the location or type of work, only that they cannot work for any one employer for more than six months. The WMH visa is for a year, but if the visa holder works for three months in a designated industry (agriculture, mining or construction) he or she can extend the visa for another year.

Most of the 'Others' category in Table 6 also have unlimited work rights, including those on the Graduate Skill (485) visa and most of those on bridging visas. The latter include persons who have applied for a Protection visa prior to the expiry of some other visa, such as a tourist visa.

Apart from the 457 visa holders, most work in entry-level occupations such as in hospitality, supermarket checkout and shelf-stacking positions and in retail sales. As noted, this is a serious matter because they are in direct competition with young low-skilled domestic workers, many of whom are seeking to enter the labour market. Some of the evidence on these outcomes is detailed below in the context of current unemployment levels amongst Australian-born young people (see Table 8).

Table 6

Stock of temporary entrants as at 31 December 2009, 2010 and 2011			
by major visa group			
Visa group	2009	2010	2011
Students	324,555	291,199	254,681
Working Holiday Makers	116,805	114,158	130,612
Visitors	365,534	372,147	367,971
457s	119,018	116,012	128,602
Others	112,803	146,171	163,973
Total	1,038,715	1,039,687	1,045,839
Source: DIAC, Immigration Update; various issues			
Excludes New Zealanders			
Includes primary and secondary visa holders			

The Australian Government has not addressed concerns about the cumulative impact of the current surge of temporary migrants on the employment prospects for young domestic workers. For example, in 2009, there was prominent media coverage of an analysis which suggested that continued high immigration during 2008-2009, a period of no net employment growth, had damaged the employment prospects of younger Australians.³⁹ The then Minister for Immigration, Chris Evans, dismissed the analysis in a Senate Estimates Committee hearing on 20 October, 2009, where he stated that, as immigration creates jobs, there could be no problem.⁴⁰

The tendency has been to grant work rights to temporary residents in response to the lobbying of special interest groups. The childcare sector, with a reputation for high employee turnover and high worker dissatisfaction, is the latest to seek workers from overseas via 457 visas to fill employment vacancies.⁴¹ The tourist industry has also recently sought additional opportunities to recruit temporary workers, with discussion underway on the matter. The recent Government decision to extend the work rights of overseas students who have completed university-level courses in Australia illustrates our point that the interests of domestic workers tend to be ignored in such decisions. There has been a notable absence of any assessment of the aggregate effect of decisions favouring these interest groups on the labour market, especially for young people.

The Australian Government appointed former NSW State politician and Olympics supremo, Michael Knight, to review the overseas student issue in 2011. Knight recommended that all overseas students in Australia who complete a university degree (though not a VET course) be granted the

right to stay on in Australia with unrestricted work rights for two years. (Previously, the work right period was for 18 months and restricted to those with VET or university qualifications whose occupations were listed on the SOL). The Government has accepted this proposal and will implement it in 2013. Knight's justification was that the measure will help revive the overseas student education industry by adding to the incentives to enrol in an Australian higher-education institution.

Knight did not evaluate the impact of these work privileges for domestic workers. He acknowledges in his *Discussion Paper* that; 'The ability to work in Australia after completing a course is very attractive for a prospective international student'. He also admits that there are labour market implications.⁴² However, in his final report these issues were not discussed. Nor did the Australian Government review the implications for domestic job seekers when it accepted Knight's recommendations.

Knight insists that his temporary-entry proposals are about temporary residence – and should not be seen as the beginning of a pathway to prolonged stay in Australia.⁴³ This is a pipedream. Temporary migrants from countries where wages are way below Australian levels, are highly motivated to utilise every opportunity to extend their stay for employment purposes. They can do this legally because of the laxity of Australian visa arrangements. These arrangements allow temporaries to churn through an assortment of visa subclasses, thus enabling extended stays.

Visa churning – the case of overseas students

The argument is documented by reference to the experience of overseas students. They are an important group in their own right, but the focus on them is partly because DIAC has made the relevant data available on their take up of other visas (or visa 'destinations') while in Australia. A related pattern appears to be occurring for visitors and Working Holiday Makers, but DIAC has not released data on their visa destinations.

Table 7 details the visa pathways by which former students are extending their stay in Australia. The table lists the number of former students issued visas in Australia during 2010-11 and 2011-12 by major visa subclass. The number of such visas is very large – 138,875 in 2011-12. Table 6 showed that there were some 324,554 persons in Australia who held a student visa as of December 2009, 291,199 as of December 2010 and 254,681 in December 2011. A comparison between these stock numbers and the visa issued data in Table 7 indicates that between one third and a half of the stock successfully obtained another visa in 2010-11 and 2011-12.

Table 7

Visa destinations of those with student visas who obtained a new visa in Australia, 2010-11 and 2011-12		
	2010-2011	2011-2012
Graduate Skilled	18,906	35,800
Student	39,048	33,451
Tourist	26,015	26,872
Temporary (457)	5,289	10,626
Partner	5,681	7,255
Skilled Independent (885)	8,513	5,389
Skilled Australian Sponsored (886)	4,137	2,503
Employer Nomination	1,063	1,130
Regional Sponsored (119 and 857)	1,474	3,901
Others	10,432	11,948
Total	120,558	138,875
Source: DIAC		

The main category of new visa in 2011-12 was the 35,800 who obtained a Graduate Skilled (485) visa. As noted, the rules applying for this visa for the two years in question were that all those who had completed university or VET qualifications were eligible if their occupations were listed on the SOL.

Another large group of student visa holders (33,451) enrolled in a new course of study. Some of this is explained by those doing English-language courses, about 8,000 of whom enrolled in a VET or university course in 2011-12.⁴⁴ However, in 2011-12, the 33,451 figure included 9,078 who moved from the VET sector to a higher-education course and another 4,914 who went in the reverse direction.⁴⁵ This looks very much like churning, that is, using the flexible arrangements allowed by DIAC for students to stay on in Australia by taking another course.

A stunning element of this flexibility is that DIAC allows students to stay on as tourists, 26,872 of whom took up this opportunity in 2011-12. There is little doubt that most will be working, notwithstanding the unenforceable proscription forbidding tourists from working. This is partly because of their need to cover their living expenses, but also because, for many, their main purpose for taking up a student visa in the first place was to gain access to Australia's labour market.

The ultimate goal for those with this aspiration is to obtain a permanent residence visa. One way to do so is to gain a 457 visa which might lead to a permanent residence visa under the ENS scheme. Table 7 shows that an increasing number of former students are going down this pathway, with 10,626 gaining 457 visas in 2011-12 (double the level in 2010-11). That many are proceeding to an ENS visa is implied by the data shown in Table 2 and in the accompanying discussion on page 9. This indicated that, in 2011-12, some 843 cooks and bakers were sponsored under the onshore ENS visa subclass 856, and another 1,197 under subclass 857 (which is the RSMS visa subclass).

Another pathway to permanent residence, also growing rapidly, is sponsorship by an Australian permanent resident as a spouse (whether married or de facto). According to Table 7, there were 7,255 persons in Australia on student visas who gained such a sponsorship during 2011-12. Such

partnerships may be legitimate. Nevertheless, the scale reflects the softness of Australian Government rules on migration, in this case in relation to partner visas. Unlike most European countries, an Australian permanent resident can sponsor a spouse regardless of how long the resident sponsor has been in Australia or the resident's financial capacity to provide for the spouse.

Visa churning for WHMs and visitors

As indicated, it is likely that a parallel pattern of visa churning is occurring with the other main temporary groups, visitors and WHMs. The empirical basis of this belief is the NOM estimates prepared by DIAC. These indicate that, for the year to June 2012, there were 37,000 visitor arrivals counted as residents, that is, they were estimated to have stayed for 12 out of the ensuing 16 months after their arrival. DIAC's estimate is based on applying the past actual pattern of stay on the part of visitors to the record of movements to Australia in 2011-12. There were also 53,800 WHMs in the same category.⁴⁶

According to the ABS, most of those in the visitor group were on short-term tourist visas, valid for 12 months, but only for visits of up to three months at a time.⁴⁷ Clearly, the visitor privilege is being parlayed into other activities in Australia. Many of these 37,000 who stayed for more than a year would have obtained another visa, in a similar way to that described for students. DIAC's rules allow them to do so, including applying for a 457 visa. It is likely that most would be working, whether legally or illegally – if only to support themselves financially.

In the case of WHMs, there were 223,000 new WHM visas issued in 2011-12. This includes 192,922 new WMH visas, as well as another 30,501 issued to WHM's already in Australia who had completed three months of 'designated work'.⁴⁸ As noted, 53,800 were estimated to have stayed in Australia for at least 12 months. Since the WMH is for a year duration, the implication is that, as well as those eligible for an extra year stay on account of completing three months of 'designated work', many others must be succeeding in gaining another visa. In 2011-12, 8,924 WHMs were granted a 457 visa while in Australia.⁴⁹ This information suggests that, for many, the trip to Australia is more about work and long term engagement in Australia's labour market than it is about cultural exchange.

Like students, WHMs are young people whose short-term stay means that most will be looking for entry-level work in the same labour markets as young domestic workers.

DIAC frankly acknowledges the work motive of WHMs. It reports that the recent increase in WHMs 'largely appears to be associated with the wider global economic situation in 2011-12 as labour market opportunities in some partner countries remain uncertain.'⁵⁰ This is a classic understatement, best illustrated by the surge of job hungry WHMs from Ireland. The number of WHM visas issued to Irish citizens increased from 14,790 in 2009-10 to 25,827 in 2011-12.⁵¹

There is no limit on the number of visas being issued from the partner countries, including Hong Kong, South Korea, Taiwan, Ireland and the United Kingdom, all of whom are experienced weaker economic conditions in the aftermath of the GFC. The WHM in effect invites young people from these countries to try their luck in Australia.

There is one remaining group crying out for attention. This is New Zealand citizens. They can come and go to Australia as they please without any assessment of their skills. According to NZ Government statistics, the net number of New Zealand citizens moving to Australia (minus those returning) on a long-term or permanent basis was 39,588 in the year to April 2012 compared with 19,752 in the Year to April 2005.⁵² New Zealanders are spread across the occupational spectrum. But they too tend to be concentrated in the younger age ranges.

Can the domestic workforce compete?

The context is that employment growth in Australia has slowed, particularly in the relatively low-skilled entry level jobs in retail and other service sectors. Domestic workers face ferocious competition from the temporaries just described for such work because the latter are less likely to have access to family assistance or government welfare payments and are thus under extreme pressure to find employment. In the labour markets in question, domestic workers also often have to confront wages and conditions which violate Australian awards. This is because employers can exploit the desperation for work and legal vulnerabilities of temporary migrants.

One consequence is increasing evidence that young domestic workers have to accept 'cash in hand' work in lower skilled jobs. One recent survey reports that 24 per cent of young people aged 18-29 have been paid in this way at some time in the last three years.⁵³ Employers hold the whip hand and if minded to do so can demand such arrangements from their employees. 'Cash in hand' work tends to be associated with work where award conditions are ignored as well as employer obligations for sick leave and superannuation payments.

It is true that most teenagers in the workforce are also engaged at least partially in education activities. Nevertheless just over half of 15-19 year olds are in the workforce as are over 80 per cent of those aged 20-24.

It is also true that young people are reluctant to leave home to take on horticultural or hospitality work in non-metropolitan locations. Employers face difficulty in finding such workers and as a result many have become dependent on temporaries, particularly WHM backpackers. But, the worst of the employment problems for Australian youth are in metropolitan areas. That is where most temporary migrants are also located. The situation for Australian youth in these locations is likely to get worse if the Australian labour market remains slack and the influx of temporary migrants continues. Employers in the hospitality, retail and related industries face intense competition. They can, and indeed have to employ people on the substandard conditions described above, if their businesses are to survive.

This argument gains credibility from the record of job outcomes for Australian-born young people. The focus is on the Australian-born because any information based on ABS Labour Force statistics which aggregates all residents in Australia in these age groups will include temporary migrants who meet the resident definition, that is a stay in Australia of 12 months out of the 16 following their arrival in Australia.

Table 8 shows the unemployment rate for 15-19 and 20-24 year olds born in Australia since July 2006, that is, well before the downturn in economic activity in 2009. The Table shows that unemployment for 15-19 year olds surged to 15 per cent in July 2009 and to 6.8 per cent for 20-24

year olds. In the case of the 15-19 year olds, there has been no improvement since July 2009 and in the case of the 20-24 year there has been a further deterioration, to 8.1 per cent by July 2012. There has also been a sharp fall in the participation rate since July 2009 for both age groups. By contrast, the unemployment rate for all persons aged 15 and over in Australia (whether Australian-born or not), which was 5.8 per cent in July 2009, fell to 5.2 per cent by July 2012.⁵⁴

Table 8

Labour force status of Australian-born persons aged 15-19 and 20-24 years, July 2006 to July 2012

15-19 years			
July	Civilian population (000s)	Unemployment (% labour force)	Labour force participation rate
2006	1240.3	12.2	60.9
2007	1247.7	11.1	60.8
2008	1289.7	10.5	61.0
2009	1299.2	15.0	57.3
2010	1310.2	15.9	57.0
2011	1315.7	14.2	55.3
2012	1290.1	14.9	55.5
20-24 years			
July	Civilian population (000s)	Unemployment (% labour force)	Labour force participation rate
2006	1159.0	5.3	85.8
2007	1168.1	5.1	85.8
2008	1204.7	4.5	85.2
2009	1193.5	6.8	84.3
2010	1280.5	7.1	84.1
2011	1278.1	7.2	82.9
2012	1277.9	8.1	82.5

Source: ABS, Labour Force Australia, monthly data, (data cube ST LM5)

The situation is even more serious in lower income metropolitan areas. This is acknowledged by the Australian Workforce and Productivity Agency, which reports that in Sydney's west, Melbourne's north and north-west and Queensland's Sunshine Coast and other tourist areas, the proportion of 15-19 year olds unable to find full-time work teenage unemployment is around 30 per cent.⁵⁵

Giving priority to the employment prospects of Australians is not just a moral imperative flowing from our status as a nation in which the welfare of citizens is paramount. The present arrangements are also becoming very costly. The combination of the slowdown in employment growth in Australia and the intense competition for work from hundreds of thousands of migrants (permanent and temporary) is swelling the ranks of the unemployed.

By August 2012, there were 666,830 such unemployment benefit recipients, up from 626,969 in August 2011. All of these recipients were permanent residents of Australia with at least two years residence. Included in this number as of August 2012 were 85,525 residents who were receiving the

Youth Allowance. The latter benefit is for persons seeking work who are aged 16-21 and who are not studying.⁵⁶

Recommendations

The economic setting

The following recommendations all address the misfit between the current soft labour market in Australia and migration policy settings. The latter were shaped by the huge average annual rate of employment growth generated during the resources boom between the early 2000s and 2010-11. The presumption has been that this growth will continue – thus the need for unabated high immigration.

The current state of the global economy suggests that there may be no short-term return to the recent boom conditions. The outlook in China, the main driver of the Australian minerals industry is uncertain. This is affecting the demand side for iron ore, coal, energy and other commodities. Meanwhile other suppliers are gearing up to compete with Australian suppliers when Chinese demand does increase.

Nevertheless, because of the long pipeline of new resource projects, the pressure for the concentration of economic activities in Australia's commodity industries will remain strong. These industries are Australia's main source of comparative advantage in the global economy. But, these industries are not labour intensive, except during the start-up construction phase. Meanwhile, the high Australian dollar continues to undermine the prospects for employment in Australia's other internationally exposed industries, including education, tourism, professional services and manufacturing.

Most of the growth in employment during the boom years has come from two sectors of the economy. One is the city building industries (including offices, shopping centres, infrastructure and housing). This activity has been fuelled by a massive property boom, which has been undergirded by rapid population growth. Though population growth continues, there is no longer any guarantee of parallel city-building activity. The property price boom has ended. This has removed some of the speculative support for investment in property, particularly housing. Equally important, house and apartment prices during the property boom reached levels that are beyond the reach of most new households.⁵⁷ Few are currently willing to take on the mortgage burden needed to enter the housing market while the employment situation in Australia is so uncertain.

The other impetus to employment came from the people servicing industries. They grow with population, but in several crucial sectors, notably health and social assistance and education and training, further expansion depends on state and federal government financing. This is now in doubt as governments at all levels are being forced to rein in their budgets as tax revenue growth slows with the economic slowdown.

In this setting, it makes no sense for the Australian Government to be running an expansive immigration program. By doing so, the Government is increasing the competition domestic workers face in finding employment. The first obligation of government to its citizens is to protect their

welfare, and the best way of doing so is to ensure that they get access to whatever employment opportunities there are.

We consider the major components of the current migration influx in the light of these concerns, starting with EMAs.

Recent developments in the EMA debate

The debate over EMAs is of enormous importance because it clearly exposes to the interested public the conflict between the boom era assumptions about the alleged need for migrant labour and the aspirations of domestic workers for this work.

The trade unions which have led the debate on EMAs have argued that, with the softening of the Australian labour market, it is crucial that well paid semi-skilled jobs in the resources industries should go to locals who might otherwise end up on the unemployment rolls. The recent decline in employment in the construction industry, from 1,032,000 in the August Quarter of 2011 to 964,000 for the August Quarter of 2012 attests to this concern.

This softening of the labour market is manifesting in increased interest in access to resource industry jobs. According to the DEEWR, there has been enormous interest in the Jobs Board on the part of Australian workers. As of October 2012, some 27,500 job seekers have registered their details and over 6,500 have lodged a completed resume.⁵⁸ It is no longer correct to assume that blue collar workers will not cross the Nullabor to take on resource industry work.

Another manifestation of this interest is that talkback radio has been flooded by callers claiming they could not get any response from mining companies when they sought positions. The recruitment firm, Programmed Group, states that the firm has been swamped by applications from across Australia for the mining jobs it has posted. The manager, Chris Sutherland told *The Australian* that 'the huge shortfalls in blue-collar, semi-skilled and unskilled labour in WA could be filled from interstate rather than from overseas if our clients give us enough opportunity to train existing skilled workers in the job-specific or specialist equipment needs of the project or operation.'⁵⁹

These developments plus reports that the Labor Caucus sub-committee on 'Spreading the benefits of the resources boom' proposes to recommend much stricter conditions placed on EMAs,⁶⁰ appears to be moving the Government towards softening the key features of the original EMA arrangements.

Now that the Labor Government has put a Resource Sector Jobs Board in place, the pressure is on to require resource projects seeking an EMA to use it prior to recruiting overseas. This is about to happen according to DIAC's Krno Kukoc when under cross examination by the Senators evaluating Bandt's bill on 25 October 2012. Kukoc stated that when the final 'deed of agreement' on the specifics of each EMA is signed off by the proponent and the Government, it will include a clause which will require the companies involved to use the Resources Sector Jobs Board when recruiting employees.⁶¹

Whether this requirement will amount to full-scale labour market testing, in the sense of demanding that contractors advertise all the EMA jobs in question, consider the merits of domestic applicants,

justify the non-selection of Australian applicants and only then proceed to hire a 457 visa worker remains to be seen.

It may not, at least in the case of skilled workers on 457 visas recruited to the project outside the concessional EMA arrangement. This is because, unbeknown to most of those commenting on the issue, as part of Doha round of trade negotiations, the Labor Government is in the process of negotiating away Australia's rights to apply labour-market testing to temporary overseas workers in the 457 visa program.

This stance was initiated by former Coalition Government which, in 2005, as part of the Doha round of trade negotiations, offered to eliminate labour-market testing on all temporary workers with occupations at the trades level or above in return for trade concessions. The Rudd Labor Government affirmed this position in 2008. While the offer is non-binding and could be withdrawn, the Government's present position is that it will not do so because it would be in 'bad faith' as regards the Doha negotiations.⁶²

Recommendations for EMAs

It is evident that resource companies will have to recruit skilled workers from overseas during the start up phase of the mining boom because of the huge pipeline of projects still in place. However, claims on the part of EMA proponents for particular skills should be validated by an independent review of the labour market situation in the industry and in the locality it intends to operate in. This should be done by Skills Australia.

To the extent that Skills Australia verifies the proponent's claims, they should be allowed to access skilled workers via the 457 program. Labour market testing is a time consuming and expensive operation, and is best avoided if there is no clear case for it.

Nevertheless, the proponent should be required to list the jobs in question on the Resource Sector Jobs Board so that, when reviewing the progress of each EMA, the Government can be reassured that domestic workers are not being ignored in favour of migrants.

We agree with Andrew Banks, the chairman of Talent 2, who argues that the Norwegians got it right. They allowed thousands of workers entry on short-term permits to help develop the North Sea oil resources adjacent to Norway. As Banks puts it: 'They got the job done, got the oil out of the ground and they are now the richest nation on the planet – then they sent everyone home.'⁶³ By contrast, the existing Australian practice of linking temporary migration to permanent migration means that the benefits of the resources boom will have to be shared by a much bigger population.

However, tougher rules are needed for semi-skilled workers. As noted earlier, some 60 per cent of those proposed to be recruited for the Roy Hill project were to be employed in semi-skilled occupations. The justification for importing such workers is far weaker than it is for skilled workers, because it is now evident that many domestic workers are available for such work and the amount of training needed to prepare them for the jobs in question is limited.

The notion that an EMA proponent should be allowed to import a non-English-Speaking semi-skilled workforce is particularly disturbing in this context. Surely, it would be better to have local workers

on the job, not just for their benefit, but also for the overall safety of the site and for the awareness of workers as to their rights and obligations on the job.

The Resource Sector Jobs Board should be used to inform domestic workers as to the semi-skilled jobs available on the project and as a platform from which to establish the training programs needed for their preparation to do the work. This idea follows those put by the recruitment firm, Programmed Group.⁶⁴

Governments currently waste millions of dollars on Certificate II training for fitness trainers and the like. Some of this money would be better spent ensuring that locals get access to prize jobs in the resource industries.

Recommendations for reform of the larger 457 program

Any proposals for EMAs ought to be applicable to the larger 457 visa subclass. The public gaze has not yet been focussed on its shortcomings. But, they are at least as serious as for EMAs. The numbers recruited in the larger program are far greater than for the EMAs, there is no labour market testing, and not even the beginnings of initiatives like the Resource Sector Jobs Board, which gives some hope that Australian workers may be able to access the resource industry jobs in question.

As documented earlier, most 457 visas are issued to persons with skills unrelated to the resources industries and for jobs in locations where Australia's employment market is weak. There is no limit on the occupations eligible for sponsorship other than that they be skilled and no official assessment of whether there is a shortage in the occupation where the job is located.

There will always be a need for skill transfers in an Australian economy dominated by multi-nationals. But, this is not what is driving the 457 program. Rather, our analysis of the visa-issued data indicates that the system is being navigated by people 'jumping the queue' in order to obtain permanent residency. It is allowing persons with limited English and no formal assessment of qualifications, who would not qualify for a visa under the points-tested visa subclasses.

Sceptics who have got this far should consider the following statistics. For the months of July and August 2012, the number of primary applicants granted 457 visas jumped by 20.6 per cent compared with the same months in 2011. The number of visa grants is increasing just as the Australian labour market is weakening. One further statistic, which offers compelling evidence of the navigation thesis, is that the top occupation visaed in July and August 2012 was cooks. There were 500 such grants. If they were serving up meals in the Pilbara there might be less concern. But 170 were for jobs in Sydney and 170 in Melbourne. Just 30 were for jobs in WA.⁶⁵

There is a case for full labour market testing in which an employer wanting to sponsor a person on a 457 has to show that he has advertised the position and seriously reviewed domestic applicants. The unions have argued that domestic workers should have a legally enforceable right for this opportunity. The problem with this policy is that it is difficult to enforce.

We recommend that, for the time being, an alternative strategy be put in place. This is that the Department of Education, Employment and Workplace Relations (DEEWR) use its labour market intelligence to prepare lists of skilled occupations where there is evidence of shortages for each

capital city and region outside these cities. These regions would include large areas of each state, such as South Western WA and Western Victoria. If an occupation is not on the relevant list for the location of the employer, no 457 sponsorship should be allowed to proceed.

The same argument applies to the permanent-entry ENS program. It is equally irrational at a time of labour market softness to allow employers to sponsor migrants for permanent residence if there is not an authentic case that there is a shortage of the skills in question where the sponsoring employers are located.

In addition, all 457 applicants should be required to undergo a skills assessment from the relevant accrediting occupational authority as is the case for those who apply under the points tested visa subclasses. All those with professional or managerial occupations should be required to achieve a minimum of 6 on the IELTS test (again, as is required with the points tested visa subclasses). In practice many will need level 7, because this is required by all accrediting authorities in the health fields and in accounting and IT.

The State/Territory sponsored visa subclasses

These visas have no credibility in the current labour market situation. The States present their case to DIAC for a quota of visas and occupations within this quota in secret. To judge from the high allocation to South Australia this has little to do with skill needs in that State. For most of the visas issued there is no link to a specific employer or any obligation on the sponsoring State to ensure that a job relevant to the applicant's credentials will be available.

Like the 457 program, the State/Treasury sponsored visa subclasses offer a backdoor entry for applicants who cannot meet the current selection standards for the Skilled Independent points-tested visa subclass. The data on the English language capacity of those so far invited to apply for a State/Territory visa in 2011-12 shown in Table 5, attests to this conclusion. It indicates that invitees did not possess professional level English proficiency (IELTS level 7).

We recommend that the State/Territory visa subclasses be abolished.

To the extent that there are immediate skill shortages in a State or Territory, these would be best met via the 457 or ENS program, subject to the occupation being listed on the relevant capital city or regional SOL.

Where it is anticipated that there will be medium to long-term shortages for particular skills, this need is best met through DIAC's points-tested Skilled Independent and Skilled Australian Sponsored visa subclasses.

The points-tested skilled migration visa subclasses

Following the reforms to these visa subclasses they are much better targeted to select well qualified migrants than the State/Territory sponsored subclasses. The only occupations eligible are those where Skills Australia determines that there is a medium to long-term prospect of shortages at the national level.

Skills Australia tends to exaggerate impending shortages because the organisation is tied to the very high projections of annual employment growth in Australia cited earlier. However, Skills Australia's assessments are relatively open to scrutiny and to contestation.

As detailed earlier, the new points test better targets the qualities needed for success in skilled occupations in Australia, because of its greater focus on work experience and English language skills. Under the new Skill Select system starting in July 2012, the data reported in Table 5 indicates that, for the most part, only those with professional level English, that is, 7 on the IELTS test, are being invited to pursue their application.

The current problem with these points-tested visa subclasses is that they are burdened by a large backlog of applications from former overseas students. Once these are cleared, the program should be cut back in size. This is to ensure that the program is restricted to selecting applicants who possess professional level English. If so, the program can play a useful role in augmenting Australia's skilled workforce.

Visitors, students, WHMs and other temporaries

Though temporary workers are ubiquitous in Australia's metropolises, their impact on the domestic labour force rarely stirs comment. This is because young domestic job seekers are poorly represented. They usually do not belong to trade unions and those not undertaking post-school education are amongst the least articulate of their generation.

This helps to explain the disconnection between government policy on temporaries and the welfare of domestic workers. At a time when the employment outcomes for young, domestic job aspirants is declining, the Australian government policy has been keen to facilitate temporary entry for sectional interests like the education, horticulture and tourist industries and foreign affairs objectives aimed at the international exchange of young people.⁶⁶ Most recently, there has been pressure to extend the post study 485 visa (the two year work entitlement visa recommended in the Knight Report) to those finishing VET sector courses. Currently VET graduates cannot access this visa except in skill shortage occupations. In October 2012, the three Coalition State Premiers (NSW, Victoria and Queensland) wrote to the Prime Minister urging the VET sector should have access to the post study work visa on the same terms as higher education. They claimed that the VET sector would be disadvantaged without it.⁶⁷

These interests are decisively trumping the interests of the young people who bear the brunt of job competition in entry-level labour markets.

A vigorous flow of visitors and students is needed for the tourist and education industries. Likewise the reciprocal WHM visa arrangements contribute to its official purpose, which is to 'foster closer ties and cultural exchange between Australia and partner countries, with particular emphasis on young adults'. However, the guiding principle of these visa programs should be enforced, namely that their prime purpose is holidaying or study – not work. By this standard, the Australian Government should also restrict the work conditions on these visas to allowing work as a direct employee only (as with the 457 visa)⁶⁸ and not as a so-called 'independent contractor'. Under current visa rules, overseas students and WHMs can take out an Australian Business Number (or

ABN) and employers can engage them as 'ABN workers' pretending to work as independent contractors running their own businesses when in fact they are disguised employees.

This practice, known as 'sham contracting', occurs in many industries where overseas students and WHMs work such as cleaning, construction, call centres and the taxi industry.⁶⁹ Sham contracting contributes to labour exploitation⁷⁰ (because the workers are denied employee benefits such as award wages and protections, sick leave and superannuation entitlements etc), to tax evasion and avoidance (because employers do not pay PAYG and payroll tax, or the Superannuation Guarantee Charge among others), and to undermining wages and conditions for Australian workers in the industries concerned. It is bad public policy to allow temporary visa work conditions to encourage or permit the growth of sham contracting and the policy needs to change.

Nor should overseas student and WHMs be allowed to move on to tourist visas, or be permitted to directly or indirectly enter the Australian labour market by taking up a 457 visa. If tourists want to work in Australia they should first apply from their homeland like other offshore residents.

Our analysis indicates that for many temporaries, work is paramount. The escalation in the number of WHM visa holders from job hungry nations, like Ireland, attests to this priority. So too does the extent to which they are currently churning from visa subclass to visa subclass in order to remain in the Australian workforce. They are doing this in part because the regulations allow it – as with the 26,872 overseas students who moved to a tourist visa in 2011-12 (Table 7).

There is an immediate case for a cap to be placed on the number of WHM visaed, which takes account of labour market conditions for young Australians.

It is also time for a thorough official inquiry into the matter, to ensure that the Government gives higher priority to the interests of the young Australian workers affected by the influx of temporary overseas workers. It is the aggregate impact of the numbers and work concessions available to the diverse temporary visa subclasses which is the key problem. Part of the terms of reference for the proposed inquiry should be that this overall impact is assessed.

Finally it is time to do something about the New Zealand influx. Australia is serving as a safety valve for New Zealand's economic woes. Because wages are so much higher here relative to New Zealand, there will always be an interest on the part of New Zealanders who are starved of opportunities at home, or wishing to avail themselves of career opportunities in Australia, to make the trip. The net number of New Zealand citizens locating in Australia has exploded in recent years. This is a ridiculous situation. The NZ influx may have made sense when all looked rosy in the Australian labour market. But, this is no longer the case. New Zealanders should be subject to the same rules of access to Australian employment as are all other prospective migrants.

This will require amending the free trade agreement with NZ which provides for unrestricted two-way access to each other's labour market.

References and notes

-
- ¹ These figures are all estimates, subject to revision. They derive from DIAC, *The Outlook for Net Overseas Migration*, various issues, the most recent being *The Outlook for Net Overseas Migration, June 2012*.
- ² Ibid, p. 8
- ³ Skills Australia, *Australian workforce Futures, A National Workforce Development Strategy*, 2010, p. 13
- ⁴ Bob Birrell, Ernest Healy, Katharine Betts & T. Fred Smith, *Immigration and the Resources Boom Mark 2*, Centre for Population and Urban Research, July 2012, pp. 4-5
- ⁵ Australian Workforce and Productivity Agency, *Australia's skills and workforce development needs, Discussion Paper*, July 2012, p. 52
- ⁶ Department of Education, Employment and Workplace Relations, *Australian Jobs, 2012*, 2012, p. 25
- ⁷ Peter McDonald and Jeromey Temple, *Immigration, Labour Supply and Per Capita Gross Domestic Product: Australia 2010-2050*, DIAC, December 2010
- ⁸ ABS, The Labour Force, data cube
- ⁹ ANZ Research, November 2012. p. 1
- ¹⁰ Bob Birrell, et al, op. cit., p. 10
- ¹¹ DIAC, *2011-12 Migration Program Report*, p. 6
- ¹² Chris Bowen, 'Skilled migration benefits and reforms', DIAC, 25 May 2012
- ¹³ Bob Birrell and Ernest Healy, 'The February 2010 reforms and the international student industry', *People and Place*, Vol. 18, No. 1, 2010
- ¹⁴ Kruno Kukoc, Key Issues in Skilled Migration to Australia, Australia-Canada Roundtable on Foreign Qualifications Recognition, 13 April 2011, p. 13
- ¹⁵ DIAC, *The Outlook for Net Overseas Migration*, March 2012, p. 13
- ¹⁶ Kruno Kukoc, op. cit., p. 8
- ¹⁷ DIAC, *Annual Report 2008-09*, p. 7
- ¹⁸ Bob Birrell, *Australia's New Health Crisis – Too Many Doctors*, Centre for Population and Urban Research, Monash University, September 2011
- ¹⁹ DIAC, *Visa subclass 457 Integrity Review*, October 2008
- ²⁰ DIAC, *Subclass 457 State/Territory summary report, 2011-12*, p. 11
- ²¹ ACTU Submission, Inquiry into the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012, Senate Education, Employment and Workplace Relations Committee, 13 September 2012, p. 15
- ²² Ibid., p. 7
- ²³ Department of Education, Employment and Workplace relations, op. cit., p. 37
- ²⁴ Australian Government, National Resources Sector Employment Taskforce Report, *Resourcing the Future*, July 2010, p. 70
- ²⁵ DIAC, Fact Sheet 48a, Enterprise Migration Agreements, p. 3 (accessed 1/10/2012)
- ²⁶ Chris Bowen, *Skilled Migration Benefits and Reforms*, Address to the National Press Club, Canberra, 25 May 2012.
- ²⁷ Ibid.
- ²⁸ Anthony Parsons, Department of Education, Employment and Workplace Relations, evidence presented to hearings on the Protecting Local Jobs (Regulating Enterprise Migration Agreement) Bill 2012, Senate Hansard, Thursday 25 October 2012, p. 29
- ²⁹ Marcus Priest, 'Bowen was told of concerns', *AFR*, 28 May 2012
- ³⁰ Peter Nolan, *Is China Buying The World?*, Polity, 2012, pp. 73-74
- ³¹ Marcus Priest, op cit
- ³² Senate Hansard, 18 June 2012, p. 6647

-
- ³³ ACTU Submission, Inquiry into the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012, op. cit., p. 5
- ³⁴ Birrell, Healy, Betts and Smith, op. cit. p. 22
- ³⁵ Detail on these grandfathering rules is provided in Ibid., pp. 23-24
- ³⁶ A previous CPUR paper reports that boosting aggregate GDP is an explicit goal of the Rudd/Gillard Governments' immigration policy. See B. Birrell, E. Healy, K. Betts and T. F. Smith, Immigration and the Resources Boom Mark 2, Centre for Population and Urban Research, Monash University, July, 2011, pp. 2, 6-8
- ³⁷ Ibid., pp. 25-28
- ³⁸ DIAC, *SkillSelect report, Invitations to apply to migrate – Round 1 September 2012 Results*, September 2012.
- ³⁹ Healy, E. (2009) 'High net migration during a period of no net job growth: implications for young job seekers', *People and Place*, Vol. 17, No. 3, pp. 18-24
- ⁴⁰ Senate Legal and Constitutional Legislative Committee – Estimates, Tuesday October 20, 2009, pp. 50-51
- ⁴¹ Patricia Karvelas, 'Visa plan for childcare workers', *The Australian*, November 1, 2012, p. 7
- ⁴² Knight, Discussion Paper, p. 17
- ⁴³ *Strategic Review of the Student Visa program, Report*, DIAC, 2011, p. 40
- ⁴⁴ DIAC, *Student visa program quarterly report*, 30 June 2012, p. 70
- ⁴⁵ Ibid.
- ⁴⁶ DIAC, *The Outlook for Net Overseas Migration*, June 2012, p. 8
- ⁴⁷ Personal communication, ABS Demography section
- ⁴⁸ Dr Southern, DIAC, Senate Estimates, 15 October 2012
- ⁴⁹ DIAC, unpublished
- ⁵⁰ DIAC, *Working Holiday Maker visa program report*, 30, June 2012, p. 7
- ⁵¹ Ibid, p. 12
- ⁵² Statistics New Zealand, International Travel and Migration: April 2012
- ⁵³ Essential Media Communications, *Report on Cash-in-hand*, September 2012. Commissioned by the ACTU.
- ⁵⁴ ABS *The Labour force* July 2012, trend data
- ⁵⁵ Australian workforce and productivity agency, op cit, p. 22
- ⁵⁶ Department of Education, Employment and Workplace Relations, *Labour Market and Related Payments*, August 2012
- ⁵⁷ Bob Birrell, Ernest Healy, Virginia Rapson and T. Fred Smith, *The End of Affordable Housing in Melbourne?* Centre for Population and Urban Research, June 2012, Chapter Nine.
- ⁵⁸ Anthony Parsons, op cit, p. 30
- ⁵⁹ Quoted in Paige Taylor, 'Few keen to work at "end of earth"', *The Australian* 15 May 2012, p. 6. Sutherland told the ABC that ' We had to recruit about 80 workers for a mining site in the north west. We were able to get over 3,600 applicants, and from those applicants screen to 80. So, we certainly think there are more than enough workers available right now to fill most of the requirements...' From G. Hoy, 'Enterprise migration agreement sparks questions', 7.30 Report, ABC TV, 29 May 2012 (transcript from Factiva). Examples of locals excluded from work in the resource industry were common in the media. See for example G. Hallandal, 'Letter: If locals have the goods, no need to import miners', *The Australian*, 28 May 2012, p. 15; M. Eddey, 'Letter: If locals have the goods, no need to import miners', *The Australian*, 28 May 2012, p. 15; S. McGill, 'Letter: It is not so easy for Australians to get mining work', *The Australian*, 5 June 2012, p. 15; M. Mirski, 'Letter: Skilled but jobless', *The Age*, 22 August 2012.
- ⁶⁰ Pip Freebairn, Mark Skully and Laura Tingle, 'Caucus revolt brews over foreign workers' *AFR*, 26 October 2012, p. 3
- ⁶¹ Senate Hansard, 25 October, op cit, p. 39
- ⁶² CMFEU, *Australia's international trade commitments and the 457 visa*, February 2010, pp. 6-7

⁶³ *The Australian*, 3 October, 2012, Business Section, p. 20

⁶⁴ Paige Taylor, 'Few keen to work at 'end of earth'', *The Australian* 15 May 2012

⁶⁵ DIAC, *Subclass 457 State/Territory summary report 2012-13*, p 11

⁶⁶ Commonwealth of Australia, *Australia in the Asian Century, White Paper*, October 2012, p. 262

⁶⁷ Michaela Whitbourn, 'States request visa extension for VET sector', *Weekend Australian Financial Review*, 27-28 October 2012, p. 6

⁶⁸ The Immigration Minister can permit certain 457s to undertake additional work as an independent contractor, but this has been strictly limited to mainly medical practitioners and specialists.

⁶⁹ The extent of sham contracting may be disputed but its existence is not. For example, see Fair Work Ombudsman, *Sham contracting and the misclassification of workers in the cleaning services, hair and beauty and call centre industries*, November 2011 ; CFMEU Construction and General Division, *Race to the Bottom: Sham Contracting in Australia's Construction Industry*, March 2011; Cameron Roles and Andrew Stewart, 'The reach of labour regulation: Tackling sham contracting', (2012) 25(3) *The Australian Journal of Labour Law* 258;

⁷⁰ For a recent case involving a Korean WHM, see 'Foreign worker on working holiday was allegedly underpaid as cleaner', Fair Work Ombudsman media release, 24 July 2012.