

Immigration and the nation building and jobs plan

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Introduction

The Australian labour market is undergoing a dramatic transformation, from chronic shortages to oversupply. Over the last few years, there has been a net gain in the employed workforce of over 200,000 per year. However, the immediate outlook is for a decline in the employed workforce.

- Employment peaked in October 2008 and has since declined
- Treasury projections of February 2009 indicate that employment will decline by 0.25 per cent over 2008–09 and that there will be no net growth during 2009–10 (*Economic Outlook 2009*, no. 6)
- Leading indicators, notably job advertisements are falling rapidly.

The Commonwealth Government's \$42 billion National Building and Jobs Plan (hereafter, the Plan) has been designed to ameliorate the situation. Its focus is to protect Australian jobs. According to the government's supporting statement, around 90,000 jobs will be protected over the period 2008–09 to 2009–10. Treasury modeling indicates that the stimulus package will likely support about 37,500 jobs in the year 2008–09 and between 56,250 and 75,000 in the year 2009–10.¹

The urgency of the Plan and the huge expenditures involved are justified given the situation domestic job seekers will face over the next couple of years. Based on recent experience, there will be about 116,000 new school leavers entering the job market for the

first time in 2008–09 and 2009–10 and at least 100,000 young (less than 25) university and diploma graduates.²

The job market these new job seekers encounter will be totally different from that faced by their counterparts over the past few years. The pendulum has swung decisively towards employers. Previously, job-seekers could pick and choose. Now employers have the upper hand. This is true even for skilled workers in the mineral industry. With employment cutbacks and cancellation of new projects, many of these workers will have to compete for whatever employment is available.

The immigration policy setting

The scenario described will unfold at a time when the Labor Government is running a record-high migration program. In May 2008, the Labor Government decided to increase the permanent entry intake by 37,500 to around 200,000 for 2008–09, including the humanitarian component. Most of this growth was in the skilled program, which was increased from just over 100,000 to 133,500. At the same time, the Labor Government has also been encouraging employers to sponsor migrant workers on a temporary basis under its 457 visa program. The number of principal applicants visaed under this program has grown rapidly to reach 58,050 in 2007–08.

On the face of it, Labor's migration program constitutes a direct challenge to the interests of domestic workers. It will add a huge influx

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of job seekers at a time when the bargaining power of domestic job seekers has taken a turn for the worse. The migration program appears to be in direct conflict with the Nation Building and Jobs Plan—the explicit aim of which is to protect Australian jobs. Nevertheless, the Rudd Government has so far reacted defensively. There is no indication that the employment crisis has prompted a retreat from its migration commitment. Rather, as the Minister for Immigration and Citizenship, Senator Evans, announced on 17 December 2008, the message he has received from business interests is that ‘we need to maintain a skilled Migration Program, but one that is more targeted’.³ To this end ‘the government will fast-track the processing of sponsored permanent migration visas, where skilled migrants are nominated by employers for jobs that cannot be filled locally’.⁴

The focus of this analysis is on the skilled component of the permanent-entry and temporary-entry skilled visa categories. The key question is, do the principal applicants visaed under these programs have skills that have been determined either by an independent assessment body or by a labour-market testing mechanism (see below) to be in short supply in Australia? If they do not—that is, if Senator Evans is incorrect—then there is an urgent need to change the rules governing skilled-migration selection, to ensure that they do not enter the Australian labour market during the impending jobs crisis.

In 2007–08, there were 52,417 visas issued to principal applicants (as distinguished from accompanying secondary applicants) out of the total 133,500 permanent-entry skilled program and, as indicated, 58,050 under the 457 visa category. The migrants selected are coming under two broad categories. The first is those selected by employers for particular jobs, whether under the permanent entry or temporary employment nominated visa categories. The second is those selected via

the various permanent-entry visa categories, determined by some form of skill assessment. The State governments also sponsor migrants for permanent entry on the basis of skill shortage lists they prepare. We do not examine this relatively small component of the skill program.

The bulletin examines the ways these two immigration pathways function in the context of the question stated above, as to whether they possess skills that are scarce in the Australian labour market. We then evaluate recent (late 2008 and early 2009) policy changes announced by the Department of Immigration and Citizenship (DIAC). The analysis concludes with a set of labour force projections that indicate what the contribution of migration will be to the growth of the Australian labour force under the current migration policy setting. Under this setting, net migration will add far more workers to the Australian labour force over the next 18 months than the number of jobs the government’s plan hopes to protect.

Employer-sponsored visas

Since 2005, the Coalition Government and now, following Senator Evans’ 17 December statement of policy, the Rudd Labor Government has given migrants sponsored by employers top priority in the skilled-migration program. The number of principal applicants visaed for permanent entry under the Employer Nomination Scheme (ENS) and the Regional Sponsored Migration Scheme (RSMS) has increased from 5,314 in 2005–06, 5,712 in 2006–07, to 8,264 in 2007–08. In the case of the temporary entry 457 visa program, the respective numbers of principal applicants visaed were 39,530, 46,680 and 58,050. In December 2008, the stock of 457 visa workers in Australia was 82,500.

Employers have to sponsor a migrant to a specific job under these visa categories, except for labour hire or ‘on-hire’ companies who can farm migrant workers out to other

employers. Employers generally do not have to ‘labour market test’⁵ to determine whether Australian resident workers are available to do the work. In the permanent program all that is required is that the employer attests that the job will be available for a minimum of three years in the case of the ENS, two years in the RSMS and for between three months and four years under the main temporary-visa program, the 457 Business (long-stay) temporary entry visa subclass.

Eligibility criteria for employer-sponsored visas

The criteria for visa approval are far less stringent than for the permanent-entry, skill-tested visa subclasses. They are as follows for the 457 visa program which is also the regulatory model for the ENS visa:

- The employer currently must nominate a minimum salary level (MSL) of at least \$43,240 a year for most occupations and \$59,480 for designated ICT occupations. In regional areas, employers are entitled to a 10 per cent discount on these MSLs, to \$39,100 and \$53,530 respectively. Currently, it does not matter whether market rates for the occupation in question are far higher than these minimum base salaries. In February 2009, the Immigration Minister released draft regulations proposing that market rates replace the MSL for 457 visa approval, but only from mid-September 2009 and market rates have yet to be defined.
- The qualifications of the sponsored migrant do not have to be assessed by an Australian skill accreditation authority (unlike skilled independent applicants). All that is usually required is that the sponsored 457 migrant must convince a DIAC case officer that his/her qualifications and experience are relevant to the specified job.
- The English language standards are rudimentary and concessions abound. The baseline minimum is IELTS 4.5, a standard well below the minimum

5.0 for trades and 6.0 for professional occupations in the main points-tested skilled permanent visa categories. These levels are well below what is needed for professional appointments in Australia. This was acknowledged by DIAC when it increased the minimum level of English required for the points-tested permanent entry skill categories from 4.5 to 5.0 for those in trade occupations and from 5.0 to 6.0 for all other eligible occupations, in September 2007. Even this rudimentary level is waived for all visa applicants in Australian Standard Classification of Occupations (ASCOs) 1–3. These include managers, professionals and associate professionals. The waiver is given on the presumption by DIAC that such applicants must have this level of English. In addition, an English test is waived for all those with nominated annual salaries above \$75,000, among other concessions. But applicants need a higher proficiency level where this is required for licencing or registration in their occupation (e.g. nurses and doctors).

The main employer-sponsored permanent visa (ENS) embodies most of the above 457 minimum regulations, a point not well understood outside of the migration industry. The ENS has:

- The same minimum wage regulations as the 457 visa MSLs.
- There are no requirements for qualifications to be assessed by Australian accrediting authorities, except for the tiny minority who are sponsored from overseas. The great majority of those sponsored are former 457 visa holders. As long as they have worked in Australia for two years including 12 months with the employer sponsoring the visa applicant on a 457 or other designated temporary visa, they do not need to have their qualifications assessed. This two-year exemption was introduced in March 2005 to encourage 457 visa holders and their employers

to use the permanent entry employer nomination provisions in order to keep them in Australia.

- A higher English language requirement (IELTS 5 or Vocational English), but this can be waived in ‘exceptional circumstances’ where the applicant has been working in Australia in the occupation for two years and ‘undertaken some English training’ in that time—a further concession to 457 visa workers and their employers
- A separate list of ENS-eligible occupations, known as the ENSOL or ENS Skilled Occupation List, which also includes

occupations not eligible for skilled permanent visas in the main skilled visa program.

Under the ENS, where the sponsored person is not applying as an onshore applicant, the applicant must have had three years employment experience in the occupation overseas—but that can be waived when the nominated occupation is on the Migrant Occupations in Demand List (MODL).

The RSMS has even lower standards than the ENS. This ‘skilled’ visa for regional employers is available for an even broader range of

Table 1: Top countries of citizenship for visa grants to primary applicants for visa subclass 457 (business long-stay) 2005–06, 2006–07 and 2007–08

Country of citizenship	2004/05 ¹	2005/06	2006/07	2007/08	2008/09 ¹
United Kingdom	7,740	9,830	10,640	13,110	6,690
India	2,880	3,990	6,520	8,250	4,080
Philippines	600	2,470	3,980	5,120	3,020
United States of America	1,630	2,170	2,680	3,410	1,710
China (PRC)	930	2,080	2,640	3,360	1,420
Republic of South Africa	1,230	2,040	2,410	3,260	2,180
Irish Republic	1,370	1,700	1,590	2,080	1,280
Germany (Federal Republic)	850	1,400	1,580	1,830	920
Canada	870	1,350	1,370	1,780	830
France	540	830	900	1,270	600
Malaysia	360	790	1,060	1,240	540
Japan	1,080	1,260	1,160	1,190	480
Netherlands	350	570	690	780	*
Zimbabwe	*	420	580	690	300
Indonesia	*	480	530	680	*
Other	6,920	8,150	8,350	10,000	5,580
Total	27,350	39,530	46,680	58,050	29,630

Sources: DIMA/DIAC visas issued data, 2004–05 to 2007–08; # DIAC State/Territory Summary Report 2004–05
 Note: * Total includes count for the countries indicated

¹ July to December 2008

occupations than the ENS, including ASCOs 5–7 and possibly even elementary clerical, sales and service workers and Labourers (ASCOs 8–9).⁶ The sponsoring employer has to attest that the job will be permanent for only two years (versus three years in ENS), and:

- market wages and conditions are not required, nor are 457 minimum salaries or MSLs required, merely that the position complies with ‘all relevant Australian standards and workplace legislation for wages and working conditions’. As industrial awards and legislation generally establish minimum wages only, the bar is set as low as it legally can be
- qualifications are not independently assessed by accreditation authorities but only by DIAC officers
- the minimum qualifications nominally are ‘at least Australian diploma level’ but ‘a trade certificate with full apprenticeship is accepted as equivalent to or higher than a diploma qualification’
- visas can be granted for occupations in ASCOs 5–7, which require a Certificate II only, where the applicant has filled the position for at least two years while on a 457 visa
- the minimum English language required is notionally functional English defined as an average band score of IELTS 4.5, or as assessed by the DIAC assessing officer or the Adult Migrant Education Program (AMEP) as having functional English. But even functional English is not required in all cases where the visa applicant worked in the nominated position on a 457 visa for ‘at least 12 months’, and had ‘undertaken some English training’ in that time—again, a further concession to 457 visa workers and their employers.

How many ENS and RSMS visas have been granted at the minimum wages possible under the schemes? Despite the government giving these visas the highest priority and the Immigration Minister repeatedly stating

he is strongly committed to transparency in the immigration program, we know very little about how these visas are working in practice. The Minister’s office refused several requests in 2008 to provide data on the salary levels at which these visas were being granted by occupation, and—as far as we are aware—no such information has been publicly disclosed anywhere. Similarly, information on how many visas are being granted at the absolute minimum English language levels is important information for public debate about the merits of these programs, but that too is missing.

There can be no doubt that workers granted visas under these programs, at the low minimum entry standards, will be at a severe disadvantage in a rapidly shrinking labour market when employers will be able to pick and choose. With their limited language skills and possibly non-transferable ‘technical’ skills of dubious credibility in a competitive job market, they will struggle to find alternative work if they are retrenched by their sponsoring employer.

The transformation of the 457 visa subclass

At the same time as recent governments have been encouraging employer-sponsored visas, there has been a transformation of the linkages between the 457 visa subclass and the permanent-entry employer nomination visa categories. The latter has become an extension of the 457 visa subclass.

In the past, despite some well-publicised cases of gross exploitation of lower-skilled workers from Asia, the 457 visa subclass was dominated by the temporary transfer of highly-skilled, mainly professional and managerial staff located in Europe, Japan and the United States to enterprises in Australia. The great majority of these workers returned overseas after their stay. This is still the case with those coming from the United States, Japan and Germany. Over recent

years, however, those granted 457 visas have included large numbers of migrants whose goal has been to use the 457 visa as a stepping stone to a permanent residence. Many of these come from the UK, Ireland and South Africa, often first entering Australia on other temporary visas. However, a significant and increasing minority of 457 workers now come from Asia. They include IT workers from India, but also many blue-collar workers sponsored by employers in the construction and manufacturing industries. Table 1 documents this trend towards Asian countries of origin in the 457 program. This is notable for the Philippines, China and India, all of which are low-wage countries where most migrants gaining access to Australia’s labour market will earn far more in a semi-skilled position than they could possibly earn in their home country in these sectors.

The main route to permanent residence through a 457 visa is via a subsequent sponsorship by the original employer for a permanent-entry employer nomination visa. This migration pathway is being vigorously marketed by migration agents and their networks of recruiters across Asia, Europe, South Africa and elsewhere. From the point of view of prospective migrants, this pathway has the advantage that it provides an immediate job (on a temporary basis) as well a relationship with an employer who may be willing to sponsor the temporary migrant for a permanent-entry visa. It is a faster and less regulated way of gaining employment in Australia relative to an application for a skilled permanent-entry visa, because the 457 visa is usually processed quickly. In addition, it is less demanding because it allows the migrant to avoid the skill accreditation and English language hurdles of the permanent-entry skilled visa categories.

The main problem with this development arises from evidence that it allows employers to recruit workers who are willing to work

at or close to the specified minimum salary rates that are well below market salary rates prevailing in the industry. The looseness of the regulations also allows the importation of workers who may lack the technical skills or English language skills required by most other employers, whether at trade level or above. There is a growing body of anecdotal evidence that some employers have engaged these 'skilled' workers in semi-skilled activities on pay and conditions well below those acceptable to Australian workers. The Deegan report found that this practice was not uncommon in the 457 program.

The outcome is extraordinary. The permanent-entry employer-sponsored visa subclass is now dominated by persons sponsored while in Australia on a temporary-entry 457 visa. In 2007–08, there were 17,760 principal and accompanying visas issued under the onshore 856 and 857 permanent entry employer nomination visa subclasses. According to the DIAC State/Territory Summary Report for 2007–08, 16,070, or 90 per cent, were issued to migrants who held a 457 visa at the time of the application.⁷

The numbers sponsored via this pathway are accelerating. Over the July–December 2008 period, the number of 457 visa holders gaining permanent residence via the onshore 856 and 857 visa subclasses was 13,390.⁸ At this rate, the total count for 2008–09 will far exceed that for 2007–08 and will reach nearly 27,000, an increase of 67 per cent.

Since a 457 visa holder has to have been employed by an Australian employer for a minimum of two years (including 12 months with the sponsoring employer), many of those sponsored would have been employed on a 457 visa by the same employer during that period. Any deficiencies in technical skills or English language skills are thus being imported into the skilled permanent residence program via the lower standards that employer-sponsored visas are permitted.

Similarly, to the extent that these workers are employed under wages and conditions less than those for Australians doing similar work, the entry of such workers will undermine the workplace standards and rates of pay of the mainstream workforce. Furthermore, there is nothing in the 457 visa regulations preventing a sponsoring employer from keeping 457 visa holders in employment while at the same time retrenching local staff. There are instances where this has already occurred. If an employer is experiencing difficult market conditions, it may well be to their advantage to keep the lower-paid 457 visa holders at the expense of Australian resident workers. These circumstances are increasingly likely to arise in the current financial and employment climate.

For their part, the sponsored migrants have to accept such conditions since they cannot obtain permanent residence without the support of their employer sponsor.

As Barbara Deegan, who conducted an Integrity Review of the 457 visa subclass concluded in October 2008, stated: *It has been made clear during the consultation process that where a visa holder has permanent residency as a goal, that person may endure, without complaint, substandard living conditions, illegal or unfair deductions from wages, and other similar forms of exploration in order not to jeopardise the goal of permanent residency. These situations are exacerbated where the visa holder is unable to meet the requirements for permanent residency via an independent application.*⁹

Table 2: Numbers of visas issued for principal applicants under the Employer Nomination Scheme and the Regional Nomination Migration Scheme, Australia, 2007–08

Occupation	ENS offshore (121)	RNMS offshore (119)	ENS onshore (856)	RNMS onshore (857)	Total ENS and RNMS
Registered nurse	49	12	678	252	991
Business and information prof.	4	1	283	12	300
Marketing specialist	17	2	247	16	282
University lecturer	91	21	128	29	269
Specialist managers NEC	18	2	236	9	265
Computing professionals NEC	4		238	8	250
Cook	19	19	115	61	214
Sales and Marketing Manager	11	6	180	7	204
General Manager	14	3	165	11	193
Project or program administrator	8	9	140	14	171
Chef	6	8	111	37	162
Personnel consultant	152	2	154		
Selected other occupations					
Welders	1	1	44	18	64
Toolmakers	0	0	3	1	4
Bricklayers	1	1	4	1	7
Carpenters	2	2	19	2	25
All other occupations	250	347	3139	973	4709
Total	495	434	5882	1453	8264

Source: DIAC, 2007–08 visas issued dataset

The occupational make-up of the permanent-entry employer nomination program has been notable for its diversity. It is not composed of occupations for which shortages have been acute in Australia. Table 2 provides an indication of the occupational base in 2007–08. Tradespersons, except cooks, are conspicuous by their absence. The occupations visaed under the ENS are predominantly professional and managerial and the migrants themselves are university-trained. The Table indicates that there were 282 marketing specialists. By contrast, there were only 38 welders, 4 toolmakers, 7 bricklayers and 25 carpenters (included under 'selected other occupations' in Table 2).

But the concern is that the number of employer-sponsored permanent visas granted in the trades and subtrades occupations will grow rapidly—if that process has not already started. As noted above, onshore visa grants in the ENS and RSMS grew rapidly in the first half of 2008–09, but the occupational composition of that growth is not known. The evidence suggests many lower-skilled 457 workers are staying in Australia longer than the 457 average and thereby building up the Australian residence and work experience needed for permanent residence visas under ENS and RSMS. In December 2008, 23 per cent (18,980) of the total stock of 457 visa workers were in trades or subtrades occupations.¹⁰ This is a higher than their 19 per cent share of all 457 visa grants in 2007–08.

The permanent resident skill-tested categories

The great majority of those visaed under the skill-tested, permanent-entry program (44,153 visas to principal applicants) in 2007–08 were issued under the points-tested Skilled Independent categories. Most of these visas were issued to applicants with university qualifications, nearly half of whom were already in Australia and who had completed studies at the

university or VET level in Australia. These visa category programs are being driven by the applicants themselves and not by Australian employers. There is a huge interest in obtaining permanent residence on the part of Asian residents. Applicant success in gaining permanent entry is mediated by the points-selection system. By May 2005, when DIAC set the pass mark at 120, the key determinant of selection had become whether the applicant had an occupation listed on the Migrant Occupation in Demand List (MODL). To be included, an occupation had to be in national shortage as determined by the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR). In addition, DIAC has privileged former overseas students in the application process by granting extra points for those with Australian training and waiving the work-experience requirement for applicants applying from overseas.

There has been no quota for individual occupations. As a consequence, the points-tested categories have come to be dominated by just a few occupations, notably accounting, computing and cooking. Most of the former overseas students enter under these occupations. In part, this is because they offer the least costly and least demanding study requirements of the occupations listed on the MODL.

However, it is now evident that even during the boom era, these migrants have struggled to gain professional-level employment. Only a minority have succeeded in gaining professional positions as accountants, computing professionals and engineers within a year or two of entering the Australian workforce.¹¹ In brief, the Independent Skilled Migration has proven a very imperfect skills acquisition strategy for the Australian labour market.

Policy changes announced in December 2008

The above description of the main skilled visas implies that a review of their merits was overdue, even in the absence of the current financial crisis. The Rudd Government has announced some changes. These are now examined with an eye as to whether they deal with the problems identified.

In the case of the skilled permanent residence program, the Minister for Immigration and Citizenship (DIAC), Senator Evans, announced on 17 December 2008 that the government intended to reallocate selection priorities. Evans stated that the government would retain the 133,500 program level as a cap, 'with the actual number of visas granted to be kept under review by the government for the remainder of the 2008–09 year'.¹² The minister said he expected the numbers to fall in 2009–10

Under the new system, first priority is to be given to those sponsored under the employment nomination visa categories and second priority to those nominated under state or territory government sponsored visas. These permanent entry visas henceforth share overall priority along with applications under the 457 program, which were previously given top priority by DIAC. This means that DIAC staff resources will be allocated first to processing visa applications sponsored by employers or state governments.

There have been no accompanying changes to the rules governing permanent entry employer nominations. Employers can continue to sponsor as many migrants as they like, with the regulations remaining as described above.

In the case of the temporary 457 visa, the Labor Government initiated an Integrity Review conducted by Barbara Deegan, which reported in October 2008, one of

whose conclusions is quoted above. The Report contains some 68 recommendations for changes to the 457 visa which together amount to a far-reaching overhaul of the 457 visa program.

When the Immigration Minister publicly released the report of the Integrity Review in November 2008, he said that government decisions on its recommendations 'would inform the development of the government's reforms to the temporary skilled migration program as part of the 2009 Budget'.¹³ That effectively defers decisions until May 2009 and implementation of any major changes until much later. Despite the gross defects in the 457 program disclosed in the Integrity Report, which rising unemployment will surely make worse, and the commitment of \$42 billion on the Jobs Plan to protect Australian jobs, the Rudd government appears content with this leisurely timetable for reform of the 457 visa. In February 2009, the Immigration Minister released an exposure draft of proposed new 457 regulations including an employer obligation to pay 'market rates' of pay. But he revealed that implementation of this fundamental 457 reform would not be implemented until mid-September 2009.

This means that employers in 2009 can still sponsor as many 457 or permanent migrants as they wish, with only minimal English language requirements and without any general requirement for labour market testing. For example, if employers wish to bring in computer programmers in fields where there is—or soon will be—an oversupply of Australian workers they can do so, whether under the permanent or temporary employer-sponsored visa programs.

The Rudd Government has also not addressed the most serious issue identified above. This is the way the 457 visa system is being transformed into a concessional

avenue for permanent residence via the permanent entry ENS. The decision to give the latter visa category first processing priority will make the situation worse. It will give an added incentive to those seeking permanent entry, but whose occupations are not on the Critical Skill List (described below) to seek entry to Australia by first gaining a 457 visa. In turn, this will mean that program expansion will be driven by temporary-entry migrants who cannot gain entry via the permanent residence skill visa categories.

In other words, the Rudd government is facilitating a backdoor entry to permanent residence in Australia to applicants adjudged not to be in demand under current circumstances, many of whom are likely to have poor English and skills that would not be recognised by Australian accreditation authorities.

In effect, the government has rejected a key recommendation from the Integrity Review, which is that:

*The Subclass 457 visa should not be able to be used as a device to obtain long term residence in Australia for applicants who would not qualify under the permanent migration program . . . The temporary nature of the visa should be emphasised.*¹³

In summary, the main effect of the Rudd Government's announced changes to the immigration rules is to increase the role of employers in determining the occupational and skill make-up of the skilled program. Senator Evans is quite explicit about this role and its alleged benefits in present circumstances. He states that:

*Around 80 per cent of the employer-sponsored visas are granted to people who are already living and working in Australia on temporary visas. Fast-tracking the grant of these visas will provide greater certainty to employers and ensure the program does not contribute to local unemployment.*¹⁵

There was little basis for these claims in the boom labour market and no basis in the circumstances of labour market surplus that the Jobs Plan assumes. As indicated, under the current rules there is no labour market testing.

Would employers really want to bring in workers for jobs that locals could do in the present circumstances? Although we anticipate that there will be some decline in visas sought by employers, there are powerful incentives for employers to sponsor foreign workers in the present difficult economic circumstances. The main one is that employers with 457 visa holders on their staff who are working on pay or conditions below those locals would accept have a powerful interest in maintaining this cost advantage. They may even want to retrench locals in favour of 457 visa-holders. In addition, those migrants anxious to use their 457 visa as an avenue to permanent residence will do what it takes to persuade their employer to sponsor them. And, as noted above, there is a large pool of 457 workers already in Australia (numbering 82,500 in December 2008), many of who would relish PR for themselves and their family members.

Changes to priorities in the points tested categories

In December 2008, the government created a new third-priority category. This was the Critical Skills List (CSL). The list is limited to various health professional fields, most engineering fields and a few metal and construction trades areas. Computing professionals are excluded except for specialties listed on the MODL. Cooking and hairdressing are not included, nor is accounting unless the applicant can establish that he/she has reached a score of 7 on the IELTS test.

It is unlikely that applicants with occupations on the CSL will exhaust the program places available. As a consequence, those in the

fourth priority category, that is occupations on the MODL, will be processed next. This means that it is possible that applications from the accountants, computer programmers, cooks and hairdressers will be processed during 2008–09 and perhaps 2009–10. Since the government has not changed the rules governing selection since September 2007, most applicants will be selected. The September 2007 changes introduced a new transition visa (category 485) that gives applicants 18 months to gain employment experience or complete a professional year. In the case of accountants and most other occupations there is no requirement that during their professional year or their year of employment experience that they show evidence that they have obtained level 7 on the IELTS test.

Aggregate labour market implications under the high migration scenario

Another way of looking at the impact of migration on the Australian workforce is to explore the aggregate labour market effect of net migration to Australia. This requires examining a different set of statistics. When the ABS counts the movement of people into and out of Australia, it includes all those who are moving permanently or temporarily (for a year or more) whether they be migrants selected as settlers or temporaries under the skill, family reunion and humanitarian movements, whether they come from New Zealand or whether they are Australian residents moving in and out of Australia.

According to the ABS estimates, by 2006–07 the net inflow to Australia was 177,600

persons. This represents a 0.86 percentage net growth of Australia’s population, which is well above anything experienced in Australia since the late 1960s. For the year 2007–08, the ABS has estimated a further increase in net migration to 213,500. We have prepared labour market projections which assume that the net intake will fall somewhat to net 180,000 per year in the immediate future, to take account of a possible reduction in the number of employer-sponsored temporary migrants. Until the Labor Government announces that it has decided to reduce its record high program, labour market planning has to occur in this context.

It is not possible to precisely translate the numbers of migrants visaed under the skill programs discussed above into estimates of net growth in the Australian workforce.

Table 3: Labour force projections for Australia under selected overseas net migration assumptions, 2008–09 to 2018–2019

	2008 –2009	2009 –2010	2010 –2011	2011 –2012	2012 –2013	2013 –2014	2014 –2015	2015 –2016	2016 –2017	2017 –2018	2018 –2019
0 NOM											
Annual change (persons)	35,626	30,978	23,548	7,541	3,454	2,665	-1,410	-8,275	-12,560	-18,467	-16,098
Annual growth (per cent)	0.3	0.3	0.2	0.1	0.0	0.0	0.0	-0.1	-0.1	-0.2	-0.1
30000 NOM											
Annual change (persons)	53,835	49,437	42,227	26,509	22,725	22,187	18,355	11,781	7,797	2,170	4,873
Annual growth (per cent)	0.5	0.5	0.4	0.2	0.2	0.2	0.2	0.1	0.1	0.0	0.0
90000 NOM											
Annual change (persons)	91,774	87,891	81,239	66,059	62,782	62,758	59,448	53,367	49,835	44,588	47,525
Annual growth (per cent)	0.8	0.8	0.7	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4
180000 NOM											
Annual change (persons)	147,921	144,812	138,941	124,582	122,109	122,855	120,306	115,022	112,234	107,649	111,153
Annual growth (per cent)	1.3	1.3	1.2	1.1	1.0	1.0	1.0	0.9	0.9	0.9	0.9
Difference 0 net and 30,000 net	18,209	18,459	18,679	18,968	19,271	24,853	16,945	3,506	-4,763	-16,297	-11,225
Difference 0 net and 90,000 net	56,148	56,913	57,691	58,518	59,328	65,424	58,038	45,092	37,275	26,121	31,427
Difference 0 net and 180,000 net	112,295	113,834	115,393	117,041	118,655	125,521	118,896	106,746	99,675	89,182	95,055

Assumptions: Throughout TFR = 1.8; medium longevity; 180,000 net annual overseas migration from 2005 (series commences 2004); December 2008 labour force participation rates applied 2008-09 to 2018-19

There are too many components of the total net movement to do so. However, there is a reasonably close relationship between the recent growth in the numbers visaed under the permanent or temporary programs and the overall growth in the workforce attributable to the net migration flows as defined above.

With these qualifications, it is possible to estimate the labour market implications of the current surge in migration levels. For this purpose, we have assumed that the net migration intake will continue at 180,000 per year over the next decade. It is also assumed that migrants will exhibit the same propensity to enter the labour market by age and sex as their domestic counterparts. The labour force participation rates by age and sex used in the projection are the same as those that applied in 2006–07.

Table 3 provides four projections—our focus is on two of these. The first assumes that there will be no net overseas migration over the period shown. The projected growth or decline in the size of the workforce in this projection is a product of the entry of younger residents into the workforce minus retirements or withdrawals from the workforce among older resident workers. The projection shows that, even without any net migration, the Australian workforce will increase by around 30,000 a year over the next few years. However, by 2014–15, the domestic workforce will begin to decline slightly. This occurs because of the large number of baby boomers who will be entering their late 50s or early 60s by this time and thus leaving the workforce.

The second focus is on the impact of immigration at net 180,000 a year. If net migration continues at this level, the additional net inflow to the workforce (other than from resident sources) will be around 112,000 in 2008–09 and 114,000 in 2009–10. After this, there will be a gradual increase in the contribution of migration. The effect of migration at the 180,000 per annum level and

growth from domestic sources over the next couple of years will be to add around 140,000 per year to the overall Australian workforce.

These numbers provide a guide to the supply-side challenge that the Australian Government will have to deal with. They mean that, at the same time as the government is projecting that employment will fall in Australia, the workforce will grow by around 140,000 a year. New domestic entrants to the workforce will be looking for employment at a time when the number of jobs available will be falling, yet the competition for these jobs will be increasing, mainly from recently-arrived migrants.

The net migration intake to the workforce through 2009–10 will exceed the 90,000 jobs expected to be ‘protected’ under the National Building and Jobs Plan. At a time when the government is spending billions to protect jobs, it will be simultaneously running a migration program that will almost certainly neutralise the beneficial impact of this expenditure for Australian workers.

Do migrants create more jobs than job seekers?

There is a diversity of arguments deployed in defense of continued high migration, even in depressed economic circumstances. The favourite of Senator Evans is that migration will contribute to an improvement in the ratio of workers to dependents over the long term. This is true, but the extent of the benefit is dependent upon a number of variables, including the workforce participation rates of persons aged 65 years and over in future. Furthermore, in 2005 the Productivity Commission advised the Australian government that immigration was not a feasible countermeasure to population ageing. The Commission noted that a high-migration strategy affected population numbers more than age structure.¹⁶ Nevertheless, this issue is not a relevant consideration in the current crisis. Instead the

focus must be on protecting domestic jobs at time of unprecedented financial turmoil and a downturn in Australia’s export revenues.

The only relevant issue in the current context is whether a high influx of migrants is likely to generate a commensurate growth in employment. This is the conclusion commonly reached by economic modelers for medium to long-term projections of the impact of immigration. These projections invariably assume that the incoming migrants are highly-skilled and will find employment to match their skills. Under such circumstances, the assumptions embodied in these models about the impetus such employment gives to productivity and output ensure that there will be a positive flow on effect of additional domestic employment. The models also assume that there will be buyers for the increased output—including buyers for additional exports of Australian-produced minerals, manufactures and services.

Plainly, these assumptions do not currently hold. Many of the migrants being attracted under the skilled independent categories will struggle to gain professional or trade employment. Some of those sponsored by employers will effectively displace domestic aspirants for the jobs in question. Also Australian exporters face a serious downturn in buyers for their products.

It is also routinely asserted by development industries that migration will give an impetus to Australia’s housing and city-building industries. This is unlikely in the short-term. Migration has been running at record levels over the past few years, with Sydney continuing to be the main settlement point. Yet, over this period, the number of new dwelling approvals in Australia has sharply declined, from 177,687 dwellings approvals in 2003 to 144,618 in 2008, and in the case of Sydney from 29,917 dwellings approvals in 2003 to 16,108 in 2008.¹⁷ The reason for this situation is that the housing investment

market is driven by investor and purchaser confidence, not by housing need. Migrants need housing, but if they cannot find employment quickly they are unlikely to accumulate the funds needed to purchase a house. Rather, they will further stress Australia's rental markets.

A slightly greater estimation of the jobs impact of the package was given to the Senate Finance and Public Administration Committee on February 9th 2009, by Monash University economist, Professor Dixon, who reported that his economic modeling estimated that job losses could be as high as 500,000, but that the government's stimulus package may reduce this figure by about 150,000 jobs.¹⁸

What should be done?

In our judgement there needs to be a sea-change in thinking about skill shortages in Australia. Successive Commonwealth and state governments, as well as employers, have become accustomed to resorting to migration to fill skill vacancies. DIAC has responded by developing a wide range of visa categories to meet these needs. All these interests have assumed that the need for more skilled workers will continue to exceed the stock of domestic workers or potential workers.

This is not going to be the case in the immediate future. As long as the number of job seekers exceeds the number of available jobs the focus of government and employers should be on domestic sources of labour. The recruitment focus should switch from overseas to local sources. Instead of worrying about removing obstacles to recruitment from overseas, the priority should be on how Australian training and mobility incentives can ensure that any surplus of workers in one part of Australia can be helped to relocate to the shortage locations. In order to enforce this priority the following actions should be put in place. Migration should be limited to those skills where there is a substantiated

case that the skill cannot be obtained from within Australia. The Rudd government needs to make the following changes:

The skilled permanent program

1. The *Employer Nomination Scheme (ENS)* needs to be changed as follows, in terms of both the eligible occupations and the regulatory criteria:

- The gazetted list of occupations for which ENS visas can be granted should be urgently reviewed, and greatly reduced, in the light of the prospective oversupply of labour in many of these occupations. This list is known as the ENSOL or ENS Skilled Occupation List. There should be independent reviews of the ENSOL every three months in the light of actual and projected changes in labour market circumstances. The expectation is that the list of ENS-eligible occupations would be progressively culled as unemployment worsens.
- The ENS list should remain restricted to ASCOs 1–4 only (managers, professionals, associate professionals and tradespersons), i.e. all sub-trade occupations in ASCO 5 and below should not be eligible for ENS.
- Labour Market Testing (LMT) at market wage rates for all ENS visa applications should be mandatory, effective immediately. LMT should include effective Australia-wide advertising of the vacancy, as the government is forecasting rising national unemployment.
- Employers should be required to pay at least market wage rates to ENS visa applicants, not the current 457 minimum salaries as is current policy. Developing a mechanism for establishing market rates for ENS positions should be a top priority for the government since it is committed to expanding the ENS program.
- A formal assessment of the qualifications of ENS applicants (professional, trade etc) should be required as a mandatory condition for granting the PR visa, in all

cases where a positive skills assessment has not already been made (e.g. as part of obtaining a temporary visa). For visa applicants in the trades (ASCO 4), the assessment should take the form of a practical trade skills test and not a paper-based assessment.

- English language skills: the minimum required level should be increased from its current level of Vocational English (IELTS 5) to at least the standard currently required for a PR visa in the General Skilled Migration Program, i.e. IELTS 5 for most trades positions and IELTS 6 for occupations in ASCO 1–3, and IELTS 7 for accountants since 1 January 2009.
 - There should be no concessions (exceptional circumstances) on skill, age or English language grounds, as there currently is in the ENS.
 - The concessions currently available for 457 visa workers seeking PR through the ENS should be removed. They are currently the major source of ENS nominations. They should meet the same English language and credential assessment requirements as other ENS applicants (as specified above).
 - The current requirement that ENS employers attest that the ENS position will be full-time and 'available for at least 3 years' should be retained, more rigorously scrutinised and enforced by DIAC in assessing the position nominated by the employer.
2. *The Regional Sponsored Migration Scheme (RSMS)*
- The RSMS occupation list should be the same as the revised ENS list, described above. It should be restricted to ASCOs 1–4 only (Managers, Professionals, Associate professionals and Tradespersons), i.e. all sub-trade occupations in ASCO 5–7 currently eligible for RSMS should be removed from the list. If any occupations in ASCO 5–7 are retained on the list, they should only be

- among highly-paid positions only, e.g. certain mobile plant operators.
- As with the ENS, LMT at market rates should be mandatory, along with payment of market rates, increased English language standards and qualification assessment.
3. *The permanent entry skill-tested visa subclasses:*
- There should be an immediate independent, transparent and urgent review of the occupations on the Critical Skills List (CSL) and ongoing independent reviews every three months in the light of changed labour market circumstances and outlooks.
 - The number of PR visas to be granted in each year should be capped for each CSL occupation and the CSL component as a whole. In other words, there should not be an unlimited number of visas as is current government policy.
 - DIAC should indicate how far it intends to recruit migrants whose occupations are listed on the fourth priority for selection, that is, those with occupations listed on the Migrant Occupation in Demand list (MODL). Senator Evans has indicated that these have been concentrated among just a few occupations, including accountants, cooks and hairdressers. Yet these occupations remain on the MODL and under the current rules, points tested applicants will gain PR. The government should remove these occupations from the MODL pending the completion of a review of the MODL.
 - The minimum English language requirement for ASCO 1–3 occupations should be raised to 7 on the IELTS. In the tight labour market conditions of the present crisis, migrants without professional-level English will go to the back of the employment queue. That will provide incentive to undercut local wages just to get a job.
 - There are range of visa classes under

the skill-tested category which grant significant concessions to those sponsored by relatives and/or those which involve a regional destination or location of the sponsor. These visa subclasses should be urgently reviewed. The largest is the Skilled Designated Area Sponsored (SDAS) visa subclass. This allows relatives living in certain designated areas to sponsor relatives on concessional terms. In this case, the sponsored applicant is not points tested. All that is required is that their occupations are listed on the Skilled Occupation List, that their credentials are assessed, that they meet the minimum English language requirements and that they live in the designated area for a period. The occupation does not have to be in short supply in the area where the sponsor lives. Since Melbourne and Adelaide are on the designated area list, the requirement to live in a designated area is hardly onerous. Most of those sponsored under the SDAS visa do locate in Melbourne and Adelaide.

The 457 visa temporary skilled program

The government should bring forward its proposed implementation date for changes to this program (currently mid-September 2009), preferably by May 2009.

1. The list of occupations for which 457 visas can be granted should be urgently reviewed, and reduced, in light of current and likely oversupply of labour in many of these occupations. As with the

skilled-permanent visa program, there should be an independent review of this 457 occupation list every three months in the light of actual and projected circumstances in the Australian labour market. The expectation is again that the list of 457-eligible occupations would be progressively culled as unemployment worsens in skilled occupations.

2. Labour Market Testing (LMT) at market wage rates should be a requirement for all 457 visa applications, except for occupations designated and justified as specific exclusions, effective immediately.
3. If the Commonwealth government is unable to apply LMT to some 457 visa positions due to its existing WTO/FTA obligations, it should clearly and publicly explain what these obligations are and their implications for the 457 visa program. Similarly, the government should explain whether it has made any offers to further constrain LMT in the 457 program as part of its WTO negotiations.
4. Market rates of pay should be an immediate 457 sponsorship obligation.
5. Employers should not be permitted to sponsor 457 visa holders in occupations where there have been redundancies within the enterprise within the last 12 months.
6. Where an enterprise retrenches staff, they must give priority to retaining Australian residents over 457 visa holders in the same occupational group, and this requirement should be enforceable.

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- ⁴ *ibid.*
- ⁵ Except in the Regional Sponsored Migration Scheme (RSMS), and 'regionally-certified' 457 visas, where a form of LMT applies, and similarly in 457 Labour Agreements.
- ⁶ The DIAC guide for employers states that nominations for ASCO major groups 8 and 9 'are not generally considered to fall within the scope of the RSMS program, and would not, under policy, meet the exceptional circumstances requirement', DIAC, *Booklet 5, Employer-sponsored categories*, p. 20. That is equivocal.
- ⁷ DIAC, Subclass 457 Business (long stay) *State/Territory Summary Report 2007–08*, financial year to 30 June 2008
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