

**The Australian Population Research Institute, Research Report,
August 2017**



The Coalition's 457 Visa Reset: Tougher Than You Think

Bob Birrell

The Australian Population Research Institute <tapri.org.au>
PO Box 8107
Monash University LPO
Victoria 3800
Australia

Report authors

Bob Birrell (mobile 0413 021 126) is the Head of the Australian Population Research Institute (TAPRI), an independent, non-profit research organisation.

Articles published by the Australian Population Research Institute may be republished provided the institute and its writers are appropriately credited, and a link is made to our website <tapri.org.au>.

Any articles reproduced cannot be edited or any material sold separately.

The Coalition's 457 Visa Reset: Tougher Than You Think

Bob Birrell

The Australian Population Research Institute

Executive Summary

Over the resources boom years 2003 to 2012, successive Australian governments opened up Australia's immigration policy in order to achieve two ends:

1. To give employers open-ended rights to recruit the skilled migrants they needed on a temporary basis via the 457 visa program
2. To maximise the opportunity for employers to keep these temporaries for the long term by sponsoring them for a permanent entry employer sponsored visa (ENS).

The result is that these two visa subclasses are now the main source of skilled migrants. In 2015-16 there were 45,395 temporary 457 visas issued to principal applicants and 48,250 permanent ENS visas granted to principal applicants and dependents.

Few commentators realise that the reset will reverse these priorities.

The reset certainly came as a shock. The Coalition stated that from March 2018 it would abolish the 457 visa and replace it with a new Temporary Skills Shortage (TSS) visa. The Prime Minister, Malcolm Turnbull, said that: 'Australian workers must have priority for Australian jobs, so we are abolishing the 457 visa... we will no longer allow 457 visas to be passports to jobs that could and should go to Australians'.

The head of the Department of Immigration and Border Protection (DIBP), Mike Pezzullo, asserted that the 457 visa had become a 'bloated out and a proxy pathway to permanent residence'. The purpose of the reset, he said, was to make the 457 visa regime address 'Short term need'.

Notwithstanding such bold statements, subsequent media analysis has concluded that the reset is largely cosmetic. The media focus has been on just one aspect of the reset. This concerned whether or not employers would maintain their rights to sponsor migrants for a 457 visa or a Temporary Skilled Shortage (TSS) visa when the 457 visa was abolished in March 2018.

It soon became evident that, on this issue, all that had changed was that the government had split the eligible occupations into two streams: one allowing employers to enter employment contracts with temporary foreign workers for an initial two years (with the option for a further two years); and the other which permitted four year employment contracts. The two year stream comprised 250 occupations and four year stream 185 occupations.

Furthermore, it was quickly revealed that few significant occupations had been removed from those eligible for sponsorship. Though the total number of occupations had been reduced from 651 to 435, those deleted such as goat farmers and kennel hands were insignificant. Those sponsored in the deleted occupations made up just ten per cent of the annual number of 457 visas granted in recent years (p. 2).

The analysis in this paper (pp. 4-7) shows that the Coalition has not put any mechanism in place to remove any of the 435 eligible occupations where there is evidence of a surplus of domestic aspirants.

The reset looked like, and was labelled as, window dressing; not much more than a publicity stunt.

A reassessment – the reset is an immigration policy game changer

It is a game changer because it will have two consequences:

1. It will significantly reduce the number of migrants eligible to apply for a TSS visa and toughen the requirements for employers who want to sponsor those that are eligible; and
2. It will reduce the number of ENS visas granted either to TSS visa holders or other foreign workers because only a small fraction of the occupations previously eligible for such sponsorship will continue to be eligible. Employers will also face much tougher sponsorship hurdles.

Reducing the supply of eligible applicants and tightening requirements for sponsors

From March 2018, applicants for TSS visas must have two years of relevant experience in their nominated occupation. This is a game changer, because over half the 457 visas currently being granted are to onshore applicants. The majority of these are former overseas students or Working Holiday Makers (pp. 12-13).

Most of these will struggle to find the required experience, even though they may hold graduate credentials, especially in accounting. This is because such jobs are scarce and employers prefer domestic applicants to foreigners on temporary visas (p. 12).

In addition, the reset will sharply reduce the number of onshore applicants (mainly overseas students) who have been able to bypass the 457 route to permanent residence by being sponsored directly by employers. This is the case for around half of those sponsored in the Regional Sponsored

Migration Scheme, which is responsible for about 12,000 of the annual total Employer Sponsored visas being issued. This group will be largely excluded from this pathway in future, because, from March 2018, all applicants will have to have three years' experience in the relevant occupation (pp. 8-9).

For their part, potential sponsors will be prompted to think twice about whether pursuing a 457 or TSS visa sponsorship is a good idea. They will have to pay additional visa costs and training levies and they will have to provide evidence that they have labour market tested. They will also be subject to more surveillance in regard to their wage payments to visa holders. Employers who do not pay the nominated salary to 457 or TSS visa holders will be publicly exposed through interrogation of Tax Office records (p. 11).

Abridging the pathway from a temporary work visa to an ENS visa

From March 2018, those holding a TSS visa in the two year stream of occupations will no longer be eligible to be sponsored for an ENS visa. This will cut the number of ENS visas to about a third of their recent level – given the current pattern of ENS sponsorship by occupation (p. 7-8).

The reset has also placed a number of new hurdles and costs in the path of the relatively few employers who have occupations they want to fill that are still eligible for an ENS sponsorship. The most important are that eligible employers will have to establish that there is a genuine need for the person sponsored to do the work (p. 10). The persons being sponsored will, from 1 July 2017, be required to meet much higher English language standards than in the past (p. 8). He or she will also have to have been employed by the sponsor for three years rather than two as in the past. In addition, as with TSS visa holders, there is the new threat of public exposure if the nominated salary level is not being paid (p. 12).

Political Implications

The reset puts an axe to the two pillars of past immigration policy of encouraging employers to recruit as many skilled temporary foreign workers as they want and then facilitating their transition to permanent residence via ENS sponsorship.

Though much more remains to be done (pp. 14-16), the reset has gone some way to redressing the balance between employer interests and those of domestic workers.

It is the first serious sign that either major political party is prepared to tackle the immigration issue. All the Coalition's reset initiatives point one way, they add additional constraints and costs to employers considering employing foreign workers on a temporary or long term basis.

Make no mistake about the significance of the reset. When fully in place from March 2018, the flagship ENS program will fall to less than a third its recent size of 48,250. The number of TSS visas will also fall sharply relative to the current number of 457 visas being granted. Those who think that immigration levels are set in concrete will have to reassess this belief.

The reset leaves Labor exposed. It has been inert on immigration policy.

True, the significance of the reset has not yet cut through to the public. Expect further Coalition reform designed to rectify this situation.

Those who think that Australia is immune from policy discord on immigration are wrong. The immigration issue is now in play.

The Coalition's 457 Visa Reset: Tougher Than You Think

Australia's temporary entry worker program is far larger, in relative terms, than in any other developed country. It is huge in scale, with 45,395 visas granted to principal applicants in the 457 visa subclass in 2015-16. It has given employers the right to recruit as many migrants in trade level and above occupations as they want. There is no requirement on employers to demonstrate that the sponsoring enterprise needs to fill the position or that the temporary resident proposed has the necessary skills. If the employer wants to do a favour for a relative, accept a financial inducement from an applicant to sponsor them, or perhaps anticipate lower labour costs from the sponsorship, he or she can do so.

The 457 program also gives the employer the right to sponsor the temporary worker for a permanent entry visa, again with few restrictions. Near 20,000 visa subclass 457 holders were so sponsored in 2015-16.

As is evident, the 457 visa is extremely generous to employers and open to abuse if employers want to use the carrot of permanent residence to tie the sponsored person to wages and conditions below those prevailing in the wider labour market. In addition, it makes a large number of jobs inaccessible to domestic job aspirants, at a time when there is increasing competition for employment.

There are also large downstream costs to taxpayers. When 457 visa holders and their families gain permanent residence, they have immediate access to state-financed education for their children, Medicare benefits and family payments.

The reset in brief

On 18 April 2017 the Turnbull Coalition government announced that the 457 visa will be abolished from March 2018. From this date the 457 visa program will be renamed as the Temporary Skills Shortage (TSS) program. The government also indicated that prior to March 2018 the number of occupations eligible for a 457 visa would be reduced from 651 to 435. Furthermore, these 435 occupations, would, from 19 April 2017, be split into two streams. Some 185 were eligible for four year work contracts between the sponsor and sponsored person and the other 250 for two year contracts.

The crucial impact of this split into two streams was that from March 2018 those with an occupation included in the two year TSS stream will no longer be eligible to be sponsored for a permanent entry employer sponsored visa. Previously, all those holding 457 visas in the 651 eligible occupations could be sponsored by employers under this permanent entry pathway.

The announcement included major changes to the rules determining whether those holding an occupation eligible for a permanent residence sponsorship would be granted the visa. (See Figure 1 for the timing of these new rules).

Media response to the reset

The Coalition government's announcement was greeted with widespread scepticism. This is hardly surprising considering that the Coalition both in opposition and in government (until the reset) has been an unabashed advocate of high migration and of enhancing employers' rights to access migrant skills.

Figure 1: Timing of major reset changes

<p>From 19 April 2017</p> <ul style="list-style-type: none">• List of occupations eligible for a 457 visa released• Split of eligible occupations into those that can be contracted for two year and four year periods
<p>From 1 July 2017</p> <ul style="list-style-type: none">• Revised list of occupations eligible for two year and four year contracts released• Much tougher English language requirements for all permanent entry employer sponsorship visas
<p>From March 2018</p> <ul style="list-style-type: none">• 457 visa abolished and replaced by the Temporary Skills Shortage (TSS) visa subclass• Labour market testing required for all TSS visa applications• Employers must pay the Australian market salary rate to all TSS visa holders• Occupations limited to two year contracts no longer eligible for a permanent entry employer sponsorship• Two years of relevant occupational experience required for all TSS visa applications• New rules for employer sponsorship visas introduced. They include:<ul style="list-style-type: none">○ At least three years relevant work experience for all applicants○ Employers must pay the Australian market salary rate

The leader of the Labor opposition, Bill Shorten, dismissed the reset as cosmetic. He said that the occupations deleted, such as zookeepers, goat farmers and kennel hands were of no importance. He claimed that the deletions would only cover eight per cent of those currently applying for a 457 visa. He was close to the mark on this. In fact, the occupations removed covered about ten per cent (based on the number of visas issued for the relevant occupations over the past six years).

Shorten and other commentators have also asserted that the new temporary two and four year visa streams will operate much as has been the case in the past. In one sense this is true. Employers can continue to sponsor migrants in the remaining eligible occupations for a 457 visa.

I initially shared this scepticism, partly on the same grounds as Shorten, but also because, just a few weeks later, the Coalition announced that the 2017-18 permanent entry program would remain unchanged at 190,000. In my view (at the time), if the government was serious about putting Australian job seekers' interests first, it would not have continued with its record high immigration program. But let's keep an open mind, pending close examination of the reset.

The government's headline policy commitment: jobs for Australians the first priority

When Malcolm Turnbull announced the reset, he said that 'Australian workers must have priority for Australian jobs, so we are abolishing the 457 visa... We will no longer allow 457 visas to be passports to jobs that could and should go to Australians'.¹ On 17 July 2017, Turnbull repeated this commitment when addressing the LNP Queensland State Conference. He stated that the abolition of the 457 visa was about:

Prioritising Australian Job-seekers, ensuring that wherever possible local jobs are filled by Australians.... The 457 visa will be replaced with new temporary visas, underpinned by skills lists that are focussed on skills shortages.²

Peter Dutton, the Immigration Minister, whose ministry initiated the changes, put it in a bit more detail on 17 April:

We want – particularly in areas where there is high youth unemployment, we want those young people – or people at the other end of the scale that have found themselves out of work or made redundant – we want those people in jobs first. And as I say we'll work with companies, that if they can't fill Australian jobs with Australian workers, we don't want the default position to be a foreign worker going into that position in the first instance. We want it ...as the last alternative, the last option.³

Dutton also stated that the pathway to permanent entry would be truncated. In the case of the two year stream, after the expiry of the two years; 'there won't be permanent entry residency outcomes at the end of that.'⁴

During the Senate Estimate Hearings on the immigration portfolio in May 2017, the head of the Department of Immigration and Border Protection (DIBP), Mike Pezzullo, agreed with Dutton's assertions. According to Pezzullo, the 457 visa had become a 'bloated out and a proxy pathway to permanent residence'.⁵ There is compelling evidence for this assertion. According to his departments' figures, around 50 per cent of all 457s whose visa was expiring over the years 2010-11 to 2014-15 subsequently obtained a permanent resident visa.⁶

Pezzullo told senators that the government intended to revert it to its original purpose, which was to satisfy 'short term need'.⁷ Senator Cash, the Coalition Minister for Employment and Training, who was present at the hearings, reinforced the message. She stated that the changes were 'all about ensuring that Australians get priority in the labour market'.⁸ The implication was that far fewer 457 visa holders would be able to transition to a permanent entry employer sponsorship visa.

How is the policy going to be implemented?

There are some key ways these objectives could be achieved:

1. By removing occupations in oversupply in Australia from the list of occupations eligible for 457 and TSS sponsorship.
2. Removal of the rights of employers to sponsor TSS visa holders for a permanent residence visa.
3. Implementation of a labour market testing regime designed to stop employers sponsoring migrants for the two streams where there is evidence that domestic workers are available.
4. Imposition of higher fees and training levies on employers who want to sponsor a foreign worker.
5. The supply of applicants could be cut by introducing tougher experience and credential requirements.

The government's reset is assessed on each of these potential measures.

1. Removal of occupations in oversupply

As noted, the 216 occupations removed from the eligible list as of 19 April 2017 account for just ten per cent of those sponsored to 457 visas over the last six years.

However, for the 250 occupations initially included in the two year stream, the Coalition announced that henceforth their continued presence on this list would depend on the current state of the labour market. About half the number of 457 principal applicants granted visas in 2015-16 held occupations listed on the two year stream. This provision applies not just to the TSS visas when they come into existence in March 2018 but also, from 18 April 2017, to the existing 457 visa regime.

This is significant change because previously there had been no assessment of the labour market for the occupations in question. The government indicated that when a revised list of the eligible occupations was provided at the end of June 2017 it would have access to Department of Employment (DoE) modelling on the state of the labour market for each occupation on the two-year stream.

This leaves questions, explored shortly, about why the four year stream is exempt from this labour market test.

The labour market and eligibility for the two year stream

The list of occupations included in the two year stream covered a wide variety of occupations including many in the managerial and administrative sector such as café and restaurant managers, and call and contact centre customer service managers. The largest individual occupation was cooks, where there were 2,366 subclass 457 visas issued in 2015-16. Another was university lecturers and tutors, where some 1,421 subclass 457 visas were issued to these staff in 2015-16 (mostly to lecturers rather than tutors).

When the Coalition announced its new lists for the occupations eligible for its two and four year streams at the end of June 2017, nothing much changed. The use of DoE assessment of the labour market saw a few minor occupations moved off the four and two year lists. However, this was compensated by the addition of several relatively important occupations to these lists. The ample domestic supply of applicants for many of the managerial and administrative occupations on the two year list did not lead to their delisting.

Those added to the four year list included university lecturers, senior management positions, environmental and life scientist professionals. Those added to the two year list included air transport professionals (pilots) and horse trainers.

The adjustments announced on 1 July mainly favoured employer interests, especially those that campaigned to move occupations from the two year to the four year list, notably the universities and some pharmaceutical interests.

The four year stream

The other half of those currently sponsored for 457 visas were in occupations listed in the four year stream. They include the behemoth, ICT professionals, for whom some 9,000 subclass 457 visas were issued to principal applicants in 2015-16. This is 9,000 out a total of 45,359 in that year! As well there were 1,097 subclass 457 visas granted to engineering professionals, 1,232 to accountants and auditors and many hundreds to nurses and general practitioners.⁹

The Coalition's reset explicitly insulates occupations listed on the four year stream from being removed from eligibility on account of the current state of the labour market in Australia. This is despite evidence of oversupply in many of the occupations included. How could this be, given the governments strong statement of principle in April that Australian job seekers interests would be given priority?

Successive governments have been wrestling with this issue for years. In 2010 the Labor government announced a major reform to its permanent entry points tested skilled visa subclasses. It established a Skilled Occupation List (SOL), based on DoE judgements of which occupations were in national shortage in Australia. Prospective migrants could only apply for a points-tested visa if their occupation was on this list.

This arrangement soon ran into trouble because the Coalition was getting advice from the Department of Employment that some occupations, such as accounting, were in oversupply and thus should be removed from the SOL. However, to do so would threaten the overseas student industry. Over half of all overseas students complete courses in business and commerce. Most complete the subjects needed for eligibility to apply for a points-tested visa as an accountant.¹⁰ If accounting was removed from the SOL it would sharply diminish the attraction of study in Australia, since it would cut off a crucial avenue to permanent residence. Successive governments have managed this dilemma by reducing the weight given to current labour market conditions in determining the occupations eligible for a points-tested visa. The Coalition completed this process when in 2016 it transferred the role of managing the eligible list to the Department of Education and Training (DET). The list was relabelled as the Medium and Long-term Strategic Skills List (MLTSSL). The Department declared that it was concerned only:

With 'medium to long term' skills needs rather than immediate skills shortages. As such, the Department of Education and Training is only seeking information on longer term trends rather immediate shortages and costs. 'Medium to long-term' means 2-10 years.¹¹

We have plenty of experience as to how this criterion has shaped the DET's judgements. Over the past couple of years DET has had advice from the DoE that there is a current oversupply of engineers, ICT professionals and accountants, and from the Department of Health (DoH) that there is an oversupply of doctors. This advice has been ignored.¹²

When the Coalition announced its 457 reset in April 2017, it indicated that the MLTSSL and the methodology used in its compilation would henceforth be applied to judgements on eligibility of occupations for the four year TSS stream.

This means that for occupations included on the four year stream, the priority will not be job opportunities for domestic workers, but other concerns.

One concern that is clearly stated by DET is that Australia would benefit from stockpiling migrants with certain 'valued' skills even though not in short supply. This is because they might be needed over the next ten years. Other concerns, not stated, include the health of the overseas student industry and of university revenues from overseas student enrolments.

Take the case of engineering. DoE data show that the imbalance of job vacancies to job applicants in the engineering profession is the worst of all the major professions.¹³ It is obvious why. The profession has been clobbered by the loss of jobs following the end of the resources construction boom in 2012 and most recently by the end of the massive Liquid Natural Gas construction program at Gladstone. This oversupply seems likely to worsen because the number of domestic undergraduate commencements in engineering has increased from 13,595 in 2012 to 14,896 in

2015. The intake of migrant engineers via the points-tested visas is adding to this oversupply. In 2015-16, there were 6,847 permanent entry visas issued to engineers, mostly to those selected under the points tested visa subclasses.

None of this cuts any ice with the DET. When the Coalition announced its revised list of occupations for the four year stream on 1 July 2017, all the professional engineering occupations were on the list. So too was accounting and most of the health professions.

DET's stockpiling stance indicates that it operates on a 'storage' view of the labour market. It assumes that if a stockpile of the relevant professionals results, partly because of high immigration, these people will hang around (probably employed at the sub-professional level). When the anticipated surge in demand occurs the Department assumes that they will be ready to take up the opportunities. This view misunderstands how the professional labour markets work. The skills of those not in professional employment tend to atrophy. When employers make decisions on appointments they are likely to prefer those with recent experience of whom a ready supply is likely from developing countries like India.¹⁴

DET does provide an annual opportunity for 'stakeholders' to express their views of whether particular occupations should stay on or be added to the points-tested MLTSSL list. However, these consultations are dominated by the associations representing each profession – such as Engineers Australia and the Australian Computer Society – and by the universities.

It might be expected that these 'stakeholders' would advocate on behalf of the domestic professionals struggling to find or retain work in the relevant profession and that they would oppose the retention of their profession on the MLTSSL. Some, like Engineers Australia, acknowledge that there is a serious oversupply.¹⁵ Yet, in its role as a 'stakeholder', Engineers Australia supports the retention of engineering occupations on the list.¹⁶ So does the Australian Computer Society (ACS) in the case of IT professionals and the CPA in the case of accountants.

Why? The revenue they receive for assessments of the qualifications of applicants for points-tested visas appears to be a factor. For 2015-16, Engineers Australia received some \$8.8 million in fees from assessing the credentials of migrant engineers seeking a points tested permanent resident visa.¹⁷ The dependence on this source of revenue is even greater for the ACS, which assesses IT credentials.

The universities take the same stance. Their motive is concern that if occupations like engineering, accounting or ICT are removed from eligibility for a points-tested visa, it will reduce the incentive for overseas students to enrol in the relevant university courses. They know that a significant factor in the choice of Australia as a study destination is the access this study provides to subsequent residence in Australia.

The Coalition Reset has fallen at this hurdle. In the case of the four year stream of occupations (which as noted, comprise about half the number of 457 visas issued), the government has allowed other priorities to prevail over the interests of domestic job seekers.

Don't be led astray by the business press complaints about alleged restrictions on recruitment of hi-tech labour. Mike Cannon-Brooks one of the principals of Altassian, the Australian Wall Street unicorn (floated with a more than one billion dollar valuation), has made the running. Altassian employs 1,000 staff in its Australian office, some 25 per cent of whom are on 457 visas.¹⁸ Cannon-Brooks asserts that any restriction on its access to foreign IT talent will undermine its continuing prosperity. The reality is that under the Coalition's reset Altassian can continue to recruit as many

foreign IT professions as it wishes – regardless of the current surplus of such professionals in Australia.

There were some other constraints on sponsors and tighter eligibility rules for some occupations on both the two year and four year streams specified at the time of the April 2017 announcement. These were included in a list of caveats governing eligibility. They came into effect as from April 2017. In the case of accountants, the employer could only sponsor an applicant for a 457 visa if the position was in a business that had an annual turnover of one million dollars or had at least five employees. Most of the major ICT occupations avoided any such restriction. However, in the case of the universities, they could only sponsor applicants for lecturer positions that required a minimum of two years' experience. This restriction, as we will see, did not last long.

2. Removal of the permanent entry visa carrot

Successive governments have facilitated the transition from a 457 visa to a permanent entry Employer Sponsorship visa. There are two visa subclasses within this permanent entry program. One is the Employer Nomination Scheme (ENS) and the other is the Regional Sponsored Migration Scheme (RSMS). The former is the largest, with about 36,000 places for principal applicants and dependents, compared with about 12,400 places for the latter. The places granted in the regional scheme have been granted on less stringent, concessional criteria.

More than 80 per cent of those receiving an ENS visa have been 457 visa holders. This transition is prized by both employers and 457 visa holders. As to the employers, the capacity to sponsor for permanent residence has created a captive labour market, because 457 visa holders know that to secure this sponsorship they have to accept the wages and conditions the employer is prepared to offer. This gives the employer a comparative advantage in the market place relative to employers who do not sponsor 457 visa holders. The option of permanent residence also, in effect, quarantines access to the jobs in question from domestic workers.

However, for the RSMS visa, only about half previously held a 457 visa with the sponsor. The rest gain a permanent entry visa via direct entry; that is by applying for jobs approved by the State governments as eligible for an RSMS visa. The significance of this split will become evident when the government's changes to the rules determining eligibility for these visas are examined.

The Coalition has made a significant start in reforming these arrangements. As noted, its April 2017 announcement declared that those with occupations classified in the two year TSS stream will not be eligible for sponsorship to a permanent entry employer sponsorship visa as of March 2018. Only those included in the four year TSS group will be eligible for such sponsorship from this date. This ruling will sharply reduce the number of temporary work visa holders able to move to permanent residence by this route.

An analysis of the 2015-16 visa issued data for the permanent entry Employer Sponsored visa category shows that only 6,757 (or 32 per cent) of the total of 22,091 principal applicants visaed would have been eligible for the four year list.¹⁹ The addition of a few occupations to the four year list on 1 July 2017 will result in only a marginal change.

This leads to the startling conclusion that, from March 2018, this permanent visa option will only be available for a small minority of those previously eligible.

You might wonder how this could be, given that by 2015-16 about half of all 457 visas were being allocated to occupations on the two year list. The answer is that employers recruiting many of those in these occupations, especially those in the managerial and administrative fields (such as Café and Restaurant Managers, and Call and Contact Centre and Customer Service Managers) have shown a high propensity for subsequent sponsorship for permanent entry.

The propensity to sponsor has been much lower in the major occupations on the four year list. In the case of the ICT behemoth, this propensity has been notably low. For the largest of the ICT occupations, that is, software and application programmers, there were 4,161 subclass 457 visas granted in 2015-16 but only 383 sponsorships under the employer sponsorship visa subclasses. The reason is that most of these 457 recipients were inter-company transfers brought here by Indian IT service companies. The business model of these companies is to compete ferociously for ICT contract work in Australia, partly on the basis of their capacity to bring their staff here and pay them less than local rates. Many then use the experience to bid to take the work offshore. They are not much interested in building up their permanent staff in Australia.²⁰

Other measures to tighten eligibility for an Employer Sponsored permanent resident visa

- Tighter English language standards

The Coalition has tightened the English language standards required for a permanent entry employer sponsorship visa. For all applications lodged from 1 July 2017, the English language requirements have been increased from 5 to 6 on the IELTS testing system. This is a move from 'Vocational' English to 'Competent' English. Though well short of what is required for most professional occupations, which is Proficient English or 7 on the IELTS system,²¹ Competent English is way above what is required for eligibility to the two and four year TSS visas. This is Vocational English, which requires a minimum of 5 on the four modules tested under the IELTS test – that is, reading, writing, speaking and listening. This is rudimentary English – not even acceptable if those sponsored were labourers, since many would not be able to read a safety manual, or even safety warnings.

Those with only Vocational English will struggle to meet the new language requirements for a permanent entry employer sponsorship visa. Though welcome, this toughening of English standards will not have a major impact, since most of those currently being sponsored for a permanent entry visa are professionals. Surely employers have not been sponsoring professionals for 457 visas with just Vocational English?

- Three years employment with the sponsor

From March 2018, all applicants for an Employer Sponsorship permanent entry visa will have to have been employed for three years by the sponsor rather than rather than two years as before. This is likely to act as a disincentive to persons considering applying for a TSS visa because it delays access to a permanent entry visa. As a by-product it will also add to the potential for employers to exploit the sponsored person. This is because they will have to remain with the employer and satisfy his/her expectations for another year before becoming eligible for permanent entry sponsorship.

- At least three years relevant work experience

Again, from March 2018, all applicants for an Employer Sponsored permanent entry visa will have to have three years relevant work experience. This will not be an issue for those already employed by the sponsor on a 457 visa since they will have to have been employed for three years on this visa.

However, this new requirement will have a huge impact on the RSMS visa subclass. As noted, about half of those visaed in 2015-16 utilised the direct route – that is, without first holding a 457 visa.

According to informants, around half of those receiving an RSMS visa are former overseas students.²² As is evident from DIBP statistics, most of these students utilise the direct route to their visa.²³ They will not be able to do so from March 2018. This is because hardly any will have the required three years relevant job experience. Under the present rules there is no requirement of relevant job experience at all.

A case study: The universities and employer sponsorship

An indication of the significance of the removal of the right to employer sponsorship is the fight back from some employers. The universities and bioscience employers have been particularly vocal (and successful in winning a reclassification of their occupations to the four year list).

As noted, 1,421 subclass 457 visas were granted to university lecturers and tutors in 2015-16. This is a very large number, given that the current equivalent full-time academic staff employed by Australia's universities is 21,553.

The universities complained that the Coalition proposals will limit their capacity to keep valued temporary appointments from overseas in their employ. In the words of immigration advocate Henry Sherrell, this 'would decimate the two-step migration process, replacing it with "the equivalent of guest worker" who had no way to become residents'.²⁴ This was, indeed, the stated object of the reset. It was designed to stop temporary migrants becoming permanent residents and thus forever barring local aspirants from the jobs in question.

In the case of university lecturers, this is what has been happening and, now that the universities have succeeded in joining the four year list, will continue to happen. They will also be able to do so without the caveat (noted above) that prevented them from sponsoring a lecturer or tutor unless the job required two years' work experience. The universities have persuaded the Coalition to revoke this caveat. They successfully claimed that the last two years of PhD work was the equivalent of the required experience.

In 2014-15, 568 university lecturers and tutors obtained permanent residence via the sponsorship of their employer and 503 did so in 2015-16.

The universities prefer overseas scholars because most universities want to enhance their international rankings. These are largely determined by their staffs' record in publishing in high ranked international journals. International scholars with a history of such publishing, or in research fields that will facilitate such publications, are prized for lecturer positions on this account.

However, in appointing so many foreigners to lecturer positions the universities have narrowed the career opportunities for their own domestic PhD graduates. These graduates face a daunting future as they compete for the limited number of lecturer and post-doctoral research positions that are available. The number of domestic PhD graduates is large and growing. It was 4,559 in 2014 and 5,334 in 2015.

It is a disgrace that the universities promote PhD research (which is important in assisting their staff do the research that may lead to publication in high status international journals), yet deny any obligation to give their graduates a fair go in the Australian academic job market.

It would be another matter if the huge number of overseas lecturers sponsored each year were enhancing Australia's capacity for innovation. This is what the universities like to argue. In reality, this is far from the case. Publications in international journals rarely has anything much to do with the real economy in Australia.

The issues raised by the life scientist outcome are similar – though the numbers involved are much smaller. In 2015-16 there were 157 life scientists who were granted a 457 visa. Some 45 were granted a permanent entry employer sponsored visa in 2015-16. This would have come to an end on both fronts if the Coalition's April announcement that life scientists would no longer be included on either the two year or four year temporary skilled shortage lists had stuck.

It was not to be. Again, after a strong campaign, including from the international giant CSL, the Coalition has put them on the four year list. There is a case for this move, given that some of these life scientists may have contributed to innovation, especially in the pharmaceutical industry.

Nevertheless, this reliance on foreign talent continues at the same time as the number of life science graduates from Australian universities is increasing fast – in part because government and employer interests are encouraging a shift to STEM training.

- Genuine need

A final intriguing change is the stiffening of the genuineness test for employers wishing to sponsor a temporary visa holder in their employ. In the past, the Coalition policy (and previous Labor administrations) has been to facilitate employer sponsorship on the grounds that employers were the best judges of their personnel needs. No questions were asked about whether domestic workers were available or not. From March 2018 an employer nominating a position for a permanent visa must identify the person who will fill the position and must demonstrate that there is a need for the person to do the work. This falls short of a requirement to test the local labour market. Rather it seems to be an attempt to stop employers facilitating permanent residence perhaps because of a financial inducement or an obligation to friend or relative, rather than a genuine need for the person.

All these changes will shoot a cannon through the permanent entry employer sponsorship program. Not only will the restriction of eligibility to occupations listed on the four year stream reduce the number of TSS visa holders able to apply to a third or less than is the case at present. The tightened rules just analysed will reduce the number of those who are eligible who will meet the new requirements. Furthermore, most of those taking the direct route to employer sponsorship, especially in the RSMS visa subclass, will no longer be able to do so.

3. Labour market testing

From March 2018 the Coalition will require labour market testing for all occupations eligible for TSS sponsorship, whether in the two year or four year stream. This is a sharp reversal of the Coalition's previous stance on this issue. Before winning the federal election in 2013 and while in government right up to the 18 April 2017 reset, the Coalition has opposed labour market testing. It voted against the Labor government's attempts to require labour market testing just prior to the 2013 election. Its hand-picked Review of the 457 Programme, which reported in 2014, opposed labour market testing.

Labour market testing has been opposed by the Coalition's business constituency because it would mean additional costs and delays in sponsoring a 457 visa holder. After March 2018 they will have to demonstrate that no domestic workers are available to do the work.

Depending on how rigorously the labour market testing requirement is enforced, this provision will add another disincentive to employers when deciding whether or not to pursue a 457 sponsorship. In this context we have some concern about why the Coalition is waiting until March 2018 to introduce its measure. It allows plenty of time for the interests affected to lobby to water down the proposal.

There is one important exception to the proposed enforcement of labour market testing for a TSS visa. This is where there is 'an international obligation' under World Trade Organization (WTO) General Agreements of Trade in Services (GATS) or Free Trade Agreements (FTA) which specifically prohibits Australia from applying any labour market testing (LMT) for some or all nationals of one of the particular countries; and (as intra-corporate transferees) other foreign nationals employed by enterprises operating in WTO or FTA countries. This applies to the FTAs signed since the Coalition came to office in September 2013 with Japan, South Korea and China which provide a blanket LMT exemption for all foreign nationals of the three countries concerned.

The Labor party, which in opposition voted for these North Asian FTAs, has recently stated that in government it will not sign another FTA which contains the blanket LMT exemption for all foreign nationals of FTA countries. The Coalition government has made no such commitment.

One view is that the Coalition government's 'expansive' interpretation of Australia's existing international trade obligations in the 457 visa program could see many holders of other temporary visas (especially former overseas students and Working Holiday Makers [WHMs]) become LMT-exempt for the TSS visa streams. In November 2013, the Coalition decreed that a 457 LMT-exemption applies to all citizens of a WTO member country 'who have been nominated following two years full-time employment in Australia with the same nominating employer'.²⁵

4. Strengthening the market rates requirement

A) TSS visas

The Coalition has reaffirmed that it will require sponsors to apply the nominated salary on which the temporary skilled visa was approved, known as the '457 market salary rate'. This refers to the salary or wages and conditions accepted by DIBP as that paid to the equivalent Australian worker in the occupation in question, in the sponsor's own workplace or sometimes the locality.

This is important because there is evidence that part of the attraction of the current 457 visa programme is that it allows employers to pay less than market rates because they are confident that their staff will not complain.

Previous research has indicated that the payment of salaries below market rates for ICT professionals is one of the reasons for the success of Indian ICT service companies in Australia. This conclusion was based on the nominated salary data these companies have to provide when sponsoring a foreigner for a 457 visa. These data showed that for a significant proportion of these Indian ICT workers, their nominated salary approved by DIBP was well below market rates.²⁶ We did not have access to the actual salary data being paid because the government does not publish this information.

This is a situation that cries out for reform. There are thousands of bitter Australian ICT professionals and recent graduates who have been effectively excluded from potential jobs because the Indian service companies have been able price their service at a lower cost than their competitors. Some domestic ICT professionals have experienced the additional indignity of being required to train the 457 visa holders taking over the positions they previously occupied.

The government has hitherto not acted to intervene, either to use the data it already possesses on nominal salary levels or to investigate whether actual payments are consistent with nominal salary data.

However, this may change. The reset includes a commitment that before 31 December 2017, the Department of Immigration and Border Protection will commence collecting Tax File Numbers for 457 and other employer-sponsored visa holders (then from March 2018 from TSS visa holders) in order to match them with Australian Tax Office data. This, the government states, is intended to ensure visa holders are not being paid less than their nominated salary when the visa was approved. Where this is not the case, the government has promised to publicise the names of the sponsors it has sanctioned for not complying with its market rate and other visa rules.

B) ENS visas

The requirement to pay market salary rates will also be applied to ENS visa holders from March 2018. This is a major change, as there was no previous requirement of this sort for these visas. Moreover, as indicated above, ENS sponsors will also face the same threat; that is that the government will use Tax Office data to publicise the names of sponsors who are being paid less than their nominated salary, when the visa was approved.

It remains to be seen if the proposal will be implemented once the political and business lobbies mobilise against it as they have against similar proposals. Secondly, the ATO data matching method is not a secure and foolproof way of establishing what visa holders are actually paid. As the 7-11 and other similar scandals have shown, employers can easily circumvent this kind of check by 'cash back' arrangements, that is paying the correct wages into a visa holder's bank account but then demanding repayment in cash of some of the wages.

5. Removing access to the temporary skilled work visa

Another crucial plank of the Coalition's reset is the requirement that from March 2018 all applicants for the two year and four year streams of eligible occupations must have two years' of relevant experience in the occupation they are applying for.

This measure will have the greatest impact on onshore applicants. They make just over half of all those granted a 457 visa. The two largest sources are former overseas students who have recently completed an undergraduate or Masters by Coursework degree and WHMs. They constitute nearly two thirds of the onshore 457 visa recipients.²⁷

Many, if not most, of these students and WHMs are unlikely to be eligible for a TSS visa when the two years' relevant experience requirement begins. Recall that in 2015-16 there were 45,395 recipients of 457 visas. During this year we know from Immigration destination statistics that 11,696 persons (principal applicants and dependents) whose last substantive visa was that of an overseas student were granted a 457 visa.²⁸ In addition there would have been more 457 visas issued to former overseas students holding a temporary graduate 485 visa (no data were available on these numbers). All recent overseas student graduates, regardless of the field of study, are eligible to receive a 485 visa which allows these graduates two years in Australia with full work rights. Some 30,166 were granted this visa in 2015-16.

Relatively few of these former overseas students, including those granted a 485 visa, are likely to meet the two year experience requirement because of the oversupply of professionals seeking entry level jobs, particularly in accounting but also in engineering and IT. Employers can pick and choose from multiple applicants.²⁹ Most give preference to domestic applicants because of their language skills and because they normally don't want to employ applicants without permanent residence status. Nonetheless, it is very likely that immigration agents and some employers will respond to the desperation of overseas students seeking the 'relevant experience' by coming up with intern or other employment arrangements which purport to meet the requirement.

The severity of the impact of this requirement will therefore depend heavily on how rigorously the government enforces it.

The impact of the two year relevant experience requirement is likely to have less impact on WHMs, since their propensity to move to a 457 visa seems to have declined. During the GFC and its

aftermath there was a significant influx of Europeans (especially Irish) looking for alternative work locations. They were motivated and equipped to seek 457 and subsequent ENS visas. Their numbers have since subsided with more now coming from Asia. The latter tend to engage in casual, semi-skilled work and are less equipped to meet the requirements of employers of professional workers.

Nevertheless, it has to be acknowledged that this is a speculative argument. Just as with overseas students, WHMs are likely to search for alternative routes to obtaining the required two years of 'relevant experience'.

Implications

The Coalition's announcement that, as part of its reset of the 457 visa, it will henceforth put Australian job seekers first is a dramatic change of emphasis from its previous stance.

There is no doubt that a policy reset, not just for temporary work visas, is overdue. Over the years 2003 to 2012, while the resources investment boom waxed, successive governments liberalised migrant entry to Australia in both the permanent entry and temporary entry programmes. The result is a record high permanent entry programme of some 206,000 when Humanitarian category visas are included and very high intakes of temporary visa holders, not just of 457 visa holders, but also WHM, students, and others with work rights in Australia. As of September 2016 there were some 1.2 million persons holding temporary visas in Australia – most of whom held rights to work in Australia. Of these, 172,000 were 457 visa holders. There are currently around 12 million employed persons in Australia.³⁰

These migrants are adding massive stresses to the Australian labour market, not only in the professional occupations focussed on above, but also in the lower skilled occupations, especially entry level jobs in the construction, hospitality, retail and other service occupations. Needless to say, another part of this legacy is the acceleration of population growth in Sydney and Melbourne. Over the last few years around 70 per cent of Australia's net gain from overseas migration has been locating in these two cities – thus contributing significantly to their housing affordability crisis, increased congestion and competition for public services, such as hospital care.

The Coalition government's reset is the first serious political acknowledgement that this immigration legacy needs to be addressed. It has made a start with the 457 reset and accompanying tougher rules on permanent entry employer sponsorship visas. Culling some occupations, restricting some to two year contracts and preventing any subsequent employer sponsorship for a permanent entry visa for this two year stream, adding additional labour market testing and training obligations, threats to publish the names of sponsors paying below nominated salary rates, and requiring applicants for both the two and four year visa streams to have two years of relevant experience are all tough measures.

The restriction of permanent entry employer sponsorship to those on the four year list is especially significant. It will go a long way to delivering Pezzullo's declaration to transform the 457 visa from a 'bloated out and a proxy pathway to permanent residence' to one focussing on short term skills needs. Pezzullo is close to the money. On a smaller scale, the three year work experience requirement of RSMS visas will also significantly reduce the number of visas granted in this subclass.

It seems very likely that when the reset is in full operation from March 2018, the number of permanent entry employer sponsorship visas will drop to a third or less of the current annual number of around 48,000 (principal applicants and dependents).

There is also likely to be reduction (though less severe) in the number of temporary work visas granted to principal applicants (43,395 in 2015-16 and a similar number likely in 2016-17). With so many employers barred from permanent entry sponsorship, they will have less interest in taking on a TSS worker in the first place as it removes their bargaining power when setting employment terms and conditions. Some, especially smaller, more marginal businesses, are likely to be deterred by the increased visa costs, training levies and costs of labour market testing that the government has instituted as part of the reset.

Political consequences

The Coalition has presented its reset as a gain for domestic job seekers. It will help and the government is to be congratulated for its initiatives (even if from my perspective they do not go far enough). The reset may also have been politically motivated. The Coalition is well behind the Labor opposition in the polls. Worse, since the 2016 federal election, it has leaked support to One Nation, especially in Queensland. One of the key reasons appears to be One Nation's tough anti-immigration stance.

If the Coalition's reset was about winning back these voters, who could complain. That's what democratic politics is supposed to be about. The problem for the Coalition is that its reset appears to have done little for its electoral fortunes. This is hardly surprising, given that few members of the public would be aware of the magnitude of the changes described above.

All that the Coalition seems to have achieved is to neutralise Labor's previous advantage on the 457 visa issue. Labor, as noted, sought to require labour market testing for all 457 visas in 2013 (only partially implemented because of Coalition opposition).

Nevertheless, the potential to gain a political advantage from immigration reform is there, should the Coalition build on its initial reforms. Here are some suggestions.

Further reform

Why stop at a reset of the 457 program and its links to permanent entry employer sponsorship? The days of widespread skill shortages, as during the resources boom era, are over. There is pressing evidence of oversupply in many professional and managerial labour markets. The quarantining of occupations on the four year contract list from any assessment of their current labour market situation is not justified.

The four year list should be abolished and amalgamated with the two year list. All occupations should be subject to a serious review of the labour market and only those in shortage should be available to temporary foreign workers.

Second, abolish the existing permanent entry points-tested visa subclasses. This includes the Skilled Independent category whose program target for 2017-18 is 43,990 (principal applicants and dependents) and the State & Territory & Regionally Sponsored category, whose target is 28,850 for 2017-18. The latter selects via the same points test, though with significant points concessions.

Sounds rather radical — but not when it is understood what the existing points-tested visas are about. It is not the recruitment of highly skilled professionals and tradespersons. This is a well-cultivated myth.

These visa subclasses are mainly about supporting the overseas student industry. As shown earlier, successive governments have crafted a list of eligible occupations — the MLTSSL — designed to ensure

that former overseas students are eligible for the points-tested visas regardless of the current state of the labour market.

Perhaps a half of all the points-tested visas are going to former overseas students. Who are they? Highly skilled? Hardly. As noted earlier, just over half of all overseas higher education students complete courses in business and commerce. Most have a qualification that has been designed to meet the minimum requirements needed for accreditation as a professional level accountant (for immigration purposes).

When overseas student graduates apply for an Independent or State & Territory & Regionally Sponsored visa, they confront a points-test that has been designed so that overseas student graduates trained in Australia can pass, despite the absence of any occupational experience in their profession.³¹

As for the other recipients of points-tested visas, who predominantly are recruited from offshore locations, they do need to have experience in their profession or trade. However, there is no assessment as to whether this experience is relevant to the needs of Australian employers.³²

It may be objected that in the case of the State & Territory & Regionally Sponsored visas they are at least being nominated for employment in regional areas. You may be surprised to learn, however, that these visas do not require an employment offer in a regional area. There is nothing to stop the visa recipient from locating in a metropolitan area.

Replacements

There is a case for continuing with the points-tested visa subclasses, and for some former overseas students to gain permanent residence.

As to the points-tested visas, the number should be much smaller than at present, and focussed on migrants with high level qualifications and high level skills in short supply in Australia.

As to overseas students, a sustainable overseas student industry is an important component of Australia's economy. However, it should be based on the quality of the educational credentials delivered. This is not the case at present. Much of the attraction of Australia as a study destination comes from the subsequent access that course completion provides for further work opportunities and to permanent residence in Australia, rather than the high quality of the qualifications.

There is a strong case for a new visa subclass for former overseas students which avoids the subterfuge of the present system by offering a dedicated and transparent pathway to permanent residence. It would be designed to offer permanent entry to the best students who have completed courses in fields needed to augment the availability of highly skilled graduates where there is a demonstrated need, as in advanced computing and life sciences.

Family reunion

This is a program overdue for reform. Every year the government allocates nearly 60,000 visas for family reunion visa subclasses. Most, 47,000 in 2015-16, were for partners. This is an enormous number. It is a consequence of Australia's generous partner visa rules (by international standards).

All Australian citizens and permanent residents can potentially sponsor a partner. They only have to be 18 years of age and to promise that they will financially provide for the partner once resident in Australia. It does not matter if the sponsor is unemployed, has a poor income record and has only

just arrived in Australia as a permanent resident. As to the sponsored spouse, he or she can be as young as 18. There are no language or skill requirements.

Such generous arrangements are extraordinary given the government's worries about financing its welfare bill and the wider community's concerns about the oversupply of low skilled workers in the Australian labour market. We are not talking about the abridgement of migrant's rights to bring their spouses to Australia. Rather the issue is the right of any permanent resident or Australian citizen to select a partner overseas regardless of the financial position of the sponsor or the characteristics of the selected partner.

There are plenty of examples as to how this might be done. In the UK, sponsors and their partners have to be at least 21 years of age and the sponsor must have an income equivalent to \$31,145. In Denmark, the minimum age of the sponsor and the partner is 24. The sponsor cannot be someone with little association with Denmark (such as someone who is a recently arrived migrant).³³

References

-
- ¹ James Massola, Malcolm Turnbull to abolish 457 Immigration work visas, *Sydney Morning Herald*, 18 April 2017
- ² <https://www.malcolmturnbull.com.au/media/speech-to-1np-state-conference-15-july-2017>
- ³ 'Peter Dutton discusses the government's decision to axe 457 visas', *ABC News 24*, April 18, 2017, p. 3
- ⁴ Ibid.
- ⁵ Pezzullo, Senate Estimates, Legal and Constitutional Committee, p. 12
- ⁶ Department of Immigration and Border Patrol, answer to question on notice, 17 July 2015 (received 11 August 2015), Senate inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.
- ⁷ Massola, op. cit., p. 16
- ⁸ Ibid., p. 16
- ⁹ The detailed numbers are provided in Bob Birrell, Ernest Healy and Bob Kinnaird, *Immigration Overflow: Why it Matters*, The Australian Population Research Institute, December 2016 (available at tapri.org.au)
- ¹⁰ Department of Employment and Training, *Higher Education Statistics*, customised purchase, unpublished
- ¹¹ Ibid., p. 11
- ¹² Ibid., pp. 8-12
- ¹³ Bob Birrell et al, op. cit., p. 9
- ¹⁴ Jim Oakley, 2016, *The Deliberate and Sustained Oversupply of the Engineering Labour Market by the Australian Federal Government, 2012-13 onwards*, p. 31
- ¹⁵ Ibid., p. 38
- ¹⁶ Ibid., p. 54
- ¹⁷ Oakley, op. cit., p. 57
- ¹⁸ Glenda Korporaal, 'Anti-457 push will hurt us', *The Australian* 30 November 2016
- ¹⁹ DIBP, *2015-16 Migration Program Report, Programme Year to 30 June 2016*, p. 8
- ²⁰ Bob Birrell et al, 2016, op. cit.
- ²¹ Bob Birrell, 'Implications of low English standards among overseas students at Australian universities', *People and Place*, vol. 14, no. 4, 2006
- ²² Personal communication, Mark Webster, Managing Director of Acacia Immigration Australia
- ²³ See Destination data for overseas students, *BR0109 student visa and temporary graduate visa programme trends, 2015-16*, p. 53. The table shows that 2,757 former overseas students were granted an RSMS visa in 2015-16. This being the case, they could not have first gained a 457 visa.
- ²⁴ Michael Koziol and James Massola, 'The hidden time bomb in immigration visa changes', *Sydney Morning Herald*, 20 April 2017
- ²⁵ Bob Kinnaird, Menadue blog forthcoming
- ²⁶ Bob Birrell, Ernest Healy and Bob Kinnaird, op. cit.
- ²⁷ John Azarias, et al., op. cit., p. 36
- ²⁸ DIBP, *Student visa and temporary graduate visa programme trends, 2015-16*, p. 48
- ²⁹ Bob Birrell, Ernest Healy and Bob Kinnaird, op. cit., p. 9
- ³⁰ Australian Bureau of Statistics, *Labour Force, Australia, Jun 2017*, cat. no. 6202.0
- ³¹ Bob Birrell, Ernest Healy and Bob Kinnaird, op. cit., p. 13
- ³² Ibid.
- ³³ Nicole Stokes-DuPass, *Integration and New Limits on Citizenship Rights, Denmark and Beyond*, Palgrave, 2015, pp. 145-146