

CURRENT ISSUES IN THE SKILLED TEMPORARY SUBCLASS 457 VISA

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There has been a sharp increase in the numbers of skilled migrants sponsored by employers on long-stay temporary entry visas (subclass 457). Several trade unions and the Australian Labor Party have asserted that some sponsoring employers pay below market rates to the migrants in question. This article examines this and other claims. It concludes that, on the limited evidence the government makes available, there is a basis for these concerns, especially in the ICT industry.

The business long-stay or subclass 457 visa is Australia's main temporary visa for employer-sponsored skilled persons.¹ The 457 visa has a notional maximum stay in Australia of four years, but in practice this is extendable. This temporary employment visa program has been expanding very rapidly and is now a highly contentious political issue. The Australian Council of Trade Unions (ACTU) and Federal Australian Labor Party (ALP) Opposition now vigorously oppose the 457 visa program in its current form. Both portray the 457 program as part of the Coalition Government's broader industrial relations strategy. Critics claim this strategy, especially the controversial 2005 Workchoices legislation aims to reduce wages and working conditions, and to shift the balance of power in workplace relations more towards employers.

ACTU and ALP concerns on the 457 visa include 'that unscrupulous employers are using the employer-sponsored visa as a means to drive down wages and conditions of employment', with visas being approved at wages below market rates. In March 2006, the ACTU formally requested an investigation into the operation of these visas by the Commonwealth Ombudsman, to include 'whether the requirements for the issue of such visas are being met prior to issue and if temporary workers entering the country under such visas are having their rights abused'.²

The number of 457 visas granted in 2005–06 is projected to be around 40,000 (primary applicants only), a massive increase of over 40 per cent in just one year. This is about the same as the number of skilled permanent visas expected in 2005–06 in the main permanent migration program, the General Skilled Migration program (GSM). In 2006–07, for the first time in Australia's migration history, there will probably be more temporary skilled 457 visas granted than skilled permanent visas.

This is so for two reasons. In May 2006, the Federal Government announced that GSM visas for 2006–07 would be held at 2005–06 levels, while changes were made to this program following the evaluation of the GSM. Second, the number of 457 visas granted in 2006–07 is likely to be even more than the 40,000 projected for 2005–06. The 457 visa is essentially an employer-demand driven visa, and employer take-up of 457 visas is likely to grow further. There is no cap on the number of 457 visas issued each year (unlike the counterpart US temporary skilled visa—the H-1B visa—which does have an annual cap), nor is there any annual government target for 457 visas.

The Government is aggressively promoting 457 visas to employers, including by outposting Department of Immigration and Multicultural Affairs (DIMA) officials to employer and industry

organisations to stimulate demand for skilled visas. In January 2006, there were some 20 such DIMA 'Industry Officers' outposted and the number has probably increased since then.³ Other factors contributing to increased employer take-up of 457 visas include record low unemployment, genuine skills and labour shortages in some sectors such as resources, and a large and growing supply of temporary residents in Australia on other visas who are willing to take up 457s.

Against this background, this article outlines the history of the 457 visa, its main features in 2006, and examines the evidence on some of its more contentious aspects.

HISTORY OF THE 457 VISA

The 457 visa was introduced by the first Howard administration on 1 August 1996, following its election in March 1996. But the decision to introduce the 457 visa was actually first made by the Keating Labor government. In September 1995, the then Minister for Immigration and Ethnic Affairs, Senator Nick Bolkus, announced that the Australian Government had accepted the key recommendations of the Roach Report⁴ on temporary skilled visas and would change the visa program accordingly. These changes were essentially the new 457 visa regime.

The Roach Report was prepared by a Committee chaired by Neville Roach, then Managing Director of Fujitsu Australia. The Committee included a representative of the ACTU as well as business interests. The new Coalition Government also accepted the Roach Report as the blueprint for the 457 visa.

The 457 visa rules involved a radical deregulation of Australia's temporary entry regime, involving 'considerable self-regulation' by employers recruiting foreign nationals. Before August 1996, the Australian Government operated

temporary work visas on the basis that access by foreign nationals to the Australian labour market should not jeopardise the employment of Australian citizens and residents. This was embodied in the visa requirement that employers undertake resident 'labour market testing'. This meant that employers had to demonstrate that the jobs to be filled by foreign nationals had first been offered to Australian residents and that none suitable were available.

From August 1996, the 457 visa rules did away with labour market testing for many employers and many (but not all) skill or job categories. In 2001, the resident labour market test was removed completely from the 457 visa rules for all employers and all eligible occupations. At the same time, as a trade-off for removing labour market testing, the government introduced several other measures.

First, the number of occupations for which 457 visas could be granted was now limited. A list of 457-eligible occupations was created known as ESTEL or Employer Sponsored Temporary Entry List. ESTEL essentially defined 457-eligible occupations as those in major groups 1 to 4 in the ASCO or Australian Standard Classification of Occupations. These groups are: Managers and administrators, Professionals, Associate professionals, and Tradespersons and related workers, with some exceptions. But DIMA officers still retained some discretion to grant 457 visas for occupations not on the ESTEL list.

The basis for ESTEL was occupations defined in the ASCO with an entry-level requirement completion of a trade certificate (Australian Qualifications Framework Certificate III), or higher level qualification, usually requiring at least three years full-time study. This is a lower standard than the equivalent US temporary skilled visa (the H-1B visa), which requires a bachelor degree as a minimum.

Second, a minimum threshold salary was established for the 457 visa applying from July 2001. Up to July 2001, 457 visas could be approved at any salary. From that date, for the visa application to be approved by DIMA, 457 employers or sponsors had to formally agree to pay the 457 visa-holder at least this minimum amount as gross annual base salary (that is, including tax but excluding other payments such as living-away-from-home-allowances, superannuation, and so on).

The 457 minimum annual salary was set at \$34,075 in 2001 for all occupations and is reviewed annually. This salary level was derived from the Australian Bureau of Statistics (ABS) Survey of Average Weekly Earnings, specifically the trend average weekly earnings for all employees in all skill categories (including categories like unskilled labourers not eligible for 457 visas), and part-time workers (while 457 visas are restricted to full-time workers). The 457 salary was low compared to other benchmarks. It was less than the 2001 median starting salary for a new graduate with a Bachelor degree Australia-wide (\$35,000) and nearly \$8,000 less than ABS average weekly ordinary time earnings for full-time persons (all occupations) in February 2001 of \$42,104.

Third, the government significantly expanded the program for monitoring employer compliance with the 457 visa rules. This expanded compliance program was to replace completely the 'light touch' self-regulation system introduced with the 457 visa in 1996.

In July 2001, DIMA first implemented a policy of monitoring at least 10 per cent of all employers approved as 457 sponsors. In November 2001, DIMA upgraded this to monitor all employers currently approved as 457 sponsors at least once while their sponsorship status was valid. This upgraded DIMA compliance monitoring was a combination of paper-

based monitoring, and site visits to one quarter of employers in industries or categories deemed 'high-risk' for non-compliance. In the paper-based monitoring, DIMA sent a form to 457 employers and asked them to report their compliance with their 457 sponsorship undertakings, including 457 salaries.⁵

457 VISA: KEY FEATURES IN 2006

The fundamental point about the 457 visa is that employers can sponsor skilled migrants without any reference to whether there is a skill shortage in the field or not. If an employer wants to transfer staff to Australia or hire a friend or relative already in Australia who does not have permanent residence, the employer can do so as long as the other 457 rules are followed.

In 2006, the 457 visa rules in practice still do not require employers to undertake any labour market testing to see if Australians are available to do the work, with one exception (see next para). The rules also do not require employers to pay 457 visa-holders market rates. In the equivalent US and UK temporary skilled migration schemes (H-1B and work permits), there is notionally at least some form of resident labour market test in parts of these schemes, and both schemes notionally require payment of market rates to temporary visa-holders. But in practice compliance with both these conditions is not strictly enforced.

Labour market testing

The 'labour market test' exception is employers in 'regional Australia' who are seeking exemptions from the 457 minimum skill level (this allows them to recruit from ASCO groups 5–7) or the minimum salary level (until July 2006). For 457 visa purposes, all areas of Australia are classed as 'regional' except Sydney, Newcastle, Wollongong, Melbourne, Brisbane, the Gold Coast, and Perth.⁶ These employers

must have a certification from a designated Regional Certifying Body or RCB (numbering 52 in May 2006) that ‘the position cannot reasonably be filled locally’.

It is not clear what that test means in practice: for example, whether ‘locally’ means only the area covered by the RCB or other regional areas, or within Australia, nor what ‘reasonably’ means. According to DIMA data tabled in the Senate in June 2006, between November 2003 and June 2005 around 30 per cent of all onshore 457 visa grants were approved at salaries below the applicable gazetted 457 minimum (and so presumably were for regional areas). In the first eight months of 2005–06, this had fallen to nine per cent of all 457 visa grants.⁷

At the May 2006 Senate Estimates Committee hearing, a DIMA Deputy Secretary gave an unusually candid justification for the decision to do away with resident labour market testing in the 457 program. After claiming that ‘bringing skilled workers to Australia from overseas involves very significant costs for employers’, and that ‘employers are unlikely to incur these costs if they can find the skills locally’ the official said:

It is against this background that the 457 visa has been designed. The government has decided, against that background, to abolish what we know as traditional forms of labour market testing. The traditional forms of labour market testing, we found, were creating very significant costs and delays for employers but not adding any value to the decision making. Labour market testing required employers to demonstrate to DIMA that they had advertised the position in the right places, the right number of times and in the right way and that any applicants from within Australia who had applied were not suitable. Those are judgements that can only be made by an employer. Public servants cannot be involved in second-guessing those sorts

of judgements.

Given the low rate of unemployment among skilled Australians, DIMA requiring employers to demonstrate skill shortages in that traditional labour market testing way was essentially unnecessary red tape, because we could never sustain a refusal decision based on our judgement that an employer had not tested the job market properly.⁸

Wage and salary rates required

The Deputy Secretary of DIMA said in testimony to the Senate Estimates Committee in May 2006:

An applicant under subclass 457 must be paid at least the Australian award wage or the minimum salary level set under the Migration Act, whichever of the two is higher.⁹

The gazetted minimum salary for 457s is reviewed annually. There are now four minimum 457 salaries applicable: from 3 May 2006, \$57,300 in selected designated Information and Communications Technology (ICT) occupations, and \$41,850 as the standard national 457 minimum for all other occupations (including some ICT occupations) and from 1 July 2006 in regional Australia, \$51,570 in the designated ICT occupations and \$37,665 in all other fields, or 90 per cent of the 457 national minimums.¹⁰ These minimum salaries apply only to 457 visas approved after the specified date. All 457 visa-holders approved in earlier years at lower minimum salaries can therefore lawfully continue to be paid at those lower rates. In mining and many other industries, market rates are well above award rates or the 457 minimum rates.

In many areas of employment, including professionals (a large share of 457s—see below), salaries and conditions are market-determined and are not covered by awards, certified agreements or similar arrangements. For example, many ICT

professionals are not covered by awards or similar arrangements. In these cases, there is effectively no 'Australian award wage' and the gazetted minimum or DIMA minimum salary effectively sets the only salary that 457 visa-holders must be paid.

It also appears that employers can enter into individual workplace agreements with the 457 visa-holder, and strike any wage rate provided it is at least the gazetted minimum 457 salary that applies to that occupation or region. DIMA requires employers to undertake 'to comply with the laws relating to workplace relations that are applicable to the business *and any workplace agreement that the business may enter into with the sponsored person*' (emphasis added). The new Federal Workchoices legislation is likely to encourage more employers to take this option.

Recent comments suggest the Immigration Minister, Amanda Vanstone, considers the principle of paying market rates is less important than 'keeping inflationary wage demands in check':

Senator Vanstone defended the controversial foreign guest worker scheme, saying it stopped unions from pushing excessive wage demands . . .

Senator Vanstone's comments followed union anger over plans by WA builder Gerry Hanssen to bring in 170 migrant workers. She said skilled migrants should be paid a fair wage, of not less than the award rate, while keeping inflationary wage demands in check.¹¹

It is surprising that the Coalition Government does not endorse the principle that employers should pay 457 visa-holders at market rates, in line with free market and competition principles. If 457 visa rules allow employers to pay below market rates, the visa is in effect giving these businesses an unfair competitive advantage over other employers, and is effectively a form of government subsidy.

This is the view of Milton Friedman, a founding father of free-market thinking, commenting on the US temporary skilled visa, the H-1B:

There is no doubt that the [H-1B] program is a benefit to their employers, enabling them to get workers at a lower wage, and to that extent, it is a subsidy.¹²

Other key features are that the 457 visa rules:

- Do not prohibit the displacement of Australian staff and their replacement by 457 visa holders (either before or after the employer engages 457s), or local staff being required to train their 457 visa-holder replacements. This has already occurred in ICT offshoring situations in Australia.
- Allow 457 visa-holders, even though sponsored by a specific employer for a specific job, to change employers and effectively compete in the general Australian labour market (where the new employer takes on 457 sponsorship responsibilities).
- Allow recruitment companies, employment agencies and labour hire companies to sponsor workers on 457 visas, and hire them out to other businesses. DIMA enforced tighter rules in this area from March 2004, including stricter enforcement of the rule that recruitment companies sponsoring 457s must be the 'direct employer' of the 457 visa holder, with full responsibility for salary payment to the 457 visa holder, and day-to-day supervision, among other things.

Another practice of recruitment companies was 'benching' (or 'warehousing') of 457s, that is, standing down 457 visa-holders for lengthy periods with no pay between contracts with a host employer. From March 2004, time limits were imposed on 'benching' 457s. There was to be a maximum 28 days of no contract—no salary, after which the 457 visa

holder must leave Australia. Between contracts, 457 visa holders can however be paid holiday pay, and so on.

English language skills and qualifications assessment

Until recently, 457 rules also did not require 457s to have any minimum English language skills (a serious occupational health and safety issue in higher-risk occupations) or to have their qualifications assessed by an Australian accrediting body, unlike skilled migration in the permanent residence visa program. But in May 2006, the Immigration Minister announced that ‘temporary skilled workers under 457 visas will have at least functional levels of English’.

The Minister’s statement said that DIMA would ‘consult with industry on the detailed implementation of these changes’, but made clear that the new language requirements for 457s would be decided by the sponsoring employer, and not by objective testing by language testing bodies, as in the permanent skilled migration program:

Employers will need to attest either that their employees have sufficient command of English or that they have put in place arrangements to provide English language training for both the employees and their families. This will help to protect both foreign and Australian workers, particularly where a lack of English language skills can be an occupational health and safety risk.¹³

Monitoring employer compliance

In May 2006, the Immigration Minister also said she was considering the option of what she termed ‘flying squads’ or ‘mobile strike teams’, to strengthen investigation of employer compliance. These would be teams of officials from DIMA plus other relevant Federal agencies (for example, Workplace Relations

and the Australian Taxation Office [ATO]) that would involve a ‘a more cooperative arrangement between the range of agencies that are involved here’.¹⁴ DIMA officials also disclosed in May 2006 Senate Estimates questioning that employers are ‘usually’ given advance warning of compliance monitoring site visits.

457 VISA DATA: EMPLOYERS, VISA GRANTS, STOCK AND OCCUPATIONS

According to DIMA testimony to the Senate Estimates Committee in May 2006, there are around 8,000 employers in Australia in 2006 currently approved to sponsor 457 visa-holders.¹⁵ The Immigration Minister has disclosed that the largest users of 457 visa-holders are the State Labor Governments and their agencies employing medical and health manpower, and that the ‘NSW Department of Health is the largest single sponsor of temporary 457 visas’.¹⁶

As noted above, the number of 457 visa grants to primary applicants is projected to increase to around 40,000 in 2005–06, a massive increase of 43 per cent on the previous year (see Table 1). The 457 visa rules also grant unrestricted work rights to the spouse of the visa-holder and to some children. If accompanying family members (that is, secondary applicants) are also included, the visa numbers increase substantially—total 457 visa grants to primary and secondary applicants were 49,855 in 2004–05 (compared to 28,030 primary applicants), and would be around 71,100 in 2005–06, based on past experience.

Table 1 also shows 457 stock data. The *stock* of 457 visa-holders in Australia at any one time is a more meaningful indicator than visa grants data for many purposes, partly because there is a churn among 457 visa-holders. Stock data measures unique individual 457 visa-

Table 1: 457 visa grants and stock of 457 visa-holders, principal applicants only, 2001–06

Year	Visa grants		Stock of 457 visa-holders at 30 June each year		
	Number	Per cent change	Year	Number	Percent change
2000–01	21,076	—	2001	29,075	—
2001–02	19,569	-7.2	2002	28,673	-1.4
2002–03	22,155	13.2	2003	29,711	3.6
2003–04	23,992	8.3	2004	29,140	-1.9
2004–05	28,030	16.8	2005 ^b	31,471	8.0
2005–06 ^a	40,000	42.7	2006 ^c	45,797	45.5

Source: DIMA published and unpublished data.

^a Projected by DIMA, testimony to Senate Estimates Committee, 22 May 2006.

^b Estimated. Assumes 8 per cent increase in principal applicants stock over previous year, same as total 457 stock increase (principal and secondary applicants combined).

^c As at 30 March 2006.

holders. At 30 March 2006, the number of 457 visa-holders in Australia was nearly 46,000, a very large increase of 14,500 or 46 per cent over the 31,500 in June 2005. Between 2001 and 2005, the stock of 457s was fairly stable at between 29–31,000 persons, even though 457 visa grants rose by 8,500 or 30 per cent over roughly the same period. There are probably two main reasons for this: during this time DIMA implemented a policy of issuing new 457 visas to 457 visa-holders who changed employers (which could artificially inflate the number of visa grants), and the average stay in Australia by 457 visa-holders may have shortened.

Table 2 shows the *country-of-birth* profile of those 457 visa-holders in Australia at 30 March 2006. Those born in the UK were by far the largest single group and made up 27 per cent of the total 457 visa-holders stock (principal applicants only), followed by India (seven per cent or 3,400). Only three other countries contributed five per cent or more, around 2,300 persons—the US, China and South Africa, although surprisingly the

Table 2: Stock of 457 visa holders (principal applicants only) in Australia at 30 March 2006, by country of birth

Country of birth	Total	%
United Kingdom	12,186	26.6
India	3,393	7.4
Inadequately described	3,061	6.7
USA	2,288	5.0
China	2,283	5.0
South Africa	2,269	5.0
Japan	2,233	4.9
Ireland	1,881	4.1
Philippines	1,875	4.1
Germany	1,553	3.4
Canada	1,284	2.8
Korea, republic of (South)	931	2.0
Malaysia	810	1.8
<i>Subtotal</i>	<i>36,047</i>	<i>78.7</i>
All others	9,750	21.3
Total	45,797	100.0

Source: DIMA, unpublished data 2006.

country of birth was unknown for nearly seven per cent or 3,100 visa-holders.

The *occupational* composition of the stock of 457 visa-holders in Australia is not known. Although DIMA is one of the few immigration agencies in the world whose systems can even identify the stock of temporary visa-holders (the US and UK cannot, as yet), stock data does not yet identify occupational information.

Tables 3 and 4 show the broad occupational profile of persons in the 457 visa program from other data. Between 2000–01 and 2004–05 when the number of visa grants grew by 33 per cent, the 457 visa scheme was ‘de-skilled’ somewhat. While the program was still dominated by professional and managerial-level occupations, the share of visas granted to sub-professional occupations increased from 24 per cent to 27 per cent, including nearly 15 per cent (around 4,000 visas) in

the trades and sub-trades fields (Table 3). In 2005–06, the share of 457 visas in trades and sub-trades occupations is probably even larger, based on anecdotal evidence. (DIMA has so far not released any occupational information for 2005–06.)

Table 4 lists the top 20 occupations in terms of 457 visa nominations (not visa grants) approved by DIMA in 2004–05, accounting for over half of all approvals. Visa nominations approved are a reasonable guide to visa grants. Growth in visa approvals in trades was much higher than the scheme average, although coming off a low base. In the top 50 occupations list, nearly 900 additional 457 visa nominations were approved in other trades (data not shown).

Table 4 also shows that visas were approved in a wide cross-section of occupations. More 457 visa nominations were approved for Registered nurses in

Table 3: 457 visa grants by occupation, principal applicants only, 2000–01 to 2005–06 (selected years)

ASCO major group	Occupation group	2000–01 ^a		2004–05		2005–06 projected
		Per cent	Number	Per cent	Number	Number ^b
1	Managers and administrators	19.6	4,131	14.2	3,980	5,680
2	Professionals	55.9	11,781	58.8	16,482	23,520
3	Associate professionals	9.9	2,087	12.5	3,504	5,000
4	Tradespersons and related workers	5.8	1,222	12.0	3,364	4,800
5 to 7 ^c	Others	8.8	1,855	2.5	701	1,000
	Total	100.0	21,076	100.0	28,030	40,000

Source: Table 1, and Senate Hansard, 27 February 2006, p. 142 (answer by Minister for Immigration and Multicultural Affairs to Question on Notice No.1393); DIMA, unpublished data.

^a The actual occupational composition of 457 visa nominations approved (23,790), applied to actual visa grants (21,076).

^b Total is DIMA projection. Composition assumes 2004–05 occupational shares. But Tradespersons and related workers and ‘Others’ are likely to have relatively larger shares in 2005–06 (see text).

^c In 2000–01 the data included 424 visa nominations approved, or 1.8 per cent in ASCOs 8–9 categories (Elementary clerical, sales and service workers; Labourers and related workers), and 3.3 per cent ‘not stated’. In 2004–05 the composition of workers not in categories 1–4 is not known, but 457 visa rules supposedly restrict visa grants here to only ASCO’s 5–7 categories.

2004–05 than any other single occupation (nine per cent of all approvals), and three occupations in the computing professionals subgroup (ASCO code 2231) made up 11 per cent of all visa approvals. Relatively large number of 457 visa nominations were also approved in more vaguely-defined occupations like ‘Management consultant’, and nearly 3,800 visa nominations, or 12 per cent of total approvals, were in the so-called dump group occupations (nec, or not elsewhere classified).

These dump group occupations are uninformative about the occupation and skills sets for which the 457 visas are being approved. That means it is harder to assess objectively the need for these visas, or their impact on labour supply in particular occupational fields.

Onshore 457 visa grants

The 457 visa is portrayed in official statements as a program involving recruitment of ‘overseas workers’. But this is misleading as a picture of overall 457 program

Table 4: 457 visa nominations approved onshore by selected occupations, 2003–04 and 2004–05

ASCO code	Occupation	2003–04		2004–05		Change 2003–04 to 2004–05	
		Number	Per cent share	Number	Per cent share	Number	Per cent change
2323–11	Registered nurse	2,624	9.2	2,833	9.2	209	8.0
2231–79	Computing professionals nec	1,698	5.7	1,751	5.7	53	3.1
2299–79	Business and information professionals nec	888	3.8	1,180	3.8	292	32.9
3322–11	Chef	698	3.0	911	3.0	213	30.5
2231–17	Applications and analyst programmer	725	2.9	905	2.9	180	24.8
1299–79	Specialist managers nec	654	2.7	831	2.7	177	27.1
1112–11	General manager	682	2.4	751	2.4	69	10.1
1231–11	Sales and marketing manager	772	2.3	719	2.3	-53	-6.9
2221–13	Marketing specialist	571	2.3	707	2.3	136	23.8
2294–11	Management consultant	665	2.3	703	2.3	38	5.7
2211–11	Accountant	583	2.2	683	2.2	100	17.2
2291–13	Personnel consultant	469	2.1	636	2.1	167	35.6
2231–15	Software designer	756	2.0	622	2.0	-134	-17.7
4513–11	Cook	348	1.8	541	1.8	193	55.5
3292–11	Project or program administrator	383	1.6	492	1.6	109	28.5
4122–11	Metal fabricator ^a	112	1.4	417	1.4	305	272.3
4122–15	Welder (first class)	93	1.3	412	1.3	319	343.0
2128–11	Mechanical engineer	298	1.3	385	1.3	87	29.2
2124–11	Civil engineer	199	1.2	376	1.2	177	88.9
4313–11	Electrical powerline tradesperson ^a	112	1.1	323	1.1	211	188.4
<i>Subtotal, selected occupations</i>		13,330	52.7	16,178	52.7	2,848	21.4
All others		10,776	47.3	14,536	47.3	3,760	34.9
Total		24,106	100.0	30,714	100.0	6,608	27.4

Source: DIMA, unpublished data 2006.

^a 2003–04 approvals are estimated. The actual number in 2003–04 is not known, but was under 112.

experience. The majority of 457 visas have been granted to foreign nationals who are already in Australia on other temporary visas—many already working for their 457 sponsoring employer. Among other things, this means that for many employers the cost of hiring 457s does not include search and recruitment of ‘overseas personnel’; and the supply pool for 457 visas within Australia is growing, as the stock of these temporary residents grows. However, with the rapid growth of the program in 2005–06, concentrated heavily in trades and sub-trades areas, overseas recruitment is probably increasing.

The latest available data for this article, on this issue of visa status changing, is for 2000–01 when around 60 per cent of all 457 visa grants were made onshore (16,303), to persons already in Australia. Of these, 3,700 visas were granted to persons who already held a 457 visa, indicating that these persons were either changing employers or occupations, being granted an extension of stay in Australia, or were otherwise changing their circumstances. The previous visa class of first arrival for the remaining 12,600 persons granted 457 visas onshore is

shown in Table 5. Temporary residents on other short-term business visas were the largest group (30 per cent), followed by working holiday-makers (25 per cent), persons holding tourist visas (24 per cent) and overseas students (nine per cent).

457 VISA WAGES AND SALARIES: ISSUES

The important issues regarding 457 salaries are: first, whether ‘the requirements for the issue of such visas are being met prior to issue’; second, the compliance issue—whether the actual salary paid to 457 visa-holders is in line with the base salary required by the 457 visa rules; and third, the market rates issue—whether the actual 457 salaries paid are in line with, or are undercutting, market rates.

It is not clear that DIMA is approving 457 salaries in accordance with its own 457 salary rules. As outlined above, there is some ambiguity about these rules. But DIMA says 457 salaries should be the relevant 457 minimum salary or the applicable Australian award wage, whichever is the higher. This would seem to require DIMA officials, before approving visa nominations, to satisfy

Table 5: 457 visas issued onshore to employer-sponsored principal applicants in 2000–01, by visa type of first arrival^a

Visa subclass (arrival)	Visa title	No	Per cent
456, 977	Business short stay, including ETA ^b	2,325	18.4
956	ETA ^b Business entrant—long validity	1,405	11.1
417	Working holiday maker	3,165	25.1
676, 976	Tourist, short stay	2,652	21.0
686	Tourist, long stay	372	2.9
560	Student	1,091	8.6
442	Occupational trainee	116	0.9
Not recorded		1,213	9.6
Other		290	2.3
Total ^a		12,629	100

Source: DIMA unpublished data, March 2002.

^a Excludes ‘new’ 457 visas granted onshore to primary applicants who already held a 457 visa (a further 3,674 visas).

^b Electronic Travel Authority

themselves that the 457 salary nominated by the employer meets this requirement. It is not known if or how DIMA establishes this independently, or if it relies entirely on the employers' undertakings. Some cases brought to light by the unions involve claims that DIMA-approved 457 salaries were below award rates, for example restaurant workers in Canberra.

Between November 2003 and February 2006, 30 per cent of all 457 visas granted onshore were approved at or below gazetted 457 minimum salary (18,300 out of 61,500 visas).¹⁷

As to 457 employer compliance monitoring, DIMA officials advised that this system only asks employers whether 457 visa-holders are being paid the original DIMA-approved base salary. Unpublished 457 compliance data provided by DIMA for 2002–03 reveals that, of the 2,422 site visits that year, 655 or 27 per cent were 'referred to DIMA officers for possible breach' of sponsorship undertakings, including those involving payment of DIMA-approved wages, but these were not separately identified.

Monitoring employer compliance only with the original DIMA-approved salary has two further limitations. If DIMA has not determined this salary properly in accordance with 457 visa rules, then it could be monitoring compliance with the incorrect salary. Secondly, for 457 visa-holders covered by Australian awards, the base salary required by those awards usually increases over time. Thus even where the original DIMA-approved salary was in line with the relevant Australian award, employer compliance with this salary over time does not necessarily mean compliance with Australian awards.

Most surprisingly, DIMA does not collect information on actual base salaries paid by employers to 457 visa-holders through its compliance monitoring system or any other means. It is therefore not

possible to determine if actual salaries paid are in line with market rates.

457 salaries actually paid

The only published data approximating salaries actually paid to 457 visa-holders comes from the report on a 2003–04 survey of 457 visa-holders.¹⁸ The survey has some limitations regarding 457 salaries: its findings may not be representative of all 457 visa-holders,¹⁹ and it collected information not on actual base salary or even total salary, but average income for the previous year (which can include earnings from non-employment sources such as dividends, interest, and so on).

The main survey findings regarding reported incomes of 457 visa-holders surveyed in 2003–04 were that:

The median income of professional workers was about \$63,000. Equivalent figures for the other occupational groups were \$45,300 for associate professionals, \$41,100 for trades persons, and \$44,000 for the 'Other' occupational category. It would appear that many 457 visa holders in occupations other than managerial or professional occupations were paid a salary that was rather close to the minimum required by DIMA for the 457 visa sub-class.²⁰

Some 457 visa-holders reported relatively low incomes. For example, 25 per cent of the trades group reported average annual incomes of less than \$35,000; and one-third of professionals reported incomes under \$50,000, including three per cent below \$35,000 (when the median starting salary for new graduates with a bachelor degree was \$38,000 in 2004).

CASE STUDY: IMPACT OF 457 VISAS IN ICT OCCUPATIONS

Union concerns have focused mainly on the trades and sub-trades fields such as

bakers, welders, metal workers, construction and meat workers. There is insufficient data on recent 457 activity to assess the program's broader impacts in these areas. But 457 visas have long been concentrated in professional employment, and there is clear evidence of these impacts in one such area, namely, ICT occupations.

The evidence shows the negative impact of 457 visas on employment and training opportunities for Australians in ICT occupations. As shown in a recent *People and Place* article,²¹ since 2001 the proportion of computer science graduates unable to find full-time work has been at record or near-record levels, and commencing enrolments by Australian students in university IT courses have plummeted, falling by probably 50 per cent. The article argued that the main factor responsible for the graduate oversupply situation was the General

Skilled Migration (GSM) program which granted increased numbers of permanent visas to overseas student graduates in ICT, increasing the supply of IT graduates by 80 per cent at a time when nearly 30 per cent of local graduates could not find full-time work.

The 457 visa program also contributed to falling demand for IT graduates. DIMA data (mostly unpublished) shows that in ICT occupations in the period 2001–02 to 2004–05:

- DIMA continued to grant relatively large—and increasing—numbers of 457 visas, despite clear signs that the domestic ICT job market was in oversupply, especially the graduate market. Indian nationals account for all the growth in 457 visas between 2001–02 and 2003–04.
- 457 visas in ICT were approved by DIMA at relatively low salaries, especially for Indian nationals. Actual

Table 6: 457 visa grants and estimated stock of 457 visa-holders in ICT occupations,^a primary applicants only, 2001–06

Year	ICT visa grants		Estimated stock of 457 visa-holders in ICT ^b	Per cent of computer science graduates looking for full-time work ^c
	Number	Per cent of all 457 visa grants		
2000–01	4,847	23	2001	19.0
2001–02	3,591	18	2002	29.5
2002–03	3,567	16	2003	31.9
2003–04	4,129	17	2004	29.5
2004–05	4,010	14	2005	26.3
2005–06	na		2006	na

Source: Table 1; DIMA published and unpublished data; *Graduate Destination Surveys*, Graduate Careers Council of Australia.

^a IT managers (ASCO 1224–11), Electronics engineer (2125–13), Computing professionals (ASCO 2231), Electrical or electronic engineering technologist (ASCO 2128–15), Electronic engineering associate (ASCO 3124–11), Electronic engineering technicians (ASCO 3124–13), Computer support technicians (ASCO 3294–11).

^b At 30 June each year. Assumes ICT share of total 457 visa-holders stock (Table 1) is the same as ICT share of total 457 visas granted in financial year just ended.

^c Australian residents only, bachelor degree graduates. Those not working at all, and those working part-time, and looking for full-time work, in April each year.

salaries paid are not known, as noted in the previous section.

- There is no evidence that 457 visa-holders in ICT (as a group) have ICT skills which are in shortage in Australia.
- The number of 457 visas granted was large relative to labour supply in the under 30s age group, and these appear to be concentrated in programmer occupations that typically provided entry-level graduate jobs in the past.

Visa numbers and visa-holder characteristics

Since 2001–02 the number of 457 visas granted in ICT occupations rose from 3,591 to 4,010 in 2004–05 (Table 6). According to DIMA, the 2005–06 figure will probably be similar (based on 457 visa nominations approved in ICT running at an annual rate of around 5,000, similar to 2004–05).

In the four years to 2004–05, 457 visa grants in ICT to Indian nationals grew by

Table 7: 457 visa grants in ICT occupations, principal applicants only, selected features by country of citizenship

		Country of citizenship ^a		
		India	All others	Total
Visa grants				
2001–02		893	2,698	3,591
2002–03		1,270	2,297	3,567
2003–04		1,608	2,521	4,129
2004–05 ^b		1,679	2,331	4,010
Change 2001–02 to 2004–05 ^b	Number	786	-367	419
	Per cent	88.0	-13.6	11.7
Per cent share 2004–05		42.0	58.0	100.0
<i>2003–04 visa grants</i>		Per cent		
Age ^c				
Under 25		14.1	3.9	7.9
25–29		54.5	36.2	43.3
30–34		22.5	33.9	29.5
35–44		8.3	19.9	15.4
45+		0.2	5.3	3.3
Grand Total		100.0	100.0	100.0
DIMA-approved salary (computing professionals only)		Per cent		
Under \$38,000 ^d		22.8	16.6	18.9
\$38,000–46,620 ^e		22.0	5.0	11.3
\$46,620–\$50,000		4.7	4.6	4.7
\$50,000–\$60,000		10.5	10.1	10.3
\$60,000–\$70,000		4.5	11.1	8.2
\$70,000+		35.5	52.6	46.6
Total		100.0	100.0	100.0

Source: DIMA, published and unpublished data.

^a Of person granted 457 visa.

^b Estimated, based on composition of 'ICT professionals' who made up 84% of all 457 visas in ICT in 2004–05.

^c Age at time of visa grant.

^d Median starting salary for graduate (bachelor degree) in computer science, in first full-time job, 2004 (GDS).

^e 457 gazetted minimum salary in ICT raised from \$35,828 to \$46,620 in February 2004.

nearly 90 per cent while visas for other nationals actually declined by 14 per cent (Table 7). As a result, Indian nationals' share of all 457 visas in ICT rose to 42 per cent of total grants. In 2003–04, the latest year data available, over half of all 457 visas in ICT were granted to persons under age 30, and 80 per cent were under age 35. Indian nationals on 457 visas in ICT are typically younger, concentrated in ICT occupations most associated with the offshoring and IT services business model (Applications and analyst programmers; and software designers—data not shown).

457 salaries in ICT

Nearly all 457 visas in ICT (90 per cent) were the computing professionals occupation (ASCO code 2231). DIMA-approved salaries in this group were low relative to market rates prevailing in ICT at the time, and even compared to graduate starting salaries (see Table 7). Of all 457 visas granted for computing professionals in 2003–04 (nearly 3,600):

- Nearly one in five 457 visas in ICT (19 per cent) were actually approved at or below the 2004 median starting salary for new computer science graduates of \$38,000.
- 30 per cent were approved at or below the minimum ICT salary that applied from February 2004 (\$46,620), suggesting the gazetted minimum salary was used as a de facto minimum salary for many 457 visa nominations.
- The majority (53 per cent) of all 457 visas in ICT were approved at salaries below \$70,000 (when the national average rate for Analyst programmers at the time was \$67,724 and the NSW average rate was \$72,811, as measured by an authoritative industry survey).²²

457 visa salaries approved by DIMA for Indian nationals in computing professionals occupations were typically much lower than for other nationals (see

Table 7). Nearly one quarter (23 per cent) of Indian nationals granted 457 visas as computing professionals were approved at salaries of \$38,000 or less, the median starting salary for computer science graduates. (From July 2006, the 457 minimum salary in most ICT occupations increases to \$57,300, as noted earlier. That new minimum salary only applies to 457 visas approved after 1 July 2006, but the higher minimum should narrow the gap between the 457 minimum and ICT market rates.)

Skills in short supply

There is insufficient evidence to assess to what extent 457 visa-holders in ICT have skills or experience in short supply in the Australian labour market. The limited data available—their age, occupational profile and DIMA-approved salary levels—is not conclusive but suggests that many were working as mainstream programmers, some probably entry-level. In November 2003, all ICT skills were removed from the 'national shortage' list for permanent skilled visas.

DIMA data provides no evidence on the skill sets of 457s in ICT (and other fields), because it has either not been collected by DIMA, or if collected, has not been analysed. This is a serious deficiency that DIMA should have rectified during the five years of ICT market downturn since 2000–01. The data should be available on 457 visa forms lodged by employers with DIMA.

Labour supply impact

Based on stock data for end-June 2004, there were an estimated 2,200 persons under age 30 on 457 visas working as computing professionals at 30 June 2004. This was equal to around 4.4 per cent of the total employed computing professionals workforce under age 30 in Australia. Based on Graduate Destination Surveys

(GDS) data, there were around 2,000 computer science graduates and postgraduates unable to find full-time work in April 2004. On the available evidence, some portion of the 2,200 young ICT workers on 457 visas will have contributed to the lack of job opportunities for Australian IT graduates, and in turn to declining IT enrolments.

CONCLUSIONS

Even on the limited evidence available, there are legitimate grounds for concern about issues raised by critics of the 457 visas. Those examined here concern the wages and salaries paid in the 457 scheme generally, and impacts on employment and training opportunities for Australian residents in ICT occupations. If the Government wants to ensure community support for the expansion of 457 and other temporary visa programs, then it needs to address these concerns.

First, there should be much greater transparency and public disclosure of information about the 457 visa program. Since the Government has decided to abandon resident labour market testing in this visa, it is reasonable to expect high standards of disclosure about the actual operation of the program.

If the Government persists in not requiring resident labour market testing in the 457 program, then it should disclose much more information about the jobs for which 457 visa nominations have been approved, and visas granted (including intra-company transfers). This information—on individual 457 positions—should be posted on the DIMA website with open access to all, free of charge. Even if DIMA is reluctant to name 457 employers (for so-called commercial-in-confidence reasons), published information on an employer's 457 visa position (or multiple positions) should include the following: location of the position (for example, Sydney, country

NSW), detailed industry and occupation (ASCO six-digit code), base salary and other remuneration, skill sets specified by the employer for the position (for example, XYZ programming language in ICT), and specified experience required (for example, 2–4 years in finance sector). It could also identify whether the employers were labour hire companies/recruitment agencies, or not.

The task is eminently manageable and relatively low cost, partly because the 457 visa numbers involved are relatively small: 40–50,000 visa nominations approved per year, or less than 1,000 per week. As well as data on individual 457 positions, DIMA should also publish on the same site aggregated data on 457 visa nominations approved, say by industry sector and/or detailed occupation groupings, so interested parties could see the level of 457 activity in ICT programmers, metal trades, meat workers, and so on.

This information could be posted online immediately the visa nominations were approved, or updated say monthly. In June 2006, DIMA announced it had awarded a \$495 million contract to upgrade its IT systems, but it is not known if a 457 data site was part of the specifications. This system would give the community greater confidence in the operation of the 457 visa program, and could also include selected details of 457 visa-holders granted visas to fill these positions, for example, age, qualifications and experience.

Second, the current policy on 457 minimum salaries should be reviewed and the principle of requiring market rates in the 457 visa should be adopted. The balance between administrative simplicity (by having just a few minimum salaries) and fairness to Australian residents has been tilted too far in favour of the program administrators. There are many practical options for adopting market rates for the 457 program, and they should be considered.

Third, the DIMA 457 employer compliance monitoring system should collect data on actual salaries paid to 457 visa-holders. That data should also be published regularly by DIMA, and compared to DIMA-approved salaries for those visas. If for any reason data on actual salaries paid cannot be collected through the DIMA compliance monitoring system, then a properly authorized body should do that through data matching of DIMA 457 data against tax records of 457 visa-holders held by the ATO (for example, perhaps by an independent agency like the Commonwealth Auditor-General).

Fourth, as part of efforts to make its employer compliance monitoring system more effective, DIMA should notify the responsible State Government departments of workplace relations of the names of 457

employers within their jurisdictions, and details of their 457 visa-holders. Currently this is not done.

Finally, DIMA should review its blanket opposition to labour market testing in the 457 program. There are clearly some situations where labour market testing is not warranted (for example, for genuine intra-company transfers or where there is agreement that shortages exist in particular sectors, supported by objective evidence). But some form of labour market test should be mandatory in other occupations, especially those where there is an oversupply of Australians or declining training opportunities for Australians, for example, ICT over the last five years where 457 visas have had market-distorting impacts.

References

- ¹ The 457 visa is also used by other categories such as 'Independent executives'. In this paper, data refers only to employer-sponsored 457 visa holders except where indicated.
- ² Sharan Burrow, President ACTU, letter to Commonwealth Ombudsman re 457 visas and 456 visas, 1 March 2006, <http://www.actu.asn.au/work_rights/news/files/Ombudsman-456and457visas.doc>
- ³ DIMA, Migration Program Discussion Paper, January 2006 (unpublished)
- ⁴ *Business Temporary Entry—Future Directions*, (Roach Report), Report by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, Department of Immigration and Ethnic Affairs, Canberra, August 1995
- ⁵ B. Kinnaird, 'Australia's migration policy and skilled ICT professionals: the case for an overhaul', *People and Place*, vol. 10, no. 2, 2002, p. 65
- ⁶ DIMA website, Temporary Business (Long Stay)—Standard Business Sponsorship (Subclass 457): Concessions for Regional Australia, accessed 7 June 2006, <http://www.immi.gov.au/migration/temporary_business/sbs/eligibility-regional.htm>
- ⁷ Senator Amanda Vanstone, Minister for Immigration and Multicultural Affairs, Answer to Question on Notice no. 1669, Senate Hansard, 14 June 2006, pp. 155–157. Data includes independent executives.
- ⁸ Proof Committee Hansard, Senate Estimates Hearing, Legal and Constitutional Legislation Committee (Budget Estimates), Monday, 22 May 2006, Canberra, p. 70.
- ⁹ *ibid.*, p. 34.
- ¹⁰ Senator Amanda Vanstone, Minister for Immigration and Multicultural Affairs, 'New minimum salaries for temporary overseas skilled workers', media release, 1 May 2006
- ¹¹ M. Shaw, 'Guest workers cut wages: Vanstone', *The Age*, June 8 2006
- ¹² P. Donnelly, 'H-1B is just another gov't subsidy', *Computerworld*, 22 July 2002
- ¹³ Senator Amanda Vanstone, *op. cit.*, media release, 1 May 2006
- ¹⁴ Proof Committee Hansard, 22 May 2006, *op. cit.* p. 78
- ¹⁵ *ibid.*, p. 43
- ¹⁶ Senator Amanda Vanstone, Minister for Immigration and Multicultural Affairs, 'Beazley at odds with State Labor Leaders', media release, 7 April 2006
- ¹⁷ *ibid.* Data includes independent executives.

- ¹⁸ S. Khoo, P. McDonald and G. Hugo, *Temporary Skilled Migrants in Australia: Employment Circumstances and Migration Outcomes*, August 2005, <www.immi.gov.au/research/publications/index.htm>
- ¹⁹ This is because the 457 visa-holders in the survey sample were drawn from only around 40 per cent of the relevant population of 457 visa-holders in Australia at September 2003 (and therefore excluded the majority 60 per cent who may have had different characteristics). It also achieved a fairly low response rate of only 24 per cent of those surveyed (a response rate of around 60 per cent in a sample survey is generally required for statistically robust findings).
- ²⁰ *ibid.*, p.15; S. Khoo, et al., *op. cit.*
- ²¹ B. Kinnaird, 'The impact of the skilled immigration program on domestic opportunity in information technology', *People and Place*, vol.13, no. 4, December 2005
- ²² IT Skills Hub, *Market Monitor*, 2004. These are advertised salary rates derived from surveys of advertised vacancies in the first half of 2003–04.