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THE EVOLUTION OF THE AUSTRALIAN SYSTEM FOR SELECTING ECONOMIC IMMIGRANTS

By Anna Boucher and Amy Davidson

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Executive Summary

Australia's system for admitting economic immigrants has evolved extensively since the mid-1990s. While immigration was previously dominated by family reunification, over the last two decades the system has shifted to prioritize the selection of skilled permanent immigrants alongside the admission of a rising number of workers at all skill levels on temporary visas.

This system has been refined ... to address concerns regarding the extent to which the profiles of those admitted matched the needs of the Australian labor market.

Australia's selection system for permanent immigration in particular has attracted international attention for the generally strong labor-market performance of the immigrants it admits. This system has been refined several times over the years to address concerns regarding the extent to which the profiles of those admitted matched the needs of the Australian labor market. Most recently, the system came to be dominated by applications from former international students, raising concerns that the selection system was no longer recruiting according to the needs of the labor market. As a result of this and other concerns, the system has undergone several key reforms in the last ten years:

- narrowing the list of occupations under which immigrants can apply for entry to better reflect labor-market needs;
- adjusting the points test used to evaluate applications to reduce the points assigned for education and experience in Australia and to increase points for education and English skills (applicants with a nomination from an employer are exempt from these new requirements); and
- introducing an expression of interest system, known as SkillSelect, that front-loads some of the assessment of applicants' qualifications; this now occurs prior to the submission of a full visa application and allows officials to adjust the points required for entry on an ongoing basis, influenced by the supply of applicants and labor-market demands.

At the same time, important changes have occurred in the temporary immigration system. Use of Australia's temporary visas for high-skilled workers (known as the 457 visa until 2017, when it was replaced by the Temporary Skill Shortage, or TSS, visa) has expanded substantially since the visas were first introduced in 1996. While the 457 visa was originally intended to fill very specific skills shortages in the Australian labor market, concerns arose that it left too much power in the hands of employers to define labor-market shortages and rendered migrant workers open to exploitation. In response, the government replaced the 457 with the TSS visa in 2017. The TSS substantially restricts the number of occupations under which migrants can be admitted for temporary work, in an effort to align temporary immigration more closely with labor-market gaps, though sponsorship requirements leave employers primarily responsible for selecting which migrants will be admitted. The visa also creates two streams: one that gives migrants the opportunity to convert to permanent residency and one that does not. Critics have raised concerns that by closing off pathways to permanent residence, the visa may undermine integration and leave migrant workers open to exploitation.

Meanwhile, low- and semi-skilled immigration have remained largely unregulated. Formal visa pathways for low- and semi-skilled workers are limited under existing visa frameworks. Instead, employers have turned



to other visa pathways to fill these labor-market needs, including the Working Holiday Makers visa, which allows individuals under the age of 30 to enter Australia for the purposes of travel and work, as well as the International Student and Post-Study Graduate visas. Some regional visa arrangements, such as the Designated Area Migration Agreements, also allow employers in these regions to use temporary visas to recruit workers at lower wage levels. As use of these visas has increased, concerns have also arisen about exploitation of workers on these visas, as well as concerns that employers have become reliant on these visas to fill labor-market needs, rather than increasing wages or investing in the training of Australian workers.

Collectively, changes to the permanent and temporary skilled immigration pathways, together with the lack of regulation of low- and semi-skilled immigration, have had several notable effects. First, immigration at all skill levels has become increasingly employer driven. This has advantages in that it allows employers to recruit according to their needs—and there are clear needs in certain sectors, such as health and horticulture. But there are also risks. An employer-driven system may come to prioritize recruitment to fill short-term demands over long-term competitiveness, human-capital needs, and integration concerns. Employers may also become reliant on immigrant workers, rather than raising wages for or upskilling the domestic workforce. Second, immigration to Australia has become more temporary as avenues to permanent residence have become more limited. While the availability of temporary visas allows employers flexibility to adjust recruitment to their workforce needs, it also has the potential to undermine long-term integration as immigrants must navigate an increasing number of visa status changes to stay in Australia. It also puts more power in the hands of employers who act as sponsors and thus have influence over the ability of temporary migrants to stay in Australia.

Immigration to Australia has become more temporary as avenues to permanent residence have become more limited.

Australia's experience offers several lessons for other countries that seek to develop a tailored and targeted immigration selection system:

- Criteria for selecting immigrants should be adjusted and managed over time to ensure that they continue to reflect actual skills gaps within the labor market. Concerns about this sort of mismatch contributed to reforms in Australia after permanent skilled immigration became dominated by international students, and selection criteria are now periodically adjusted to reflecting new labor-market information.
- In addition to criteria, selection procedures should be reviewed and adjusted as needed in order to avoid potential backlogs and ensure that immigration streams are bringing in applicants with the desired profiles. By allowing some qualification checks to occur earlier in the application process, SkillSelect has helped reduce backlogs in Australia.
- While selection systems often target the highly skilled, policymakers should also give attention to the recruitment of low- and semi-skilled workers. Without a formal entry pathway for low- and semi-skilled workers, recruitment of immigrants in these sectors in Australia has become dominated by workers on visas originally intended for other purposes. Leaving these workers out of selection systems puts these sectors at risk of becoming under-regulated and opens migrant workers to exploitation.



- Policymakers should be aware of the effects of recruitment on domestic labor markets, particularly in areas of high unemployment. In some regions of Australia, high recruitment of immigrants has occurred in parallel with high domestic unemployment, creating concerns that immigrant workers are displacing the domestic workforce.

I. Introduction

The Australian approach to the selection of immigrants is often held up as a model for countries seeking to maximize the benefits of immigration for their labor markets. Policymakers in other countries have at times sought to emulate Australia's policies. Most recently, the Trump administration has touted the benefits of the Australian points test for immigrant admissions and suggested the system might serve as a model for reforming U.S. immigration policies.¹ Much of Australia's reputation can be linked to the economic performance of its immigrants, in particular those entering on visas tied to employment. According to a 2015 survey by the Department of Immigration and Border Protection, nearly 90 percent of migrants admitted via the skilled immigration stream were in employment six months after arriving in Australia.²

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Meanwhile, the Australian system is itself the product of extensive policy experimentation and evolution. In recent years, Australia has moved toward a temporary and employer-driven economic selection model, and away from earlier approaches that prioritized permanent selection based on human-capital attributes. While this approach is a significant departure from Australia's former position as a settler society, it does not appear to be the result of a deliberate shift in government policy. Rather, the changes have emerged from greater regulation of certain aspects of the immigration program, such as permanent economic immigration selection, at the same time as temporary immigration has been allowed to expand without significant regulation. The greater reliance on employer-sponsored temporary immigration has introduced challenges that are common to other temporary economic immigration systems, such as the potential exploitation of migrant workers and concerns over possible competition between native- and foreign-born labor.

This report outlines how approaches to permanent skilled selection in Australia have shifted over time, and draws attention to challenges inherent in the design of skills tests, including Australia's SkillSelect, a relatively new immigrant selection method. It also examines recent changes in Australia's temporary economic migration policy across skill levels.

1 Anna Boucher, *Gender, Migration, and the Global Race for Talent* (Manchester: Manchester University Press, 2016); Mosiqi Acharya, "US to Roll out 'Merit-Based' Immigration System Similar to Australia," Special Broadcasting Service, August 3, 2017, www.sbs.com.au/yourlanguage/hindi/en/article/2017/08/03/us-roll-out-merit-based-immigration-system-similar-australia.

2 Government of Australia, Department of Immigration and Border Protection, *The Continuous Survey of Australia's Migrants: Cohort 3 Report—Introductory Survey 2015* (Belconnen, Australia: Department of Immigration and Border Protection, 2015), www.homeaffairs.gov.au/research-and-stats/files/cohort3-report-introductory-survey-2015.pdf.



II. The Evolution of Australia’s Approach to Immigration

The election of a Liberal-National government in 1996 heralded Australia’s shift away from an immigration policy dominated by family reunification and toward skilled immigration as the key basis for selecting permanent immigrants. This shift was coupled with the introduction of temporary work visas. A second major series of reforms took place following the election of a Labor government in 2007. These changes made the Australian immigration system more selective and targeted. While the arrival of the Labor government was a political watershed after 11 years of Liberal-National Party rule and represented a broad ideological shift, the reforms in the economic immigration selection area were consistent with the policy trajectory established by the earlier government.

A. Permanent Skilled Immigration

Since the end of race-based immigrant selection in 1973, the Australian government has developed and refined its methods for selecting permanent immigrants on a skilled economic basis.³ While the specific selection methods have evolved since 1973, the Australian approach has historically relied on three core elements:

- a list that defines the occupations in need of immigrant workers and under which applicants can apply for entry;
- metrics for assigning points to applications based on factors such as applicants’ human-capital characteristics, experience in Australia, or offers of employment; and
- a system for ranking and selecting applicants based on their points score (known as the “pass mark” threshold).

The current selection system for skilled permanent immigrants, which involves an online platform known as SkillSelect, is outlined in Figure 1.

3 Boucher, *Gender, Migration, and the Global Race for Talent*, Chapter 4.



Figure 1. Application Process for Australia's Skilled Independent Visa (Subclass 189)

1. Register Expression of Interest into SkillSelect

- Candidates upload biographical and professional information into SkillSelect's online profile, creating an Expression of Interest (EOI).
- A candidate's occupation must be on the Medium and Long-Term Strategic Skills List (MLTSSL).
- EOIs remain in the SkillSelect system for up to two years, and can be modified after submission.

2. Points Assessment

- Candidates receive points based on:
 - Level of general work experience (maximum points for eight to ten years)
 - English proficiency (maximum points for a "superior" level)
 - General education level (maximum points for a doctorate)
 - Age (maximum points for the 25-to-32 age range)
 - Level of work experience or education specifically in Australia
- A passing grade is 65 points, out of a maximum of 135 points.
- EOIs are also evaluated based on occupation ceilings. Australia limits the number of visa applicants per skilled occupation, calculating this ceiling annually based on the number of applicants and employer demand.

3. Relative Ranking

- After passing the minimum points level, candidates are ranked relative to one another. This ranking shifts as candidates enter and leave the pool of applicants on SkillSelect.
- If the number of invitations to apply for an occupation group reaches the ceiling, candidates in other occupations will be chosen instead, even if their scores are relatively lower.

4. Invitation to Apply for Visa

- The candidates with the highest scores in each cohort will be issued an invitation to apply for a visa. The number of invitations sent monthly depends on the number of visa applications currently being processed.

5. Visa Application

- Candidates with an invitation or nomination have 60 days to apply for a visa. After this period, the invitation expires and the candidate's EOI returns to the pool. If a candidate fails twice to apply for a visa, his or her EOI is no longer eligible for consideration.

6. Visa Issued

- Accepted applicants have legal permanent residence in Australia.

Source: Compilation by the authors.

While permanent skilled immigration had historically formed a small part of the Australian immigration program, by the election of the Liberal-National Howard Government in 1996, it eclipsed family-based immigration. The metrics for selection were further refined over the ensuing decades. Under the Rudd-Gillard Labor governments (2007–13), the size of the skilled immigration program not only increased, but selection criteria also became more stringent and targeted as the result of three major changes. First, the list of occupations under which individuals could apply for permanent immigration was revised and shortened. Second, the points test used to evaluate applications was changed to emphasize work experience and high levels of English language skills. Finally, the methods used to choose applicants for entry were amended to rank individual applicants against one another, rather than based on their absolute points score alone. This subsection examines each of these changes in turn.



I. The Skilled Occupation List

In February 2010, the Minister for Immigration and Citizenship, Senator Chris Evans, announced an overhaul of the selection scheme for general skilled immigration, beginning with changes to the occupational lists used to identify the skill areas under which applicants could enter.⁴ In May 2009, the Migrant Occupations on Demand List (MODL) had been replaced with the Critical Skills Occupation List (CSOL). A year later, in May 2010, the government introduced a new Skilled Occupation List (SOL), which narrowed the range of professions under which individuals could apply for entry from 486 to 188.⁵

The decision to abandon the MODL in 2009 was due to its having become a weaker predictor of labor-market demand. International student immigration into Australia had grown rapidly, more than quadrupling from 135,226 in 1996 to 631,971 in 2009.⁶ Driven by the desire for permanent residency, many international students were enrolling in technical college courses in Australia that gained high points on the MODL, leading to an escalation of applications in certain key occupations, in particular cooking and hairdressing. Most international students had a high likelihood of being selected for permanent immigration under the skilled category because of their Australian education.⁷ In announcing reforms to the MODL, Evans argued that “[u]nder the previous government’s policy settings, Australia’s skilled immigration program has been delivering too many self-nominated migrants from a narrow range of occupations with poor to moderate English language skills who struggle to find employment in their nominated occupation.”⁸

Around this time, decision-making over the content of the SOL was also moved from the Department of Education and Workplace Relations to a newly appointed statutory body, Skills Australia (then called the Australian Workplace Productivity Agency). While this body still reported to the then Ministers of Employment and Immigration, it was intended to be an independent board comprised of industry and trade union representatives, as well as academics.⁹ Following the election of the Liberal government in 2013, however, the body was abolished and its functions moved first to the Departments of Home Affairs and Education and Training, and most recently, in 2017, to the Department of Jobs and Small Business. This department is now responsible for developing skills lists, using analysis of the labor market accompanied by stakeholder consultation.¹⁰ Some commentators have critiqued the lack of independence of skills assessments from government and have called instead for an independent expert commission akin to the Migration Advisory Committee in the United Kingdom.¹¹ Currently, however, the determination of the skills lists remains a squarely government function. The SOL itself has since been divided into the

4 Government of Australia, Department of Immigration and Citizenship, “New List of Skilled Occupations Intended to Replace the Current Skilled Occupation List” (guidance document, Department of Immigration and Citizenship, Canberra, 2010).

5 Department of Immigration and Citizenship, “New List of Skilled Occupations”; Lesleyanne Hawthorne, “Indian Students and the Evolution of the Study-Migration Pathway in Australia,” *International Migration* 52, no. 2 (2014): 10.

6 Government of Australia, Department of Education and Training, “International Student Data 2017,” accessed August 29, 2018, https://internationaleducation.gov.au/research/International-Student-Data/Pages/InternationalStudentData2017.aspx#Time_Series.

7 Research by Lesleyanne Hawthorne found that “[f]ormer international students at the time had a 99 percent chance of skilled category selection, unless they failed health or character checks.” See Lesleyanne Hawthorne, *Recognizing Foreign Qualifications: Emerging Global Trends* (Washington, DC: Migration Policy Institute, 2013), 5, www.migrationpolicy.org/research/recognizing-foreign-qualifications-emerging-global-trends; Bob Birrell, Lesleyanne Hawthorne, and Sue Richardson, *Evaluation of the General Skilled Migration Categories* (Canberra: Department of Immigration and Multicultural Affairs, 2006), 31, 76, www.flinders.edu.au/sabs/nils-files/reports/GSM_2006_Full_report.pdf.

8 Speech by Chris Evans, Minister, Government of Australia, Department of Immigration and Citizenship, to the Australian National University, *Changes to Australia’s Skilled Migration Program*, Canberra, February 8, 2010.

9 Government of Australia, Australia Workforce and Productivity Agency, “Australia’s Skills and Workforce Development Needs” (discussion paper, Australia Workforce and Productivity Agency, Canberra, July 2012), 1–102, <https://docs.education.gov.au/system/files/doc/other/future-focus-australias-skills-and-workforce-development-needs-discussion-paper-2012.pdf>.

10 Author interview with Helen Innes, Manager, Migration Branch, Department of Jobs and Small Business, Government of Australia, August 3, 2018.

11 See, for example, Joanna Howe, “Does Australia Need an Expert Commission to Assist with Managing Its Labour Migration Program?” *Australian Journal of Labour Law* 27, no. 3 (2014): 1–25.



Medium and Long-Term Strategic Skills List (MLTSSL), the Short-Term Skilled Occupation List (STSOL), and the Regional Occupation List (ROL).

2. A New Points Test

In 2009 and 2010, first the MODL and then the points test itself were reviewed by the Department of Immigration and Citizenship. This internal review was informed by concerns raised earlier by an independent review¹² that the points test was foremost serving as a visa pathway for international students rather than the economic needs of Australia. Then Immigration Minister Chris Evans was critical of the existing test and the points it allocated for domestic education, arguing that “[t]he current test puts an overseas student with a short-term vocational qualification and one year’s work experience gained in Australia ahead of a Harvard-educated environmental scientist that failed to fill persistent gaps in the labor market.” The report itself added that the points for Australian experience “works against the intention of being able to select the highest value applicants.”¹³

The new test requires more extensive work experience in a skilled occupation and rewards doctorate-level qualifications with higher points.

The review resulted in a decision by the cabinet to adopt a new points test.¹⁴ In 2011, a new test was introduced for the main points-tested visa, the Skilled Independent stream. This new test brought three major changes. First, it increased English language requirements. The International English Language Testing System (IELTS) Level 8—a very high level that many native speakers would not achieve—is now required to receive the highest number of points, while IELTS 6, often considered the level of English required for university admissions, is the threshold for applicants to be eligible for selection.¹⁵ Second, the new test requires more extensive work experience in a skilled occupation and rewards doctorate-level qualifications with higher points. Finally, the test gives preference to applicants in the 25-to-32 age bracket, who receive maximum points.¹⁶

The new points test did not apply to all immigrants under the permanent skilled immigration program. Specifically, employer-nominated entrants (ENSs) were excluded from the new points test. Different, and in some respects more lenient, selection criteria apply to this category of entrants, who need nomination from an Australian employer to gain visa entry, alongside other requirements. The policy rationale behind this preferential treatment of ENSs has not always been clearly articulated by the government. Migrants sponsored as ENSs, however, generally have higher employment rates (as they have a job waiting for them at arrival) compared with those entering through the independent points-tested visa,¹⁷ these higher

12 Birrell, Hawthorne, and Richardson, *Evaluation of the General Skilled Migration Categories*.

13 Yuko Narushima, “Doctors Flock to Australia for Jobs,” *The Sydney Morning Herald*, February 18, 2010, www.smh.com.au/national/doctors-flock-to-australia-for-jobs-20100217-odzj.html.

14 Author interview with senior Australian government officials, November 12, 2013.

15 Government of Australia, *Migration Regulations 1994, Statutory Rules No. 268, 1994*, Compilation No. 182, made under the *Migration Act of 1958*, Schedule 2, 186.232, *Federal Register of Legislation*, Authorized Version F2016C01073, December 16, 2016, www.refworld.org/pdfid/4e23f6e12.pdf.

16 Government of Australia, Department of Immigration and Citizenship, “Points Test for Certain Skilled Migration Visas” (guidance document, Department of Immigration and Citizenship, Canberra, 2011).

17 In the most recent of the skilled-visa outcome reports conducted annually for a two-year window following settlement from 2013–15, principal employer-sponsored visas have the highest employment rates of all skilled visas, between 97 and 98 percent. By comparison, offshore independent skilled visas report 75 percent employment. See Government of Australia, Department of Immigration and Border Protection, *The Continuous Survey of Australia’s Migrants: Cohort 3 Report*.



employment rates could be a rationale for reduced scrutiny of other aspects of ENS selection. Following the introduction of the new criteria for ENS applicants, the number of employer-nominated skilled entrants more than doubled from 23,762 in 2007–08 to 48,250 in 2016.¹⁸

3. SkillSelect

The 2012 creation of SkillSelect, an online database for skilled immigration applicants, further changed the nature of permanent skilled immigration selection in Australia. While previously an immigrant who met the points test had a statutory right to qualify for entry, the applicant now lodges an “expression of interest” (EOI) to be considered for future processing by immigration officials. Assuming the applicant meets the pass mark cutoff, he or she is then scored against the appropriate points test. Depending upon how the individual ranks against other applicants, he or she may then receive an invitation to formally apply. Government further controls intake by setting caps on how many people can apply in any given occupation in a given year.

SkillSelect aimed to reduce the significant backlogs that were building up in the processing of skilled immigration visas.

SkillSelect was motivated by several policy rationales. First, according to one senior government official, the SkillSelect process front-loads some of the assessment steps that previously occurred for independent skilled immigration, thereby speeding up the entry of immigrants into the Australian labor market: “People have their skill assessment, their English language, everything good to go at the EOI stage. When they want to apply for a visa and there’s a job or a sponsor identified... it’s a seamless process.”¹⁹ Second, SkillSelect aimed to reduce the significant backlogs that were building up in the processing of skilled immigration visas, in particular those applications lodged by former international students who were seeking to transition to permanent residency through skilled independent visas.²⁰ As the SkillSelect EOI system only confers a right to apply and not the right to have a decision made, it removes grounds for administrative review of rejected EOIs, thereby increasing administrative efficiency. Finally, SkillSelect may improve the matching between migrant applicants and available spots, thereby ensuring a more streamlined process.²¹

Generally, SkillSelect has been lauded in Australia as producing a more efficient supply of skilled immigration into the country and reducing processing times. However, SkillSelect also fundamentally changed the basis for entry and the predictability of admission: The EOI system renders the applicant competitive against other applicants, rather than simply subjecting applicants to a threshold for passing the points test.²² SkillSelect also represents a reduction in administrative transparency and raises some potential diversity concerns when migrants are ranked rather than subjected to threshold criteria as was previously the case.²³ There are several reasons for this. First, rather than the pass mark being predictable, as was previously the case, it can now shift rapidly depending both upon the supply of applicants and the demands of government. This situation renders policy less predictable and makes it more difficult for

18 Government of Australia, Department of Immigration and Citizenship, “Australian Reforms to Deliver Australia’s Skills Needs” (guidance document, Department of Immigration and Citizenship, Canberra, 2010); Government of Australia, Department of Immigration and Border Protection, *Student Visa and Temporary Graduate Visa Programme Bi-Annual Report* (Belconnen, Australia: Department of Immigration and Border Protection, 2017), 7, www.homeaffairs.gov.au/research-and-stats/files/student-temp-grad-programme-report-jun-2017.pdf

19 Author interview with senior Australian government official, November 12, 2013.

20 Author interview with senior Australian government officials, November 11–12, 2013.

21 Author interview with senior Australian government officials, November 11, 2013.

22 Boucher, *Gender, Migration, and the Global Race for Talent*, 110–13.

23 Boucher, *Gender, Migration, and the Global Race for Talent*, 123–24.



immigrants to plan a strategy to meet the pass mark. Second, as noted earlier, the EOI process is not subject to administrative review, which means that applicants do not have access to legal redress in the event that they feel an incorrect decision has been made. Third, evidence from New Zealand, which has operated an EOI system since 2003, suggests that this has led to a reduction in the entry of applicants from China over the last decade, and a sharp increase in the representation of immigrants from English-speaking nations. This change to the demographic composition of the intake may result from the interaction of the sliding points threshold and the prioritization of English language skills: those most successful under the EOI system are those at the top end of the points threshold who have very strong English language skills.²⁴ It may be very difficult for applicants from some countries to be competitive under this system.

B. Temporary Skilled Immigration

In 1995, a Committee of Inquiry commissioned by then Prime Minister Paul Keating published a report on the Temporary Entry of Business People and Highly Skilled Specialists.²⁵ The report recommended the creation of a temporary visa to ease the entry of workers temporarily relocating for business reasons, eventually leading to the introduction of the 457, Australia's long-running temporary work visa program. The committee's recommendations were based on a recognition that globalization and the growing trade in services had changed the skill needs of the Australian economy. Rather than developing skills in all areas of the labor market, the report suggested that Australia specialize in particular skill areas.²⁶ Although the recommendations of this report were adopted by the Keating government, actual policy changes based on it were not introduced until the election of the Howard Coalition government.²⁷ The 457 visa was introduced in 1996 and existed through to 2017; it has since been replaced with the Temporary Skill Shortage (TSS) visa (discussed in further detail later in this section).

The 457 visa was intended to facilitate the entry of high-skilled workers, and could be used by applicants with skills in Australian and New Zealand Standard Classification of Occupations (ANZSCO) Levels 1–4 (Managers, Professionals and Technicians, Trade Workers, and Community and Personal Service Workers), a total of 640 occupations.²⁸ Applicants also had to meet a minimum salary threshold (the Temporary Skilled Migration Income Threshold), and the salary they received on arrival had to be “no less favourable

24 Richard Bedford, “By Invitation Only? Selecting Skilled Migrants Down Under” (presentation for the National Institute of Demographic and Economic Analysis, University of Waikato, Hamilton, New Zealand, August 23, 2012); Boucher, *Gender, Migration, and the Global Race for Talent*, 123 and Chapter 6.

25 Neville J. Roach, *Business Temporary Entry: Future Directions* (Canberra: Government of Australia, Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, 1995); Migration Council Australia, *More Than Temporary: Australia's 457 Visa Program* (Canberra: Migration Council Australia, 2013), 36, http://migrationcouncil.org.au/wp-content/uploads/2016/06/2013_MTT.pdf; Joanna Howe, “Contesting the Demand-Driven Orthodoxy: An Assessment of the Australian Regulation of Temporary Labour Migration,” in *Temporary Labour Migration in the Global Era: The Regulatory Challenges*, eds. Joanna Howe and Rosemary Owens (London: Hart Publishing, 2016), 133.

26 The Committee argued: “When world trade in services is based on different countries developing specialized skills in different areas, it is not realistic for Australia to attempt to develop specialised skills in all areas.” It also “confirmed the role of business temporary entry as a vital component of Australia's broader economic future and important to the way Australia perceived internationally.” See Roach, *Business Temporary Entry*, paragraphs 3.4 and 1.26; Migration Council Australia, *More Than Temporary*, 36.

27 These changes were introduced through Government of Australia, *Migration Regulations (Amendment) 1996 No. 211*, Statutory Rules 1996 No. 211, *Federal Register of Legislation*, Version F1996B03570, 1996, www.legislation.gov.au/Details/F1996B03570/Explanatory%20Statement/Text.

28 The list of occupations was gazetted and posted on the immigration website. See Department of Immigration and Citizenship, “New List of Skilled Occupations.”



than that paid to an Australian citizen or permanent resident performing the same job.”²⁹ The 457 visa also required nomination by an approved employer sponsor.³⁰

Annual grants of 457 visas grew significantly over the period the visa was in operation: while 22,600 were granted between 1996 and 1997, almost 126,400 visas were granted between 2012 and 2013.³¹ Despite its popularity, the 457 visa became subject to rising concerns over exploitation of the migrant workers who used it, insufficient labor-market testing within the program,³² and a definition of “skills shortage” that was essentially employer defined.³³ These critiques appeared to relate to the various exemptions possible from labor-market testing and the easy threshold for testing, including the posting of an online advertisement or social media post in the previous 12 months.³⁴

In response to these concerns, the government introduced a labor-market test in mid-2013 that required the employer to demonstrate that there was no Australian citizen or permanent resident equipped to fill the position.³⁵ Government analysis of the 457 visa found that some employers were sponsoring overseas migrants despite the availability of Australian workers. The assessment also expressed concerns that the 457 was not fulfilling genuine short- and long-term skill shortages, and that the government lacked control over the testing and suitability of those seeking long-term or permanent admission via the 457 visa.³⁶ Following the introduction of the labor-market test, annual 457 visa grant figures began to decline: 98,571 visas were granted in 2013–14 compared with 87,580 in 2016–17.³⁷ Criticisms persisted, however, and the government chose to abolish the 457 visa and replace it with the TSS visa in 2017.

Although in many respects the two visas are similar, there are several important differences that hold implications for the ways in which skilled economic immigrants are selected for temporary admission to Australia. First, the new TSS visa is split into two components: one for a two-year duration (short term)

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- 29 Joo-Cheong Tham and Iain Campbell, “Temporary Migrant Labour in Australia: The 457 Visa Scheme and Challenges for Labour Regulation” (working paper 50, Centre for Employment and Labour Relations Law, the University of Melbourne, Melbourne, Australia, March 2011), 16, https://law.unimelb.edu.au/_data/assets/pdf_file/0006/1649022/CELR-Working-Paper-No-50-March-2011-FINAL.pdf; Government of Australia, *Migration Amendment Regulations 2009 (No. 5) Amendment Regulations 2009 (No. 2)*, Select Legislative Instrument 2009 No. 230, Inserting Regulation 2.72 (10(cc)), *Federal Register of Legislation*, September 7, 2009, www.legislation.gov.au/Details/F2009L03389.
- 30 Government of Australia, *Migration Amendment Regulations 2009 (No. 5)*, Select Legislative Instrument 2009 No. 115 as Amended, Amendments from SLI 2009 No. 203, Schedule 1 (items 1 and 2) Amended Regulation 3, *Federal Register of Legislation*, September 9, 2009, www.legislation.gov.au/Details/F2009C00781.
- 31 Government of Australia, Department of Immigration and Citizenship, “Subclass 457 Principal Application of Grants: Gender by Nominated Occupation” (guidance document, Department of Immigration and Citizenship, Canberra, 2013); Boucher, *Gender, Migration, and the Global Race for Talent*, 133–34.
- 32 While there was certainly documented exploitation of workers on this visa, some of the media and political coverage confused the 457 visa with other forms of low-skilled visas, such as student and Working Holiday Maker visas, which often present more complex and egregious exploitation cases. See Anna Boucher, “Measuring Migrant Worker Rights Violations in Practice: The Example of Temporary Skills Visas in Australia,” *Journal of Industrial Relations* 61, no. 2 (2018): 277–301.
- 33 Howe, “Contesting the Demand-Driven Orthodoxy”; Chris F. Wright and Andreea Constantin, “An Analysis of Employers’ Use of Temporary Skilled Visas in Australia” (submission 23 to the Senate Education and Employment Reference Committee Inquiry into the Impact of Australia’s Temporary Work Visa Programs on the Australian Labour Market and on the Temporary Work Visa Holders, Parliament of Australia, Canberra, May 2015), www.researchgate.net/publication/275652498_An_analysis_of_employers%27_use_of_temporary_skilled_visas_in_Australia; Damian Oliver and Chris F. Wright, “Australia’s Shifting Skills Ecosystem: Contemporary Challenges in Education, Training and Immigration,” in *Industrial Relations Reform: Looking to the Future*, eds. Keith Hancock and Russell D. Lansbury (Sydney: Federation Press, 2016), 163–86.
- 34 Peter Mares, *Not Quite Australian: How Temporary Migration Is Changing the Nation* (Melbourne: Text Publishing, 2016), 217.
- 35 Government of Australia, Department of Immigration and Border Protection, *Temporary Work (Skilled) Migration (Subclass 457) Programme Legislative Amendments in 2013: Post Implementation Review* (Canberra: Department of Immigration and Border Protection, 2013), <https://ris.pmc.gov.au/sites/default/files/posts/2016/06/Temporary-Work-Skilled-Migration-subclass-457-Programme-%E2%80%932013-Legislative-Amendments-PIR.pdf>.
- 36 Government of Australia, *Temporary Work (Skilled) Migration*.
- 37 In addition to the labor-market test, other factors that may have contributed to a reduction in 457 usage include the end of the mining boom that reduced the overall buoyancy of the Australian economy as well as the increased usage of other visas, including de facto low-skilled visas for low- and semi-skilled labor over the same period (as discussed in subsequent sections). See Government of Australia, Department of Home Affairs, “Temporary Work (Skilled) Visa Program—BP0014 Temporary Work (Skilled) Visas Granted Pivot Table,” accessed August 23, 2018, <https://data.gov.au/dataset/visa-temporary-work-skilled>.



with no avenue to permanency and a second for a four-year duration (medium term) that contains a pathway to permanency. The change weakens the nexus between temporary immigration and permanent residency, negating a prior policy assumption that migrants on temporary visas have “a right to remain in Australia beyond the term of that visa.”³⁸ Second, the TSS heavily reduces the number of occupations under which a migrant can be admitted from more than 600 down to 167 for the four-year visa and 268 for the two-year visa. According to the Department of Home Affairs, the more limited occupations list was intended to focus on “high value” occupations and to align temporary migration with Australia’s training and workforce strategies.³⁹

The change weakens the nexus between temporary immigration and permanent residency.

Despite the changes to the occupation lists, employers remain primarily responsible for selecting immigrants. Critics have argued that this is a key limitation of the design of the TSS.⁴⁰ There is also the concern that by removing the opportunity for some visa holders to convert to permanent residency, the short-term TSS may undermine social cohesion by limiting the opportunity of these individuals to gain the rights enjoyed by permanent residents such as access to welfare, government-subsidized medical costs, and ultimately, the right to naturalize and become Australian citizens.⁴¹ The shift toward more temporary work visas without a pathway to permanent visas also reinforces existing concerns about migrant worker exploitation. As ongoing visa status is dependent upon employer sponsorship, temporary status can exacerbate migrant vulnerability in the workplace, as several recent government inquiries have noted.⁴²

The introduction of the TSS resulted in several shifts in trends regarding the use of temporary skilled visas. First, the age and skill level of successful applicants have changed. Shifts in the characteristics of TSS visa holders compared with those who held the 457 visa suggest that recent changes to the temporary skilled visa have favored older applicants (those ages 30 to 39) and those with higher skill

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- 38 Government of Australia, Department of Immigration and Border Protection, “Visa Simplification: Transforming Australia’s Visa System” (policy consultation paper, Department of Immigration and Border Protection, Canberra, 2017), <https://immi.homeaffairs.gov.au/immigration-reform-subsite/files/consultation-outcomes-summary.pdf>. Government of Australia, Parliament of Australia, “Immigration and Border Protection Portfolio: Budget Estimates 2017–18” (Hansard Transcript, Australian Senate Legal and Constitutional Affairs Legislation Committee, Canberra, May 23, 2017), 22, http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/cb2ab671-367b-4059-a0bd-3150ac31359d/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2017_05_23_5104_Official.pdf.
- 39 Government of Australia, Department of Immigration and Border Protection, “Abolition and Replacement of the 457 Visa—Government Reforms to Employer Sponsored Skilled Migration Visas” (fact sheet, Department of Immigration and Border Protection, Canberra, 2017), <https://archive.homeaffairs.gov.au/trav/work/457-abolition-replacement>.
- 40 Chris F. Wright, Henry Sherrell, and Joanna Howe, “Australian Government Axes 457 Work Visa: Experts React,” *The Conversation*, April 18, 2017, <https://theconversation.com/australian-government-axes-457-work-visa-experts-react-76321>. These authors argue that “[e]mployer-conducted labor-market testing has been discredited by the OECD. A far better approach is independent labor-market testing which is used in the UK, Austria, and other countries to ascertain which occupations should be eligible for temporary skilled immigration.”
- 41 Anna Boucher, “Transforming Australia’s Visa System” (submission to the Department of Immigration and Border Protection’s Policy Consultation Paper on Visa Simplification, University of Sydney, Sydney, 2017), 10, www.researchgate.net/publication/319701681_Department_of_Immigration_and_Border_Protection_Submission_to_the_Visa_Simplification_Process.
- 42 Barbara Deegan, “Visa Subclass 457: Integrity Review” (review, Government of Australia, Department of Immigration and Citizenship, Canberra, 2008), 1–100, <https://archive.homeaffairs.gov.au/WorkinginAustralia/Documents/457-integrity-review.pdf>; Parliament of Australia, *A National Disgrace: The Exploitation of Temporary Worker Visa Holders* (Canberra: Senate of Australia, Education and Employment References Committee, 2016), 1–355, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report; Boucher, “Transforming Australia’s Visa System,” 10.



levels.⁴³ In addition, the introduction of the TSS visa has been accompanied by a continued decline in grants of temporary skilled visas. While use of these visas has been declining since 2013, the TSS appears to have accelerated this trend: between the 2016–17 and 2017–18 periods, the number of temporary skilled visas issued fell by 26 percent.⁴⁴ It is too early to ascertain, however, why the TSS has resulted in reduced entry when compared with the 457 visa. Both the TSS and its predecessor are uncapped, so this change is not a product of government processing ceilings. Rather, these reductions in intake must be viewed within the broader macroeconomic context of the Australian labor market. Employer use of temporary skilled immigrants has generally been higher during economically buoyant periods, and migrant workers were used particularly heavily during the mining boom, which has now ended. The reduced list of occupations eligible under the medium-term TSS when compared with the 457 visa may have limited the ability of some employers to use the visa, while the short-term TSS visa, which is not renewable beyond two years, could be seen as an unattractive option (for both employers and prospective migrants). Finally, higher visa fees could act as a deterrent for some employers to sponsor under the TSS visa.⁴⁵

C. Low- and Semi-Skilled Temporary Immigration

While the TSS and 457 are skilled temporary visas, the need for low- and semi-skilled workers is also increasing in many occupations in Australia. According to projections by the former Australian Workplace Productivity Agency, for example, low-skilled nursing support and personal care workers will be the fastest-growing vocations in Australia,⁴⁶ likely due to the structural aging of the Australian population. But entry routes for low- and semi-skilled workers to Australia remain formally limited within the existing visa framework and instead occur through de facto means.

In response to rising labor-market demand for low- and semi-skilled workers, some industry groups (and elements within government) have advocated for creating low- or semi-skilled modes of entry within the former 457 visa class. These groups were particularly critical of the salary threshold of the 457 visa, and the limited set of (mostly high-skilled) occupations for which the visa could be used. In 2013, the Australian Council of Chamber and Industry called for “as-needed” inclusion of low- and semi-skilled occupations in the 457 program.⁴⁷ Aged and Community Services Australia also argued that the scope of the 457 visa should be extended to care workers in areas facing a critical labor-force shortage, suggesting that the definitions of “skill” and salary thresholds of the 457 visa were preventing the entry of much-needed care workers into Australia.⁴⁸ The Australian Productivity Commission, an independent statutory body responsible for the review of major areas of government policy, similarly recommended reducing the barriers to recruiting immigrant care workers in its review of the care needs

43 For example, visas granted to people ages 20 to 24 dropped by 69 percent between 2012–13 and 2017–18, compared with a 41 percent drop in the 35 to 39 age group. There is also a narrowing gap in the number of visas granted to people in the age groups 25 to 29 and 30 to 34. During the same period, the percentage of visas granted to relatively low skill levels (defined as Australian and New Zealand Standard Classification of Occupations Levels 2–5) dropped 60–65 percent each, while the highest skill level (Level 1) dropped only 41 percent. See Department of Home Affairs, “Temporary Work (Skilled) Visa Program.”

44 In 2016–17, 87,580 visas were granted, while 64,470 visas were granted in 2017–18. See Department of Home Affairs, “Temporary Work (Skilled) Visa Program.”

45 Government of Australia, Department of Home Affairs, “Fees and Charges for Visas,” accessed August 27, 2018, www.homeaffairs.gov.au/trav/visa/fees#tab-content-2.

46 Australia Workforce and Productivity Agency, “Australia’s Skills,” 45.

47 Australian Council of Chamber and Industry, *Submission to the Senate Standing Committee’s Inquiry into the Current Framework and Operation of Subclass 457 Visa, Enterprise Migration Agreements and Regional Migration Agreements* (Canberra: Australian Council of Chamber and Industry, 2013), 8–9, 19.

48 Aged and Community Services Association, *Submission to the Productivity Commission: Inquiry into Caring for Older Australians* (N.p.: Aged and Community Services Association, 2013), 6, 34, www.pc.gov.au/inquiries/completed/aged-care/submissions/sub140.pdf.



of older Australians.⁴⁹ These and other employer groups have argued that exceptions should be made to the Temporary Skilled Migration Income Threshold to allow workers to enter some sectors or regions on lower salaries than currently permitted.⁵⁰

The Australian Productivity Commission ... recommended reducing the barriers to recruiting immigrant care workers.

The Australian government has, for the most part, rejected these requests, though it has made exceptions for regional recruitment programs such as the Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs), since collectively renamed the Designated Area Migration Agreements (DAMAs).⁵¹ DAMAs allow employers to sponsor workers under the 457 (now TSS) visa with some reductions in normal minimum salary requirements if employers can demonstrate that the salary is in line with local market rates, an especially important concern for small and medium enterprises. This arrangement was driven by concerns that the 457 salary threshold had forced employers in the region to raise pay rates above local market rates.⁵²

The results of the DAMA approach appear to be mixed. Since the adoption of the agreement in 2014, the number of skilled permanent workers in Darwin tripled over the period 2006 to 2016–17, and while 457 grants rose initially, they have since fallen in line with the overall decrease in grants of 457 visas.⁵³ Moreover, there is evidence that due to strong demand for migrant workers in the Northern Territory, where DAMAs are most commonly used, some employers in certain occupations have found it necessary to increase wages compared with levels of payment commonly expected by Australian workers.⁵⁴

Outside of the DAMAs, industry has used de facto low-skilled visas to meet labor demands. The Working Holiday Maker visa, various International Student visas, and the Post-Study Graduate visa all offer attached working rights. The Working Holiday Maker visa, which was introduced in 1975, is a 12-month

49 Government of Australia, Productivity Commission, *Caring for Older Australians* (Canberra: Productivity Commission, 2011), 383, www.pc.gov.au/inquiries/completed/aged-care/report.

50 Government of Australia, Department of Immigration and Citizenship, *Visa Subclass 457 External Reference Group, Final Report to the Minister of Immigration and Citizenship* (Canberra: Department of Immigration and Citizenship, 2008), 34.

51 The creation of these special enterprise and regional arrangements was a recommendation from the 2010 National Resource Sector Employment Taskforce into the specific labor needs of the mining sector, which itself was precipitated by employer demand. Regional Migration Agreements (RMAs) have been used most fulsomely in the Northern Territory under a negotiated Northern Territory Designated Area Migration Agreement. See Sid Maher and Joe Kelly, "Labor Can't Run Class War as Rinehart Deal Unfurries Unions," *The Australian*, May 26, 2012, www.theaustralian.com.au/business/mining-energy/labor-cant-run-class-war-as-rinehart-deal-unfurries-unions/news-story/da95816255ce6c3a17080d800b82f198; Boucher, *Gender, Migration, and the Global Race for Talent*, 135; Government of the Northern Territory, Department of Trade, Business, and Innovation, "Northern Territory Designated Area Migration Agreement," updated January 25, 2018, <https://business.nt.gov.au/business/migration-information-for-business/northern-territory-designated-area-migration-agreement>.

52 Kate Golebiowska and Alicia Boyle, "Informing the Territory Economic Summits: How Can Foreign-Born Workers Support the Development of the North?" (research brief, Northern Institute, Charles Darwin University, Darwin, Australia, May 2017), 3, www.cdu.edu.au/sites/default/files/the-northern-institute/docs/research-brief-05.2017-economic-summit.pdf; Government of the Northern Territory, Department of Business, "Submission 39 to the Education and Employment References Committee Inquiry 2015" (submission to the Standing Committee on Education and Employment, Enquiry into the Impact of Australia's Temporary Work Visa Programs on the Australian Labour Market and on the Temporary Work Visa Holders, Australian Senate, Canberra, May 2015), 2, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Submissions.

53 Department of Immigration and Border Protection, *Student Visa and Temporary Graduate Visa Programme*, 6; Department of Home Affairs, "Temporary Work (Skilled) Visa Program."

54 Northern Institute, *Market Rates of Pay* (unpublished report prepared for the Northern Territory Department of Business, n.d.), cited in Golebiowska and Boyle, "Informing the Territory Economic Summits," 3.



visa intended to bring migrants under 30 into Australia to work and travel. Visa holders are not required to work, however, and the working period was initially limited to three months of full-time work.⁵⁵ In 2005–06, the government extended the working period to six months and introduced the option to obtain a second-year Working Holiday visa for those who worked 88 days or more in regional primary industries. In the Northern Territory, the DAMA strategy has expanded the Working Holiday Makers program to permit extension of visas for 12 months with one employer and for up to two years in key sectors.⁵⁶ While the government has continued to argue that the objective of the visa is cultural exchange, regional industries with seasonal work such as tourism and agriculture have relied on it to increase short-term labor during peak times.⁵⁷ Increasingly, the visa is also used by agricultural workers.

The Post-Study Graduate visa, known as the 485 visa, permits international students with recently completed Australian qualifications to remain in Australia for up to four years depending upon their level of completed study; unlike the International Student visas, it contains no limits on the number of permitted weekly working hours. The 485 visa is also not subject to any labor-market testing.⁵⁸ Post-study visa holders and students frequently find work in low-waged sectors such as service and hospitality.⁵⁹

The number of migrants present on these visas has increased significantly in recent years. For instance, grants of Working Holiday Maker visas increased from more than 40,000 in 1996–97 to approximately 215,000 in 2015–16.⁶⁰ Grants of the various International Student visas increased from 113,000 to nearly 311,000 over the same period.⁶¹ Use of the post-study visa also rose: in the financial year 2017–18, there were 19,505 such visas granted.⁶² Continued increases are likely as the present stock of international students graduate and seek the means to remain in Australia. Most holders of post-study visas (89 percent), Working Holiday Maker visas (79 percent), and secondary visas (i.e., partners) (76 percent) are engaged in paid employment of some nature, as are 48 percent of international students.⁶³ The scope of intake in these categories therefore provides a considerable source of additional workers in the Australian economy.

At the same time, concerns over the exploitation of migrant workers on these visas are growing, and the government has conducted several enquiries into the matter.⁶⁴ A survey of migrant workers on a number of temporary visas, including Working Holiday Maker visas, commissioned by the Department of Immigration and Citizenship and the Department of Employment in 2015, found that 24 percent of respondents reported at least one negative work-related experience that ranged from underpayment,

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- 55 Janet Phillips, "Australia's Working Holiday Maker Program: A Quick Guide," Table 2, updated November 22, 2016, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/WorkingHoliday#_Table_2:_Working.
- 56 Accurate, regionally disaggregated data are hard to acquire because they have not been published for these programs. There is evidence, however, that Working Holiday Makers comprise up to 50 percent of the workforce in the hospitality, primary, and construction sectors in the Northern Territory. See Golebiowska and Boyle, "Informing the Territory Economic Summits," 3; Government of the Northern Territory, "Department of Business Submission," 10.
- 57 Government of Australia, Fair Work Ombudsman, *Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa* (Canberra: Fair Work Ombudsman, 2016), www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#417-visa; Peter Mares, "All Work, No Stay?" Special Broadcasting Service, August 20, 2018, www.sbs.com.au/allworknostay/.
- 58 Peter Mares, "We Know about the 457. What about the 485?" Inside Story, March 28, 2013, <https://insidestory.org.au/we-know-about-the-457-what-about-the-485/>.
- 59 Anna Boucher, "Australia's De Facto Low Skilled Labour Immigration Programs," in *Migration: The Economic Debate* (Melbourne: Committee for Economic Development of Australia, 2016), 45–56, www.ceda.com.au/CEDA/media/ResearchCatalogueDocuments/Research%20and%20Policy/PDF/32509-CEDAMigrationReportNovember2016Final.pdf.
- 60 Alexander Reilly, Joanna Howe, Diane van den Broek, and Chris F. Wright, "Working Holiday Makers in Australian Horticulture: Labour Market Effect, Exploitation, and Avenues for Reform," *Griffith Law Review* 27, no. 1 (2018): 99–130.
- 61 Harriet Spinks and Elsa Kolet, *Overseas Students: Immigration Policy Changes 1997–2015* (Canberra: Department of Parliamentary Services, 2016), www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/OverseasStudents.
- 62 Department of Immigration and Border Protection, *Student Visa and Temporary Graduate Visa Programme*, 69.
- 63 Hall and Partners, *Experiences of Temporary Residents* (Canberra: Department of Immigration and Border Protection., 2016), 14, www.homeaffairs.gov.au/foi/files/2018/fa180300984-document-released.pdf.
- 64 Government of Australia, *A National Disgrace*; Hall and Partners, *Experiences of Temporary Residents*.



verbal or psychological abuse through to ethnic or sexually based discrimination.⁶⁵ Further, a number of commentators have argued that undue reliance on the Working Holiday Maker visa has led to wage evasion among employers and has allowed employers and the government to avoid taking active steps to address domestic labor shortages either by offering higher wages or increasing job training opportunities to upskill Australian workers.⁶⁶

Commentators have argued that undue reliance on the Working Holiday Maker visa ... has allowed employers and the government to avoid taking active steps to address domestic labor shortages.

In response to these concerns, some critics have recommended the creation of a bespoke low-skilled labor visa, which would provide a more regulated basis for the entry of low-skilled migrant workers than do existing de facto schemes.⁶⁷ To date, this proposal has not been adopted. The government did, however, announce in 2018 a Pacific Labour Scheme, which draws upon bilateral agreements with the nations of Nauru, Kiribati, and Tuvalu to bring workers into the nonseasonal agricultural, accommodation, service, health-care, and social-assistance sectors in Australia.⁶⁸ This scheme supplements the existing Seasonal Worker Programme that covers workers in several low-skilled sectors. However, visa grants under these two schemes are small, numbering less than 5,000 entrants combined per year, and entrants under the Pacific Labour Scheme were capped at 2,000 places for 2018–19. Low uptake of both schemes is likely due to the regulatory burdens they impose on employers, such as labor-market testing and the requirements that employers apply for authorization before they recruit workers.⁶⁹ This higher level of regulation when compared with the Working Holiday Maker visa is likely due to historical anxiety in Australia over some forms of Pacific migration (e.g., concerns about migrants overstaying their visas), as well as a desire to protect the welfare of workers.⁷⁰

III. Trends and Challenges in the Australian System

The overall nature of the economic immigration program in Australia has shifted radically since the turn of the 21st century, leading to a program that is predominantly employer sponsored and increasingly temporary in nature. Australia has thus moved far (and fast) from its original position as a “settler state”

65 This survey has some methodological limitations insofar that the sample size was small (2 percent of the target population) and there was undersampling of migrants from certain ethnic backgrounds. Furthermore, there were some concerns that the survey was not in the field for a sufficiently long period of time. However, it is the most reliable of the studies that has been undertaken in Australia on this topic as it undertakes weighting against a complete database of all temporary migrants resident in Australia in 2014–15. See Hall and Partners, *Experiences of Temporary Residents*, 15, 113.

66 Alexander Reilly, “Low-Cost Labour or Cultural Exchange? Reforming the Working Holiday Visa Programme,” *The Economic and Labour Relations Review* 26, no. 3 (2015): 474–89; Reilly, Howe, van den Broek, and Wright, “Working Holiday Makers in Australian Horticulture.”

67 Joanna Howe and Alexander Reilly, “Meeting Australia’s Labour Needs: The Case for a New Low-Skill Work Visa,” *Federal Law Review* 43, no. 2 (2015): 259–87.

68 Julie Bishop, “Labour Mobility: A Win-Win for Australia and the Pacific,” DevPolicy Blog, July 2, 2018, www.devpolicy.org/labour-mobility-win-australia-and-the-pacific-20180703/.

69 Reilly, Howe, van den Broek, and Wright, “Working Holiday Makers in Australian Horticulture,” 8; Henry Sherrell, “The Seasonal Worker Program: Who Is Coming to Australia?” DevPolicy Blog, January 25, 2017, www.devpolicy.org/seasonal-worker-program-coming-australia-20170125/.

70 The authors are grateful to Peter Mares for these points.



toward a market-based immigration model—a trend shared with other former British colonies such as Canada and New Zealand and, indeed, with the United Kingdom itself.⁷¹

Several broad policy changes, acting in parallel, have driven this shift. First, selection within the skilled permanent stream increasingly prioritizes employer-sponsored migrants within the points test (many of whom were previously resident on temporary visas). Second, there have been uncapped increases in temporary immigration at the same time as access to permanent immigration has become more limited. With this, the number of visa changes an individual must make before gaining permanent residency has also increased.⁷² Finally, low- and semi-skilled immigration channels have remained largely unregulated, uncapped, and driven by employer demand.

*The shift to temporary, employer-driven migration ...
undermines the traditional commitment in Australia to the
long-term integration of immigrants.*

The overall shift toward temporary, employer-driven economic immigration has advantages. On the one hand, there is increased flexibility for employers in the system to select workers according to their needs. Increased flexibility may also have benefits for migrants, not all of whom wish to establish permanent settlement in Australia.⁷³ Furthermore, it is clear that immigrants play a crucial role in key sectors such as horticulture and health where there may be an undersupply of domestic workers.⁷⁴ For example, 33 percent of workers in the hospital sector were born overseas and 42.7 percent of café and restaurant staff were born overseas.⁷⁵

The shift to temporary, employer-driven migration, however, also undermines the traditional commitment in Australia to the long-term integration of immigrants and has raised potential policy concerns. First, bringing migrants in on temporary visas may leave them vulnerable to exploitation by unscrupulous employers who could use their role as sponsors as leverage to force migrants to endure unfair labor conditions, or risk losing their visa.⁷⁶ The potential for exploitation may be exacerbated by the lack of opportunities to convert to permanent status inherent to the design of some visas. International students, for example, find it increasingly necessary to spend additional time on temporary immigration visas as places in the permanent program are reduced and become more selective. Moreover, because the majority of temporary migrants plan to remain in Australia, the desire for future sponsorship may render such temporary migrants a more malleable, diligent, and flexible workforce when compared with local workers.⁷⁷

Second, as the system becomes more employer driven, there is a risk that selection power will move from the government into the hands of individual firms and employers. As a result, the selection of new immigrants may come to prioritize short-term demand (in the interest of individual employers and

71 Anna Boucher and Justin Gest, *Crossroads: Comparative Immigration Regimes in a World of Demographic Change* (New York: Cambridge University Press, 2018).

72 Productivity Commission, *Caring for Older Australians*, 383.

73 Hall and Partners, *Experiences of Temporary Residents*, 137.

74 Reilly, Howe, van den Broek, and Wright, "Working Holiday Makers in Australian Horticulture," 19.

75 Government of Australia, Department of Immigration and Border Protection, *The Place of Migrants in Contemporary Australia: A Summary Report* (Canberra: Department of Immigration and Border Protection, 2014), 22.

76 Stephen Clibborn and Chris F. Wright, "Employer Theft of Temporary Migrant Workers' Wages in Australia: Why Has the State Failed to Act?" *The Economic and Labour Relations Review* 29, no. 2 (2018): 207–27.

77 A report that surveyed temporary migrants resident in Australia from 2014 to 2015 found that (among respondents) 82 percent of graduates intended to apply for permanent residency, as did 59 percent of sponsored visa holders and 55 percent of secondary (partner) holders. Thirty-one percent of current international students intended to apply as well as 9 percent of Working Holiday Makers; see Hall and Partners, *Experiences of Temporary Residents*, 137–38.



firms) over longer-term competitiveness and human-capital development (the remit of government). Moreover, under an employer-driven system, migrants may be selected less for their ability to contribute to key areas of skills shortage or long-term human-capital needs and more based on behavioral traits, such as their potential compliance,⁷⁸ further increasing the risk of exploitation. Some of the key advantages of the prior government-determined, points-based system, including its purported distance from gendered or racial bias, are more difficult to maintain when employers rather than government are given the central control over selection.⁷⁹ Evidence suggests that employers are more likely to select on the basis of interpersonal competencies and “soft skills” than credentials and other human-capital features that may be more easily quantified and at least seemingly more objective.⁸⁰ Employers also select more homogeneously than governments, preferring people from English-speaking backgrounds.⁸¹ This raises concerns for the maintenance of ethnic diversity and equality of opportunity in immigration selection policy, which have been a key platform of Australia’s immigration program historically and arguably contributed to the positive global reputation it enjoys.

Finally, there is the risk that a more temporary workforce, increasingly at the mercy of employers, may compete with domestic workers at the lower end of the job market. While data are limited, there is some correlational (but not causal) evidence to suggest that immigration may, to some extent, displace younger Australians with lower levels of qualifications,⁸² although other analysis by the same institution disputes this finding.⁸³ If true, this evidence is worrisome in light of the fact that most migrants entering in the uncapped forms of immigration are young, including those entering on the Working Holiday Maker visa (the upper age limit is 30) and International Student visas (generally under age 40). Any potential effects could be exacerbated by stubbornly high domestic youth unemployment, which has remained at 12.6 percent since 2016,⁸⁴ and regional labor-market differences. Particularly in areas where there is high domestic unemployment *and* high migrant intake, such as Darwin, there are concerns about the potential displacement of local workers. As an example, in 2016, the Northern Territory, which relies heavily on migrant labor, reported an unemployment rate of 7 percent, up from 5.3 percent in 2011.⁸⁵ Unemployment in that year rose to 26 percent among Indigenous workers, much higher than the 19 percent unemployment rate reported in 2011. Unemployment among this group is particularly significant as Indigenous peoples make up over one-quarter of the Northern Territory population.⁸⁶

If labor-market displacement has occurred, government could address the issue by increasing the regulation of these lower-skilled visas, or alternately, increasing the training of local workers in other sectors. However, this would require a significant investment by government, even as funding for both the vocational and tertiary education sectors has been reduced.⁸⁷ Moreover, because far more has been done to track the labor-market outcomes of permanent immigrants than temporary immigrants—who are often transient, making them more difficult to track—it is difficult to get a clear picture of the extent to which displacement of domestic workers is occurring. In particular, it is difficult to prove a causal link between the increase in temporary labor and the flight of local workers

78 Howe, “Contesting the Demand-Driven Orthodoxy,” 139.

79 Although this can be contested; see Boucher, *Gender, Migration, and the Global Race for Talent*.

80 Oliver and Wright, “Australia’s Shifting Skills Ecosystem.”

81 Lesleyanne Hawthorne, *Competing for Skills: Migration Policies and Trends in New Zealand and Australia* (Wellington, New Zealand: Australian Department of Immigration and Citizenship/New Zealand Department of Labour, 2011), www.homeaffairs.gov.au/research-and-stats/files/migration-policies-trends-fullreport.pdf.

82 Productivity Commission, *Caring for Older Australians*, 168.

83 Productivity Commission, *Caring for Older Australians*, 644–45.

84 Boucher, “Australia’s De Facto Low Skilled Labour”; Australian Bureau of Statistics, “2016 Census: Aboriginal and/or Torres Strait Islander Peoples QuickStats,” accessed September 14, 2018, http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/IQS7.

85 Australian Bureau of Statistics, “2016 Census: QuickStats,” accessed September 14, 2018, http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/7?opendocument.

86 Australian Bureau of Statistics, “2016 Census: Aboriginal and/or Torres Strait Islander Peoples QuickStats.”

87 Wright, Sherrell, and Howe, “Australian Government Axes 457 Work Visa”; Oliver and Wright, “Australia’s Shifting Skills Ecosystem.”



from agricultural areas. This suggests there is a need for the Australian government to invest in better data collection and analysis methods to evaluate the labor-market behavior of short-term immigrants, including holders of Working Holiday Maker and International Student visas, in order to ascertain the precise labor-market effects of these programs over extended periods of time. Recent efforts by the government to engage with companies undertaking big data analysis of job shortages (via job advertisement listings) are important components of this work and could increase understanding of areas of demand into the future.⁸⁸ More broadly, it cannot be assumed that individuals on temporary visas won't have any labor-market impact, particularly as most are motivated to remain in Australia. The pathways that these individuals take to permanent residency, or their steps within and across different temporary visas, also require more analysis.

At a deeper, structural level, there have been concerns that Australian industry and government are becoming reliant on temporary immigration since, over time, this reduces training costs and allows for easier expansion and contraction of the labor force, compared with hiring locals. Concerns have been raised about the horticultural sector in particular, where the percentage of migrant workers has risen from 20 percent to around 70 percent over a two-decade period.⁸⁹

IV. Conclusions and Recommendations

Immigration for economic reasons has become a dominant part of the Australian immigration system in recent decades. Changes introduced by the Liberal-National government beginning in 1996 led to the creation of a detailed system that aimed to select people for immigration based on their potential to succeed economically in Australia. While the Australian selection system has become highly regarded internationally, it has faced its share of challenges and has undergone a near-continuous evolution as the skills demands and policy context of the Australian labor market have shifted.

Australia's experiences in seeking to develop a tailored and targeted immigration selection system offer several lessons for other countries seeking to develop similarly targeted selection systems about the likely challenges and trade-offs that lie ahead:

- ***The criteria for selecting immigrants must be adjusted and managed over time.*** In Australia, the government has found it necessary several times to adjust the occupational lists and points categories that are used to select skilled permanent immigrants, as well as the occupational lists that determine eligibility for temporary immigrants. In both cases, the changes were driven by a sense that the skills profiles of the immigrants previously admitted did not accurately reflect skills gaps within the Australian labor market. In the case of permanent immigration, the system had become dominated by former international students, and in the case of temporary immigration, employers had come to rely overly heavily on immigrant workers, when Australian workers were available.
- ***Selection procedures, not just criteria, should be reviewed and adjusted as needed.*** While selection criteria receive much of the attention in policy design, selection *procedures* also play an important role in ensuring recruitment of quality immigrants with high human capital, while at the same time ensuring that there is not an oversupply of potential applicants that could lead to backlogs. In Australia, selection procedures have been adjusted over time to allow some of the qualification and human-capital checks to occur when potential immigrants apply, prior to selection. This SkillSelect system has helped to reduce

⁸⁸ Author interview with Helen Innes.

⁸⁹ Reilly, Howe, van den Broek, and Wright, "Working Holiday Makers in Australian Horticulture."



backlogs, though it has also attracted criticism for reducing the predictability of the system for applicants.

- ***Leaving low- and semi-skilled workers out of selection systems creates a risk that these sectors could become unregulated and open to exploitation.*** While the Australian system has invested extensively in managing the recruitment and selection of high-skilled immigrants, the low- and semi-skilled sectors have been left largely unregulated. As a result, employers have turned to visas that are formally intended for nonwork purposes to fill their needs for low- and semi-skilled workers. This has led to concerns about exploitation of workers and fears that employers and the government are relying overly heavily on immigrant workers to fill low- and semi-skilled jobs.
- ***Be aware of regional labor-market differences and the risks of oversupply in high unemployment areas.*** In some regions of Australia, high recruitment of immigrant workers to fill labor shortages has occurred in parallel with high unemployment among domestic workers. For the Australian government, the challenge has thus been in determining how to meet employers' needs in the region, while also ensuring the availability of opportunities at reasonable wage levels for domestic workers. While regional visa programs have been used to manage some of these differences, they have remained subject to critique for similar reasons.



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