

Executive Summary

- In the last 5 years there has been a massive growth in the number of 457 visas being issued. There were 28,042 principal 457 visas approved in 2004-05, with around 40,000 principal 457 visas approved 2005-06. This represents a 42% increase on 2004-05 and a 66% increase from 2003-04.
- It is the AMWU's submission that:
 1. The adequacy of the current eligibility requirements are insufficient to ensure appropriate skills are held by 457 workers and that they are not subject to exploitation.
 2. The effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas are insufficient to ensure workers are not subject to exploitation; and
 3. There are a range of areas where procedures must be improved and new processes, systems and accountability of government and the Department must be developed.
- For the first time in Australia's migration history, there are more temporary skilled 457 visas granted than skilled permanent visas.
- Since 1998 the growth in 457 visa approvals has significantly outpaced employment growth across the economy as a whole. Manufacturing 457 visa approvals have nearly doubled in only one year.
- Policy changes in 2001 have been the central cause of the current problems associated with the 457 system. The removal of market testing, requiring the visa role to be a 'key' activity of the business, the requirement to demonstrate a training benefit and credentialing of overseas qualifications led to an explosion in 457 visa applications for all the wrong reasons.
- While some of the growth has been about addressing some particular occupational and geographic skills shortages, with the WA mining sector being the obvious example, the majority of the growth in 457 visas has not been to compensate for skills shortages.
- There are significant flows of 457 entrants working in traditional industries in the major eastern states. These flows are not addressing specific occupational and geographic shortages, but rather are flowing into key employing industries in metropolitan areas (construction in Sydney and hospitality in Melbourne for example). These flows are attributable to employers exploiting a wage gap between the legislated minimum wage condition (\$41,850) attached to 457 visas and the market rate that Australia-based tradespersons would demand, particularly if geographical re-location would be required in order to take up the work.
- The AMWU submits that the system was designed to undermine wages from the inception of the current requirements. In 2001, labour market testing was removed completely from the 457 visa rules (with the exception of regional exemptions). At the same time, as a trade off for removing labour market testing, the government introduced several measures, most significantly a minimum wage level.

- The minimum annual salary was set at \$34,075 which was derived from the ABS survey of average weekly earnings, specifically the trend average weekly earnings for all employees in all skill categories (including categories such as unskilled labourers not eligible for 457 visas) and part time workers (while 457 visas are restricted to full time workers).
- This minimum salary is considerably lower than other wage benchmarks for skilled workers (ASCO 1-4). It was less than the 2001 median starting salary for new university graduates (\$35,000), it was nearly \$8,000 less than the average weekly ordinary time earnings for full time persons (all occupations) and was \$12,000 below the average of ASCO 1-4 occupations full time ordinary earnings.
- It is reasonable to conclude from this that the wage was set for political purposes and to undercut the wage levels earned by Australians. This is especially evident in the failure of the 457 minimum wage, already set at an artificial low, to keep up with the wage indices it was set against. The wage level has failed to keep up with the trend average weekly earnings for all employees which as of May 2006 was \$43,160.
- The former Immigration Minister herself has admitted that the motive of many employers utilising 457 visas is to suppress wage claims.¹
- Even with a minimum wage that is artificially low, a significant number of employers pay less than it. The Department of Immigration's official statistics show that in 2003-04 25% of tradespeople on 457 visas were paid less than \$35,000, this is despite the minimum salary at that time was at around \$37,000.
- The government's own research also revealed that 33.8% of tradespeople on 457 visas had a dispute with their employer over salary level or hours worked.
- **All the available data along with anecdotal experience and the then Immigration Minister's own admission leads to the conclusion that the central reason for the continuing popularity of the 457 visa is the ability it grants employers to drive wages down.**
- The increase in use of 457 visas workers is undermining skills formation in Australia, thereby reducing the long term productive potential of the Australian economy. At the same time, the growth of these visas has set workers against worker, potentially divided communities and exposed temporary migrants to distressing levels of exploitation. It is a classic example of the short termism that plagues Australian business and the Commonwealth government.
- Temporary entry is concerned primarily with employers' immediate needs. Temporary labour flows will not contribute to skills formation through vocational training. Skills learnt or developed by temporary entrants will be enterprise-based and not broadly portable. Temporary entrants will not be available to train and mentor junior workers in the medium term, or to move into the VET sector as teachers. Over reliance on temporary labour flows is short termism at its worst and will exacerbate rather than ameliorate the impact on

¹ Shaw, M., "Guest workers cut wages: Vanstone", The Age, 8/06/2006

employers overall in relation to the quality and appropriateness of available skills and the longer-term skills gap.

- The dramatic increase in temporary trades labour inflows will undermine the recent lift in domestic apprenticeship training effort by reducing the incentives for employers to fund training due to competition from firms that instead rely on s.457 workers and by making apprenticeships less attractive to prospective apprentices by the 457 visas system lowering average wage rates.
- 457 visa holders are being used to undercut the wages and conditions of Australian workers and permanent migrants. They are being used to replace locked out workers and reduce the bargaining power of employees. As part of this process these migrants are being heartbreakingly exploited by unscrupulous employees. They are being underpaid, forced to work incredibly long hours, massively overcharged for company accommodation and transport, preyed upon by predatory migration agents and if they attempt to exercise their rights, some as basic as to access medical care after a workplace injury, they are threatened with deportation.
- This is a system that brings no credit to Australia. It was conceived to provide short run profits to the most unscrupulous of employers. Myopic employers who refuse to invest in their workforce, instead choosing short term fixes that ultimately undermine Australian skills development, reducing equity and fairness and dividing workplaces. In the end, Australia will be both poorer materially and in terms of our international reputation.
- What is required is a strategy to address the question of emerging skill shortages and to provide the basis for improved productive performance through broad based skills and qualifications.
- An essential part of this is to reform the system for temporary visas. The AMWU has put forward a series of recommendations that will ensure that 457 visas do not undermine the training and skills system of Australia or lead to exploitation of those visa holders.
- The AMWU is confident that should these 16 recommendations be implemented the result will be a system of temporary migration that adequately fulfils the only respectable role temporary skilled migration has; that is, as a last resort, to fill short term skill gaps.
- It is only fair that the employer must demonstrate that they have attempted to fill the position locally, they have a good training record and have not made Australian workers redundant in the area of skills shortage or refused to train redundant workers into the area of shortage.
- As companies must have a good training record prior to visa approval, it is necessary to exclude any overseas based company from this program. If they have no Australian presence how can they demonstrate a long and serious commitment to training?
- The qualification of the 457 visa applicant must be accredited prior to approval; this is essential to the integrity of the system.
- While these gaps are being plugged the employer sponsoring the 457 visa worker will be executing a skills development plan to enable indigenous labour to take over.

- As the only justifiable motive for temporary skilled migration is to plug a skills gap, rather than undercut wages and conditions of Australian workers, the temporary migrant will be paid the market rate for that skilled position in that locality. Anything less is unacceptable.
- Once a migrant is working in Australia they must have the same rights and protections that Australian workers have, most especially in the area of occupational health and safety. He or she should not have any deductions made for accommodation, transport, healthcare etc... unless they have been independently advised of their rights and responsibilities, they freely agree to them and that the rates charged by their employer and related entities are fair.
- Finally to ensure that these migrant workers are protected from exploitation the Immigration Department must be properly funded, given appropriate political guidance, provide information on rights and responsibilities to Visa applicants and ensure there is no exploitation when workers are within Australia. There must be the closest cooperation and coordination between the relevant Commonwealth and State authorities, for example the Department of Immigration and Citizenship (DIAC) and WorkCover.
- With these improvements in place the 457 visa system can actually help the Australian economy, avoid retarding domestic skills formation, not undercut wages and conditions and afford temporary migrants the rights and protections all workers are entitled to.

Recommendation 1

The Commonwealth must introduce a requirement for employers to identify the skills shortage and demonstrate the requirement for a defined period. The temporary business visa program must restrict the use of temporary labour flows to only the purpose of addressing significant, short term, specialist skills shortages. The Commonwealth should reintroduce the requirement that the activity must be 'key' to the business applying.

Recommendation 2

Prior to approval to sponsor a temporary skilled overseas worker an employer should be required to demonstrate to the relevant authority that they have sought to fill the vacancy within Australia. Evidence must include advertising the position Australia wide and advertising the position at the market rates, that is the average rate paid by similar employers, or the prevailing agreement rate, whichever is higher. Advertising at the award rates or minimum wage level should not be acceptable.

Recommendation 3

An employer who has retrenched Australian workers should not be able to replace such workers with temporary skilled overseas workers in circumstances where the Australian workers were retrenched within the last 12 months and the employer failed to provide such workers with the opportunity to be re-trained. Temporary overseas workers should not be seen as an acceptable alternative to a reasonable obligation on an employer to both train and retrain workers.

Recommendation 4

The use of temporary skilled overseas workers should not be permitted unless the employer can demonstrate:

- *A history of accredited training;*
- *A successful outcome (measured in employment outcomes) of the training;*
- *Retention of trained workers within workforce;*
- *On-going program of and commitment to training;*
- *Demonstrated financial investment in training in the identified skill shortage area.*

An employer should be barred from access to the scheme if they have been found to have abused the subsidy schemes available to employers for the training of skilled workers.

Approval as a sponsor of temporary overseas skilled workers must include (and be subject to audit) a requirement to enhance the skills of Australian workers through skills transfer and training. If temporary skilled overseas workers are required they must increase the skill base of Australia by passing on their knowledge and expertise to Australian workers.

Recommendation 5

Employers utilising the 457 visa program must indicate what strategies they are adopting, including training solutions to overcome ongoing skills shortages in the skills they are importing through 457 visas. A failure to implement this strategy should preclude the employer from having any future 457 visa applications approved.

Recommendation 6

That the sponsored person's credentials be vetted by Australian accrediting authorities prior to approval of visa. If the application is offshore, the accreditation must obviously occur prior to arrival of the applicant.

Recommendation 7

That the Trade Skills Training Visas (471) be abolished.

Recommendation 8

Only businesses with an active Australian commercial presence should be allowed to be 457 sponsors.

Recommendation 9

Employers utilising the 457 visa program must pay to the migrant the market rate of pay. In the first instance if there is an above award rate of pay (through an enterprise agreement) this is the rate of pay that must be made to 457 visa holders. If there is no enterprise rate then a minimum enforceable rate of pay should be determined that is in excess of the award rate and takes into account the average hourly rate of pay within the local area for the work required to be undertaken. That is, if there is no agreement a rate determination should be made specifying a rate that acknowledges local market rates for the work. Whatever the rate is, it must be enforceable and be able to be enforced by the OWS (or other appropriate government body), by unions or other means. In any event, no 457 visa holder should be

paid below the determined rate. The rate should not be artificially discounted by exploitative accommodation, health fund or other arrangements designed to maximise employer profit at the expense of Visa workers being paid market rates.

If a rate is determined under these provisions it must be adjusted annually by the average annual wage increase in agreements as currently measured by DEWR.

Recommendation 10

That regional exemptions for minimum wages or skills be removed.

Recommendation 11

That the Regional Certifying Bodies be reorganised to include representatives from State and Local Governments, training providers, employment agencies, union and employer representatives. That the RCBs be tasked with assisting the department in verifying that market testing has occurred by the applicant and monitoring the implementation of the 457 visas in their local area.

Recommendation 12

Accommodation

A temporary skilled overseas worker will not have any deductions made from their pay for rent or any other living costs without express written agreement of the worker. Any deductions for rental costs associated with any property owned or controlled directly or indirectly must be verified by the relevant authority as fair and reasonable. A breach of this provision by a sponsoring employer will be considered a breach of sponsorship provisions.

Healthcare

Temporary skilled overseas workers must have access to the public health system either through payment of the medicare levy or an equivalent health insurance scheme. Any additional cost of such insurance over and above the standard medicare levy is to be met by the employer.

Costs

An employer should not be able to deduct money from the pay of a temporary skilled overseas worker for the payment of airfares, migration, legal or other costs.

Allowances

Any rate of pay payable to 457 visa holders must exclude allowances normally paid to workers that are in excess of their specified hourly rate of pay including penalty rates, allowances, accommodation etc. That is the rate of pay struck for a 457 visa holder cannot be an "all in" rate unless this has been established for work at the site through collective bargaining.

In addition, 457 visa holders must be entitled to all other benefits an Australian worker would receive with respect to terms and conditions of employment including any rights to 'return trips' to capital cities for remote workers.

Occupational Health and Safety

In order to ensure occupational health and safety applicant employers must be able to demonstrate that visa holders have received appropriate safety induction training, and have an understanding of Australian safety standards and requirements. Applicant employers must be required by DIMA (Now DIAC) to demonstrate that they have provided safety induction training, compliant with the local statutory and regulatory requirements; that the company has a 'safe system of work' plan for the local site and has otherwise complied with all relevant legislation and regulations before work commences.

Recommendation 13

Migration agents working in the area of temporary skilled overseas workers must be licensed to do so. A strict code of practice for such migration agents will be established and enforced with violation of the code a valid reason for withdrawal of a license.

Migration agents must be prohibited from receiving monies directly or through associated companies for the payment of costs, over and above an accepted standard administrative fee, associated with the recruitment or provision of temporary skilled overseas workers.

Migration agents must be prohibited from operating in conjunction with labour hire firms – either directly or indirectly.

The only way to ensure that the desire for work does not lead to exploitation is to set the rules and regulations by which migration agents operating in this sphere are allowed to work.

Migration agents must be subject to auditing and spot checks.

Recommendation 14

State Notification

Employers sponsoring 457 visa holders should be required to notify relevant state government authorities and departments (e.g. WorkCover) that they have visa holders working for them. In addition, DIAC should be required to notify relevant state authorities of the commencement of temporary skilled overseas workers, including the name and address of the employer. Information provided to State Governments, regardless of source, must include the number of 457 visa workers at a particular employer site, the period of approval of the 457 visa and the skills/classification of those workers. The provision of such information will enable appropriate monitoring of employment arrangements by all relevant agencies.

457 Registry

DIAC should maintain a register of 457 visa sponsors, projects and migrant numbers that is accessible to state authorities.

Information

The DIAC website should provide links to the State WorkCover sites and set out the various state legislative requirements with their visa application kits. DIAC should also provide individual 457 visa holders with brochures (in the appropriate language) detailing their rights and setting out the various state contact points.

Co-operation

The AMWU believes that there is an urgent need to increase the level of co-operation between all agencies involved in monitoring of workplaces, including employment rights, occupational health and safety, wages, visa inspection and integrity services and so on.

In addition it is imperative that a breach uncovered by any agency of standards that are required to be applied in the workplace and in particular to temporary skilled overseas workers should result in an immediate, unannounced, inspection for compliance with all visa requirements.

Co-operation between relevant agencies in breaches must be conducted in an environment where the right to privacy of the temporary skilled overseas are respected and maintained.

Confidentiality

It is important that a temporary skilled overseas worker has access to mechanisms whereby they can raise issues relating to breach of conditions without fear that they will be named by any investigating department. The fear of loss of job (and of course they have no access to remedies against unfair or unlawful termination), and hence a requirement to leave the country if no new sponsorship is found, is a major impediment to reporting breaches or mistreatment by temporary skilled overseas workers.

Program Exclusion

Any employer found abusing the system, including exploiting or assaulting temporary skilled overseas workers, should be excluded from further participation in the scheme and be subject to civil and criminal penalties.

Recommendation 15

International standards provide that temporary entrants should be give 3 months in which to find alternative employment following the termination of employment. This standard should be implemented for temporary skilled overseas workers in Australia with the three month period extended if the worker has a workers compensation or employment litigation in place. During this period the temporary overseas skilled worker should be provided with access to employment placement services to assist in finding alternative employment.

Furthermore, the sponsorship cannot be withdrawn without a valid reason with access to an appeals process.

Recommendation 16

457 Visa holders should be provided with information on the appropriate union which covers the scope of work covered by the Visa.

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1. Introduction

- 1.1. The Australian Manufacturing Workers' Union (AMWU) welcomes the invitation to make submissions to the Joint Standing Committee on Migration inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas.
- 1.2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU represents approximately 140,000 workers in a broad range of sectors and occupations within Australia's manufacturing industry.
- 1.3. The AMWU is faced daily with issues surrounding the overuse and misuse of temporary business visas, usually the Temporary Business (Long Stay) 457 visas.
- 1.4. The AMWU has an extensive list of case studies highlighting problems with the 457 visa system. Furthermore we have commissioned in-depth research into issues surrounding temporary business visas. This submission is partly based on research undertaken by the Australian Expert Group in Industry Studies (AEGIS), University of Western Sydney.
- 1.5. This submission will address the terms of reference of the inquiry, namely:
 - the adequacy of the current eligibility requirements,
 - the effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas; and
 - identify areas where procedures can be improved.
- 1.6. However, it is our submission that it necessary to look beyond the issues associated with the administration of 457 visas and explores the justification for the current system, the impact of the massive growth in 457 visas on the workers and the community.
- 1.7. The broad nature of this submission is due to the fact that the problems with the system of temporary skilled migration are not solely related to the eligibility criteria, monitoring and enforcement of the system. Problems arise due to the very motives for the creation and use of 457 visas and the perverse incentives they provide for employers. Only by taking a holistic approach to the system, can the Commonwealth rectify the grave errors it made in the first place.
- 1.8. Chapter 2 of the submission provides an overview of the migration system, detailing the massive growth in 457 visas.
- 1.9. Chapter 3 examines the system of skills formation in Australia and explores the issue of is there really a skills shortage justifying the growth in temporary skilled migration.
- 1.10. Chapter 4 examines the real explanations of the exponential growth of 457 visas.
- 1.11. Chapter 5 analyses the impact of this growth on our skills system, the community and the temporary migrants themselves.

- 1.12. Chapter 6 sets out 16 recommendations to transform the Australia's temporary migration system from a crude, flawed system allowing unscrupulous employers to exploit migrants and undercut wages and conditions into a system designed to actually plug short term, localised, and specifically defined skills gaps.

2. The Migration System

2.1. Stocks of skilled workers: Migration for settlement

- 2.1.1. Australia's migration program is now primarily focussed on attracting skilled migrants to address labour shortages in skilled occupations² (DIMA 2005:10). Skilled migrants are typically:
- aged 45 or younger;
 - have sufficient English language proficiency to undertake work;
 - have an occupation on the Skilled Occupation List (SOL); and
 - have relevant work experience.
- 2.1.2. Applicants are awarded points based on these criteria (120 points are required for independent skilled migration on a subclass 136 visa). An occupation on the Migrant Occupations in Demand List (MODL) drawn up by the Australian Government receives extra points (typically 15 or 20).
- 2.1.3. The major change in the migration program over the past decade has been the decline of family migration and the growth in this skills stream. Skills migration is now the dominant stream of the overall migration program and is at record levels. In 2005-6, skill migration was 68.1% of the total migration program compared to 37.3% in 1997-97.
- 2.1.4. In 2003-04, a total of 49% of settler arrivals were in the workforce prior to migration. Of these, 12.4% were tradespersons.
- 2.1.5. The main regions of planned settlement of migrants in 2004-05 were NSW (36.3%), Victoria (24.8%), Queensland (18.4%) and WA (13.2%).
- 2.1.6. Onshore applications rose to the level of 43,895 primarily due to applications from overseas students doing courses in preferred occupations, particularly IT and accountancy. There was a question mark over the continuation due to concerns that successful applicants were not working in these occupations after completing their training³ and due to a rapid decline in enrolments in IT courses by domestic students due in part to perceptions of highly competitive labour market conditions.⁴
- 2.1.7. In summary, Australia's migration program has become strongly oriented toward skilled migration over the past decade, mainly at the expense of family migration, with the stated objective of raising productivity and growth. In more recent times, policy rhetoric around skilled migration has increasingly focussed on the topic of meeting domestic skills shortages. The list of occupations in demand and the points-based selection system employed by the Department has been adjusted to advantage particular types of skills and independent skilled migrants. In addition, on-shore

² DIMA (Department of Immigration and Multicultural and Indigenous Affairs) "Population Flows, 2003-04 Edition", Canberra, 2005

³ Birrell, B., Rapson, V. & Smith, T.F. "Immigration in a Time of Domestic Skilled Shortages", Centre for Population and Urban Research, Monash University, 2005

⁴ Kinnaird, B. "The Impact of the Skilled Migration Program on Domestic Opportunity in Information Technology", People and Place 13(4):67-79, 2002

applications have been allowed for overseas students completing Australian qualifications in professions such as IT and accountancy. All of these measures have changed the emphasis of migration away from settlement based in family and other relationships toward settlement focused at least initially on employment, occupational skills and professional relationships. This has potential implications for the project of nation-building traditionally associated with Australia's migration program and for the duration of settlement in Australia.

2.2. Flows of skilled labour: Temporary entrants

2.2.1. Along with the emphasis on skills or work based migration over family or relationships based migration, the other major change to Australia's migration policy has been in the area of temporary entry for business and employment purposes. To facilitate temporary entry a range of visas have been created. The major temporary entry business visas are summarised in Table 2.1 below.

Table 2.1 Selected temporary entry visa categories

Visa subclass	Description
456	<ul style="list-style-type: none"> • Business short stay (up to 3 months). • For visits, meetings, training, inspections, equipment installation. • Not intended for business-related employment or training that could adversely impact on employment or training of Australian citizens or residents • The holder of a Business (Short Stay) visa has a work condition attached that states that the holder of the visa must not engage in work in Australia that might otherwise be carried out by an Australian citizen or an Australian permanent resident (condition 8112). • The circumstances whereby the holder of any of the Business (Short Stay) visas may engage in work are very limited. Employment may be appropriate when it is: <ul style="list-style-type: none"> ○ of an urgent nature, <i>and</i> ○ very short-term, <i>and</i> ○ of a highly specialised nature. • A Business Visitor (Short Stay) visa is not appropriate where the actual position needs to be filled for more than three months. This is irrespective of the length of time the visa holder remains in Australia.
457	<ul style="list-style-type: none"> • Business long-stay (3 months up to 4 years). • Allows employers to sponsor workers from overseas. • Requirements under skilled migration program were removed on 1 July 2001: <ol style="list-style-type: none"> 1. no need for labour market testing or to demonstrate an activity is key to the business; 2. no requirement for employers to demonstrate a training benefit to Australian workers 3. no requirement to have the sponsored person's credentials first vetted by Australian accrediting authorities. • Replaced by minimum skill and salary thresholds. • From 1 July 2004, sponsors must ensure workers are paid the gazetted minimum wage (currently \$AUD 41,850 gross, significantly more for IT occupations); must limit the ability of those recruited to work in a regional area to change locations, and notify the Department with 5 working days after a sponsored person ceases to be in their employment. • From 2 April 2005, a 457 grant can be made regardless of whether applicants are onshore or offshore at the time of the decision and the time of application. Medical practitioners also able to be sponsored from this date. • Labour agreements can be negotiated between the Australian Government and an employer or industrial association for the temporary and/or permanent entry of a specified number of persons with particular skills to fill a group of positions where a skill shortage is demonstrated. • There is no requirement for companies who sponsor workers to have a legal presence in Australia.
471	<ul style="list-style-type: none"> • Trade Skills Training visa, introduced 1 November 2005. • Allows non-citizens to undertake trades apprenticeship on a full-fee basis. • Applicant must be sponsored by DIMA (NOW DIAC)-approved organisation (employer, industry organisation, regional organisation) who will monitor and support apprentice to completion • Must be certified by a Regional Certifying Body as not being able to be filled locally. • Must be in a traditional trade (ASCO Group 4) requiring Certificate III or IV, in a trade with skills shortage (MODL or other relevant list), be in regional Australia. • Applicant must have vocational English (IELTS 5 or equivalent), be 18-35, have written offer of full-time apprenticeship under New Apprenticeship scheme.
442	<ul style="list-style-type: none"> • Occupational trainee • Mainly used to allow junior professionals to take up jobs in Australia, e.g. doctors.

2.2.2. In 2003-04, there were 288,899 applications for Short Stay Business Visitor (456) visas. The conditions for Short Stay Business Visitor visas are intended to be very

restrictive in relation to carrying out employment. Nevertheless, there is some evidence that these conditions are being breached.

- 2.2.3. There has been considerable growth in the number of 457 visas being issued. There were 28,042 principal 457 visas approved in 2004-05. In recent Senate Estimates Hearings the Department of Immigration and Multicultural Affairs predicted that there would be around 40,000 principal 457 applicants for the year 2005-06. This would represent a 42% increase on 2004-05 and a 66% increase from 2003-04.

Table 2.2 457 Visa Approvals

Financial Year	Principal Applicants ⁵	Total	Per Cent Change
1996-97		24,000	
1997-98		33,000	37.5%
1998-99		33,000	0.0%
1999-00		34,965	6.0%
2000-01	21,076	40,493	15.8%
2001-02	19,569	37,597	-7.2%
2002-03	22,155	42,363	12.7%
2003-04	23,992	40,633	-4.1%
2004-05	28,030	49,855	22.7%
2005-06	40,000	70,000	40.4%

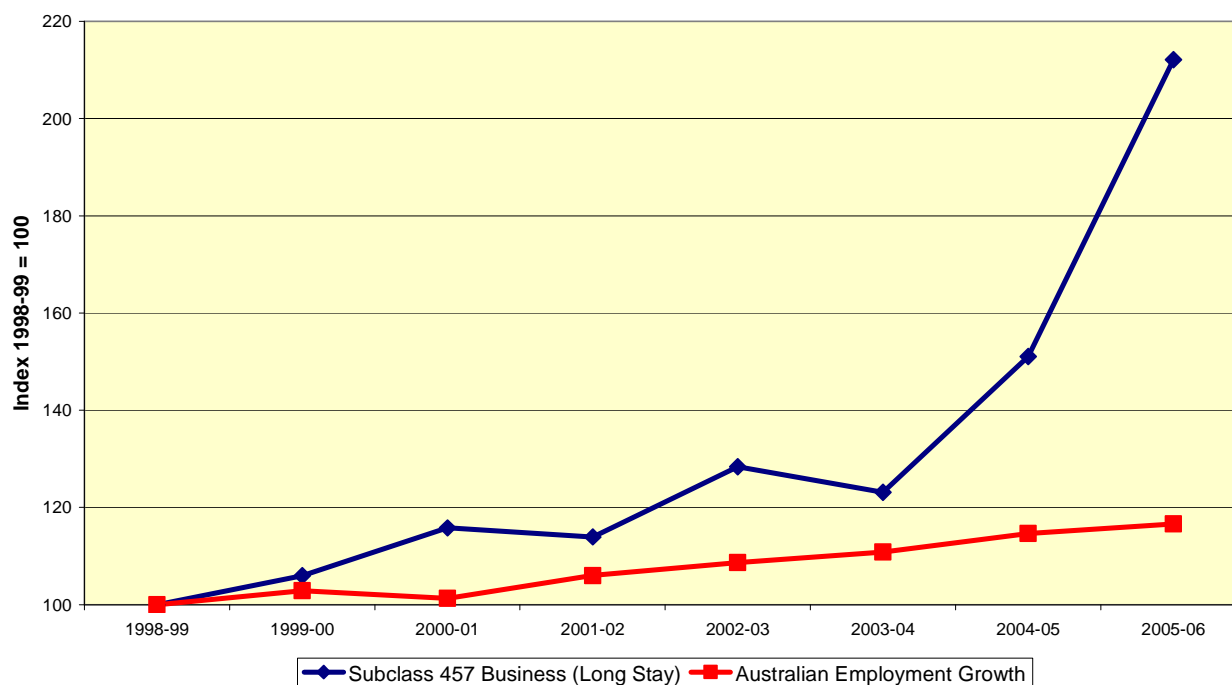
Source: DIMA

- 2.2.4. In 2005-06 for every permanent skilled migrant settling in Australia (under the skill stream), there was more than one 457 visa being issued. For the first time in Australia's migration history, there are more temporary skilled 457 visas granted than skilled permanent visas⁶.
- 2.2.5. Figure 2.1 tracks the massive explosion in 457 approvals against employment growth in the economy since 1998. The growth in 457 visa approvals is significantly outpacing employment growth across the economy as a whole. This weakens one of the main justifications for the growth in 457 visas that there is a lack of suitable employees.

⁵ Kinnaird, B., "Current Issues in the Skilled Temporary Subclass 457 Visa", *People and Place*, vol.14, no.2, 2006, p.55

⁶ *Ibid.*, p.49

Figure 2.1 457 Visa Growth vs. Job Growth



2.2.6. Table 2.3 below shows the volume of 457 visa participation by industry.

Table 2.3 457 sponsorship and nomination approvals by industry, 2003-04 and 2004-05

Industry	2003-04		2004-05	
	Sponsorship	Nominations	Sponsorship	Nominations
Accommodation, Cafes & Restaurants	611	1,261	1,091	1,780
Agriculture, Forestry & Fishing	235	675	262	565
Communication Services	638	3,191	559	3,088
Construction	638	898	691	1,916
Cultural & Recreational Services	339	894	342	902
Education	302	1,097	354	1,488
Electricity, Gas & Water Supply	102	230	132	471
Finance & Insurance	241	1,484	237	1,278
Government Administration & Defence	68	157	83	182
Health and Community Services	622	3,736	519	4,199
Manufacturing	645	1,653	986	3,071
Mining	182	988	295	1,738
Personal & Other Services	659	2,482	505	2,579
Property & Business Services	673	3,104	632	4,320
Retail Trade	496	772	546	846
Transport & Storage	136	341	273	716
Wholesale Trade	336	660	412	707
Unknown	18	439	12	781

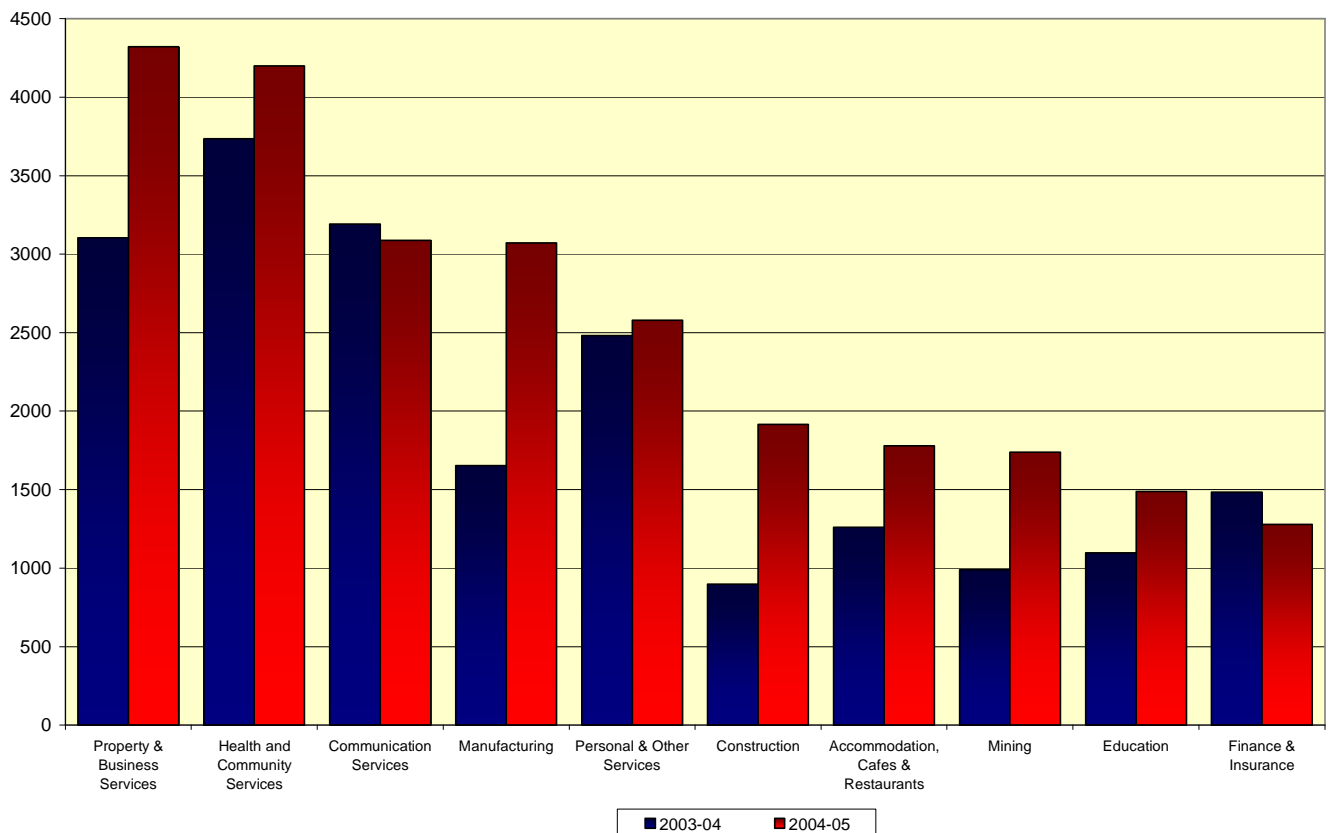
Source: DIMA

2.2.7. As the above table and Figure 2.2 below shows, temporary labour flows facilitated by 457 visas are substantial across a range of industries. These industries range from the predominantly white-collar service based to the predominantly blue collar manufacturing industry. The number of 457 visa approvals jumped markedly between 2003-04 and 2004-05 and then again in 2005-06, no doubt due to earlier changes in policy settings that replaced requirements that an activity is ‘key’ to the business and for labour market testing with salary and skills thresholds. The removal of the ‘key’ activity requirement allows for a broadening in occupations sourced through temporary labour flows. Utilisation of 457 visas is growing strongly, both in terms of the numbers of nominations and the numbers of sponsorships.

2.2.8. The 2001 policy changes are the central cause of the current problems associated with the 457 system. The removal of market test, ‘key’ activity, demonstrate a training benefit and credentialing, led to an explosion in 457 visa applications for all the wrong reasons.

2.2.9. Manufacturing 457 visa approvals have nearly doubled in only one year. By 2004-05, the manufacturing industry had reached a level on a par with Communications Services (a large employer of IT workers) in terms of the volume of 457 nominations. The rate of growth has continued to be substantial, with the number of 457 nominations in Manufacturing growing by 85.8% between 2003-04 and 2004-05.

Figure 2.2 457 Visas by Industry (top 10)



2.3. Skilled trades occupations and temporary entrants

- 2.3.1. The proportion of migrants possessing trades skills arriving as part of the skills stream of the permanent migration intake varies considerably between occupations. Several large occupation groups are predominantly drawn from the skills stream (such as mechanical & fabrication, automotive, electrical), while other continue to be made up of significant numbers of family stream and New Zealand arrivals (such as construction and food trades).
- 2.3.2. The capacity of the permanent skilled migration program to satisfy domestic skills shortages is uneven. The many skilled migrants arriving as part of the family or non-program streams are likely to have social ties that will limit their internal mobility. These migrants would likely require market inducements in terms of wages and conditions to move to remote locations for example.
- 2.3.3. Skilled stream migrants in the occupations showing rapid growth of migrant numbers are more likely to move to resolve remote skills shortages if market conditions become tighter as supply of skills increases. However, it is unlikely that they would do so without significant market incentives as skilled migrants in trade occupations are also relatively young as a group and therefore likely to be attracted to city and coastal lifestyles.
- 2.3.4. That is, as employers were unprepared to provide sufficient incentives for Australian tradespeople or migrants settling permanently in Australia the temptation to use temporary skilled migrants increased.
- 2.3.5. Accordingly, the number of trades and related occupations in the top 50 of 457 visa approvals grew sharply between 2000-01 and 2004-05, as did the numbers approved in these occupations. This data is shown in table 2.4 below, listed by rank amongst all 457 occupations for 2004-05.

Table 2.4 Trades and related occupations, Top 50 occupations list, 457 visa employer nominations approved 2000/01, 2003/04 & 2004/05

Occupation	2000-01		2003-04		2004-05	
	Approvals (n)	Rank	Approvals (n)	Rank	Approvals (n)	Rank
Chef	773	7	696	7	911	4
Cook	149	25	348	15	541	14
Metal Fabricator	*	n/a	**	n/a	417	16
Welder (First Class)	*	n/a	90	46	412	17
Electrical Powerline Tradesperson	*	n/a	**	n/a	323	20
Motor Mechanic	118	30	118	38	299	23
Fitter	*	n/a	**	n/a	256	25
Slaughterperson	*	n/a	**	n/a	166	36
Agricultural & Horticultural Mobile Plant Operator	*	n/a	**	n/a	151	37
General Electrician	*	n/a	**	n/a	148	38
Aircraft Maintenance Engineer	57	49	**	n/a	***	n/a
Hairdresser	57	50	90	48	***	n/a

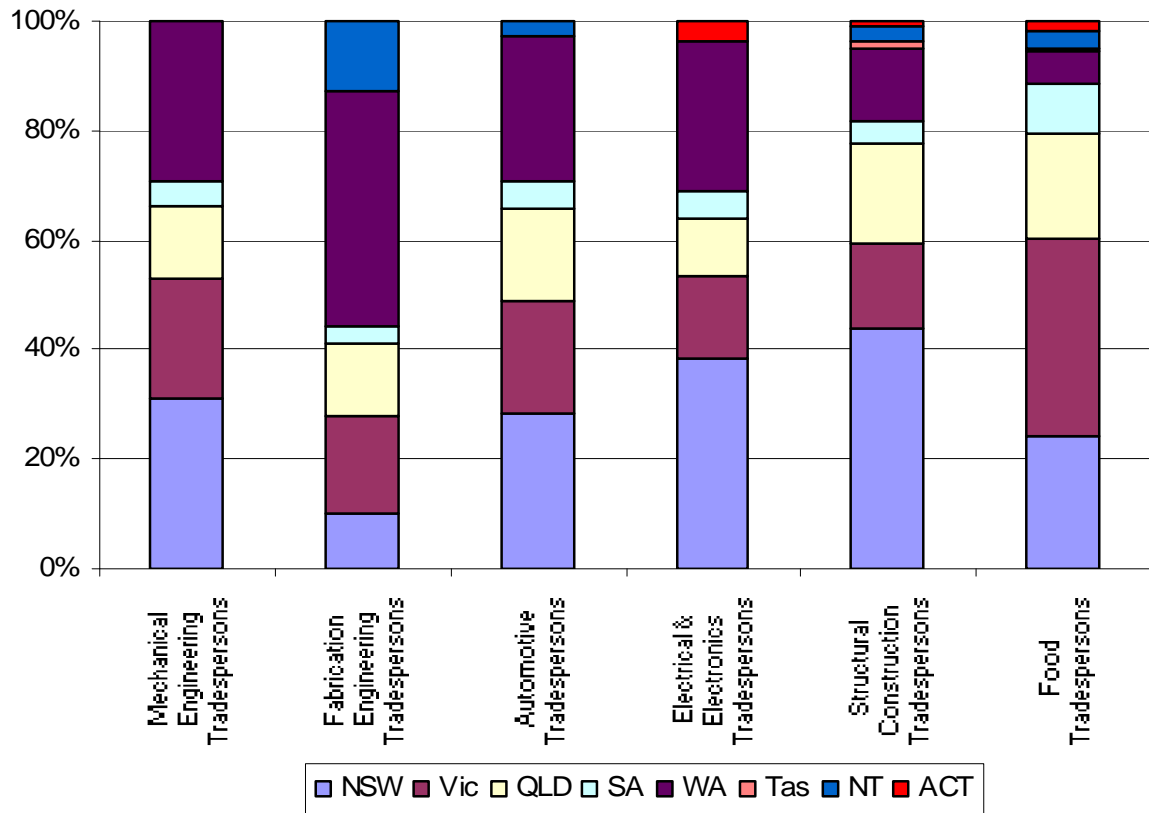
Source: DIMA. * Less than 57 approvals in 2000-01. ** Less than 85 approvals in 2003-04. *** Less than 113 approvals in 2005-05.

2.3.6. There were five trades and related occupations in the top 50 occupations for 457 employer sponsorships in 2001-02 and 2003-04. This number had doubled by 2004-05. Chefs and cooks were the top two occupations for 457 sponsorships amongst trades in both years. The most noticeable increases in the numbers of 457 approvals are for Metal Fabricators, Welders, and Electrical Powerline tradespersons, Fitters, Motor Mechanics and Slaughterpersons. 457 approvals for welders have increased by 622.8% over the last two years, while 457 approvals for fitters have grown by 201.1% over the last year alone. The rapid growth in approvals in these occupations suggests that the use of 457 visas became a favoured labour market strategy amongst employers in industries employing these skills in 2004-05.

2.3.7. It is important to examine the geographic area where 457 entrants planning to stay long-term intend to work. Although this information is only available at the state/territory level it is likely to be accurate, given the fact that 457 entrants are tied to the work site of their sponsoring employer and are restricted in the extent that they can change employers.

2.3.8. If temporary entry is operating primarily to satisfy short-term domestic skills shortages it can be expected that patterns will show up in this data, for example, a large proportion of metal fabrication tradespersons could be expected to be heading to Western Australia and Queensland where there is strong demand for these skills in remote mining areas. Figure 2.3 illustrates the proportion of 2005 long-term temporary entrants intending to reside in different states/territories, by occupational group.

Figure 2.3: Intended residence of 457 entrants, by trades occupational groups, 2005



2.3.9. As Figure 2.3 shows, there are distinctive patterns in the geographic location of 457 entrants according to their skills. Overall, NSW and Victoria received approximately 50%-60% of 457 entrants in all trades occupation groups except Fabrication Engineering trades, which were concentrated in WA. The strong flow of temporary labour flows into WA is also evident in Mechanical Engineering, Automotive and Electrical trades occupations. These flows are likely to be associated with the commodities/mining boom in that State.

2.3.10. The large construction industry in NSW took up more than 40% of the flow of 457 trades workers in 2005. Victoria was the predominant site for Food tradespersons entering temporarily. Somewhat surprisingly, Queensland appeared less reliant on temporary labour flows than the other eastern seaboard states across most categories.

2.3.11. In summary, it appears that temporary labour flows facilitated by 457 visas may be addressing some particular occupational and geographic skills shortages, with the WA mining sector being the obvious example.

2.3.12. However, there are also significant flows of 457 entrants intending to stay long-term who are working in traditional industries in the major eastern states. These flows are not addressing specific occupational and geographic shortages, but are instead flowing into key employing industries in metropolitan areas (construction in Sydney and hospitality in Melbourne for example).

2.3.13. Whilst there may be instances of shortages of very specific skills required by some companies in particular locations that these flows help to address, this is not a convincing argument at a more general or systemic level. A more plausible general explanation for the direction of these flows is that employers are exploiting the wage gap between the legislated minimum wage condition (at the time of this data collection \$39,000) attached to 457 visas and the market rate that Australia-based tradespersons would demand, particularly if geographical re-location would be required in order to take up the work. This is the topic of the section four of this submission.

2.4. Regional Exemptions

2.4.1. Employers can seek exemption from the minimum skill and/or salary levels when the nominated position is located in a regional or low population growth area in Australia. The employer must seek certification of the nomination by a Regional Certifying Body (RCB). These are State/Territory bodies based in regional Australia which are required to certify that:

- The tasks of the nominated activity correspond to the tasks of an occupation specified in a Gazette Notice;
- The position is a genuine, full-time position that is necessary to the operation of the sponsor's business;
- The position cannot reasonably be filled locally;
- The position will be remunerated at a level not less than the level of remuneration provided for under relevant Australian legislation and awards; and
- The working conditions will be no less favourable than working conditions provided for under relevant Australian legislation and awards;

The regional sponsored temporary entry arrangements are available to all sponsors, except overseas businesses and those whose business activities include recruitment or labour hire activities.

2.4.2. The use of regional exemptions allows employers to:

- Pay tradespeople coming into the country less than the minimum \$41,850. They can pay that person anything as long as it is equal to the award rate, for example the base rate for tradespeople (C10) in the Metal Award is \$30,066.40. From July 1, 2006 the minimum became \$37,665 for all other gazetted occupations (other than IT). This is still significantly less than the \$41,850 minimum and the market determined salaries.
- Alternatively, employers in regional areas can sponsor non-tradespeople.

2.4.3. Under the present system, a company can sponsor someone if the position is in the ABS Australian Standard Classification of Occupations (ASCO) levels 1-4 (1-Managers and Administrators, 2-Professionals, 3-Associate Professionals and 4-Tradespersons and Related Workers). DIMA (now DIAC) officials admitted at Senate Estimates Hearings that they consider all occupations in these ASCO levels to be in a shortage (unless otherwise notified by DEWR). Therefore, as long as the company

sponsoring the 457 satisfies all the other criteria (e.g. training commitment), they will get a 457 application approved for ASCO 1-4 occupations.⁷

2.4.4. However, if a company is in a regional area they can apply for a 457 visa for occupations in ASCO 5-7 (5-Advanced Clerical and Service Workers, 6-Intermediate Clerical, Sales and Service Workers and 7-Intermediate Production and Transport Workers). In manufacturing this means that anyone above a process worker can be brought in on a regional 457 visa as long as the other criteria are met and the RCB certifies that the position can not reasonably be filled locally.

2.4.5. Typical ASCO level 7 occupations include engine and boiler operators, engineering production system workers, printing hands and motor vehicle parts fitters etc... They usually require an Australian Qualification Framework (AQF) certificate II and would be equivalent to C12 or C11 classifications under the Metals award. Australian entrants would typically take 12 months to reach this level if they entered the site as a process worker and began training. The award rate for a C12 was \$27,222, so up until July 2006 employers can bring in 457 workers under the regional exemption and pay them quite poorly.⁸

2.4.6. Most of Australia would appear to be classified as a regional or low population growth area:

- **NEW SOUTH WALES** (Except Sydney, Newcastle, the Central Coast and Wollongong)
- **NORTHERN TERRITORY**
- **QUEENSLAND** (Except the greater Brisbane area and the Gold Coast)
- **SOUTH AUSTRALIA**
- **TASMANIA**
- **VICTORIA** (Except Melbourne metropolitan area)
- **WESTERN AUSTRALIA** (Except Perth and surroundings areas)

2.4.7. In other words, all of Australia with the exception of the Sydney region, Brisbane, Melbourne and Perth can access the more lax 457 requirements.

2.4.8. This leads to the issue of who are the Regional Certifying Bodies and how seriously do they take their responsibilities for market testing vacancies. Set out below is the list of RCBs:

- State Departments and Councils – 12
- Regional Development Boards (appointed by State Governments) – 26
- Chambers of Commerce – 4

2.4.9. It is important to examine the make up of the development boards. Of the seven boards with websites, all directors of the boards were either business people or local councillors (with an occasional academic). It is a reasonable assumption that the other

⁷ Senate Hansard, Legal and Constitutional Legislation Committee Estimates, 22/05/2006, p.72

⁸ From July 1, 2006 the minimum is \$37,665 for all other gazetted occupations (other than IT). However, these new minimum salaries only to 457 visas approved after that date. Visas approved prior to then are paid on the old rates.

19 development boards are similarly composed. It is also safe to assume that there are few or no trade union representatives.

2.4.10. It is doubtful how seriously these bodies take their obligation to ensure that position can not be filled locally. This is especially true of the chambers of commerce and development boards who are likely just to respond to the short term, profit-driven, needs of local firms.

2.4.11. It is certain that DIMA (NOW DIAC) have no way of ensuring that these RCBs fulfil their obligations. In recent estimates hearings, the following was admitted in relation to the market testing for 471 training visas:

“Mr Rizvi—It is certainly true that the regional certifying bodies operate somewhat differently across the country. They are very different organisations. For example, the situation for the body in Queensland is very different to the situation in South Australia, where it is essentially just the South Australian government and nobody else. Senator KIRK—Are there standard guidelines issued so that there is some sort of consistency amongst the bodies?”

Mr Rizvi—We had a conference of all regional certifying bodies where these matters were discussed and a draft set of guidelines was put in place. We are continuing to refine that.”⁹

2.4.12. While these remarks were related to 471 approvals rather than 457s, it is safe to assume that DIAC relies totally on the RCBs to certify that the positions cannot be filled locally. Furthermore, DIAC has no way of ensuring consistency across the nation or even that the RCBs are fulfilling their obligations. DIAC and the Federal Government as a whole sheet home any blame to the state governments who either are the Regional Certifying Bodies themselves or have approved the Regional Certifying Bodies.

2.4.13. The regional exemptions confirm the thesis to be discussed later in this submission that 457s visas are being used to allow companies to avoid paying workers the market rate. That is, if you are a South Australian manufacturer not only can you avoid competing with Gladstone and Pilbara for boilermakers by using 457 visas (\$100,000 vs. \$41,850), you can avoid paying the 457 visa minimum wage and only pay \$37,665.

2.4.14. While there may be some validity in accepting that there could be a shortage of skilled tradespeople in high growth areas such as Gladstone and the Pilbara, there is little justification for allowing semi-skilled migrants in to low population growth areas such as South Australia and Tasmania. Not only are these areas low in population growth, they are low in economic growth which means higher than average unemployment. This means unemployed workers could face competition from 457 visa holders who are prepared to accept the award minimum and are open to exploitation by employers.

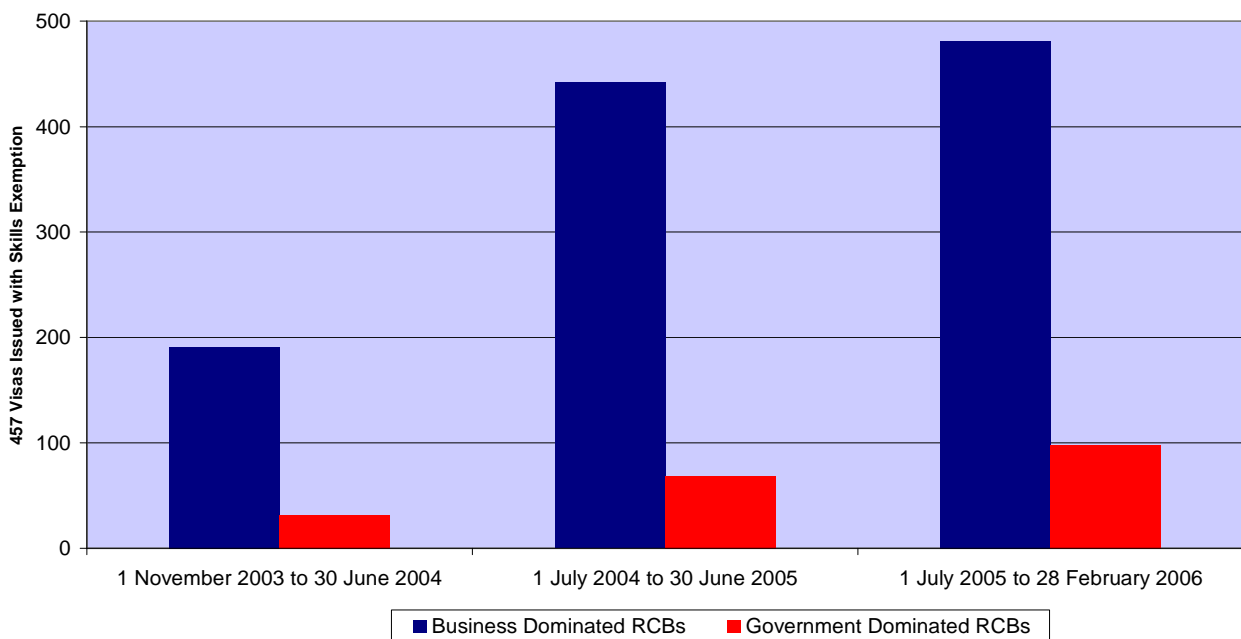
2.4.15. In addition, on one interpretation of the requirement “position cannot **reasonably** be filled locally” a Pilbara based company up until July 2006 could have advertised for a boiler operator in the Pilbara at the C12 base rate of \$27,222 and when predictably no one comes forward, they can pay a 457 visa holder the award rate, when an Australian doing the same job in the same location would command vastly higher wages. While

⁹ Senate Hansard, Op.cit, p.95

the gap is slightly smaller with the new minimum, there is a vast gulf between the market rates and the minimum salary under the regional exemption.

2.4.16. It is problematic that companies can apply for 457 visas to RCBs that they pay membership fees to, for example the four chambers of commerce. The chart below highlights the correlation between regional certifying bodies dominated by employers and vastly more exemptions granted for non-tradespeople.

Figure 2.4 Skill Exemptions by States with Business Dominated RCBs and those with Government Dominated RCBs



Source: Senate Hansard, 14/6/2006, p.102

2.4.17. In summary, regional exemptions represent the most flawed aspect of a generally flawed temporary migration system. They allow employers to undercut wages further than the general 457 visas allow, they set unskilled migrant workers in competition with Australians in areas of low economic growth and suffer from possible conflicts of interests inherent in the structure of the Regional Certifying Bodies.

3. Australia's skills system

3.1. Trade skills shortages in Australia

- 3.1.1. The Commonwealth argues that there exists a significant skills shortage in Australia and that the explosion in temporary skilled migration is necessary to alleviate this shortage. Do the facts reflect this claim? If there is a skills shortage, how widespread is it?
- 3.1.2. There has been a serious under-investment in trades skills training over the past decade. The annual average apprentice training rate over the eleven years between 1982 and 1992 was 13%; between 1993 and 2003 it declined to 11%. This has led to heightened concerns about 'capacity constraints' and an increase in commencements in traditional trades apprenticeships in the past two years.
- 3.1.3. There are currently 41 trades and related occupations on the Migrant Occupation in Demand List (MODL), reflecting the policy objective of lessening skills shortages through the attracting of skilled migrants. In such a context it is important to look for evidence of trades skills shortages in key labour market indicators.
- 3.1.4. One key labour market indicator is the wage price index, which calculates change in total hourly rates of pay. Table 3.1 below demonstrates that there is little evidence of rising wages in private sector employment that is out of step with the economy as a whole. The possible exceptions are WA and the mining industry with the wage price index rising relatively sharply between 2004 and 2006.
- 3.1.5. Wages for Tradespersons and related workers have tracked the national level quite closely, whilst wage rates in the manufacturing industry show signs of slowing growth relative to the economy as a whole. The rate of wage increases for tradespersons has been remarkably consistent over the past decade. There is no evidence in recent wage price movements to indicate critical trades skills shortages, with the exception of the WA mining sector.

Table 3.1: Wage Price Index, total hourly rates of pay excluding bonuses (%)

	Percentage change from corresponding quarter previous year			
	Sept Qtr 2003	Sept Qtr 2004	Sept Qtr 2005	Sept Qtr 2006
Private sector	3.3%	3.5%	3.9%	3.8%
Public sector	4.7%	4.0%	4.7%	4.2%
AUSTRALIA	3.6%	3.5%	4.2%	3.8%
Manufacturing	3.4%	3.9%	3.7%	3.6%
Mining	2.6%	3.4%	5.1%	5.9%
Electricity, gas, water supp.	3.3%	5.1%	4.0%	5.2%
Construction	3.6%	4.6%	4.8%	5.0%
Tradespersons & related	2.9%	3.6%	4.5%	4.1%
Associate professionals	3.0%	3.0%	3.7%	3.8%
Professionals	3.7%	3.3%	4.3%	4.3%
Managers & administrators	2.7%	3.3%	3.8%	3.6%
New South Wales	3.9%	3.4%	4.2%	3.8%
Victoria	3.2%	3.4%	4.0%	3.5%
Queensland	3.4%	4.0%	4.1%	4.5%
Western Australia	3.1%	3.5%	4.9%	4.3%

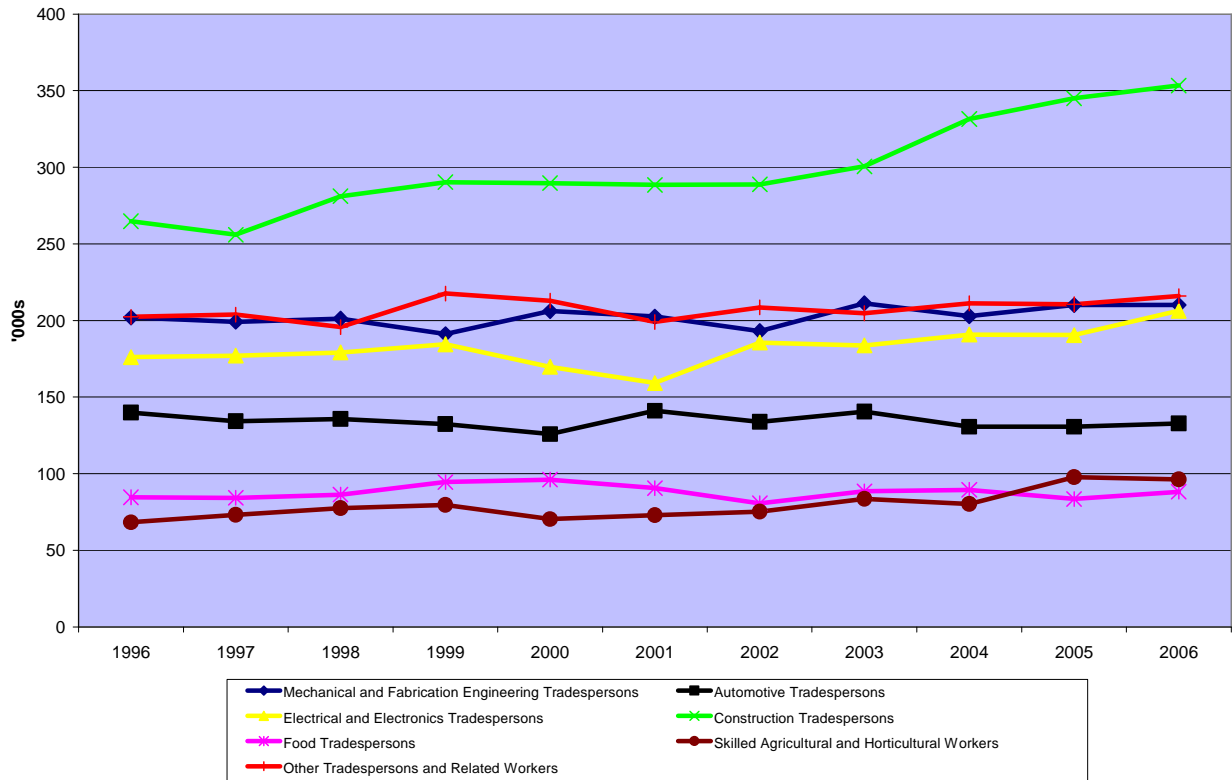
Source: ABS 6345.0 - Labour Price Index, Australia, Sep 2006

- 3.1.6. Other data, although more dated, provides some potential insights into the reasons for the growth in temporary labour inflows. The average weekly earnings of full-time adult non-managerial tradespersons in Australia in May 2004 (the latest available data) was \$913 or \$47,500 per annum. There have been wage increases since this time, according to the ABS Wage Price Index wages for tradespeople have gone up on average 8.7% since June 2004. We can then regard the average weekly earnings of full-time adult non-managerial tradespersons in Australia to be around \$992 or \$51,500 per annum. Anecdotally, it is reported that in some mining, infrastructure and resource development projects in regional WA and Queensland, tradespersons can command wages of up to \$120,000 p.a.
- 3.1.7. **The large discrepancy between the average national tradespersons wage and what can be commanded in certain regions provides a strong incentive to employers to find cheaper alternative labour sources. Some employers are engaged in arbitraging the difference between the market rate for labour and the minimum wage rate to be paid to temporary labour (\$41,850).¹⁰ This submission will examine this in more detail in section 4.**

¹⁰ It is widely known in the Australian IT sector that wage arbitrage is the key reason that overseas workers are employed locally. There is anecdotal evidence that overseas IT professionals working locally are commonly paid \$AUD12,000-14,000 as IT professionals working in roles that would pay around \$75,000 to local workers. This low salary is justified as part of a 'training' package that also includes accommodation and other costs. Global organisations

3.1.8. Figure 3.1, below, shows another key labour market indicator, total growth in employment for a range of trades occupation groups for the financial years from 1996-97 to 2004-05.

Figure 3.1 Growth in Employment, by Occupation Group



Source: ABS 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2006

3.1.9. As Figure 3.1 shows, employment growth has been by far the strongest in skilled construction occupations. Growth has been continuous since 2001. Recent growth in employment number is also evident for electrical trades.

Table 3.2: Growth in employment by trades occupations 1996 – 2006

Occupation	Growth in employment 1996 - 2006	Growth in employment 2000 - 2006
Mechanical and Fabrication Engineering Tradespersons	4.0%	1.9%
Automotive Tradespersons	-5.2%	5.5%
Electrical and Electronics Tradespersons	17.2%	21.6%
Construction Tradespersons	33.5%	22.0%
Food Tradespersons	4.3%	-8.2%
Other Tradespersons and Related Workers	6.7%	1.4%
Tradespersons and Related Workers	14.9%	11.7%
Total Employment	22.5%	14.0%

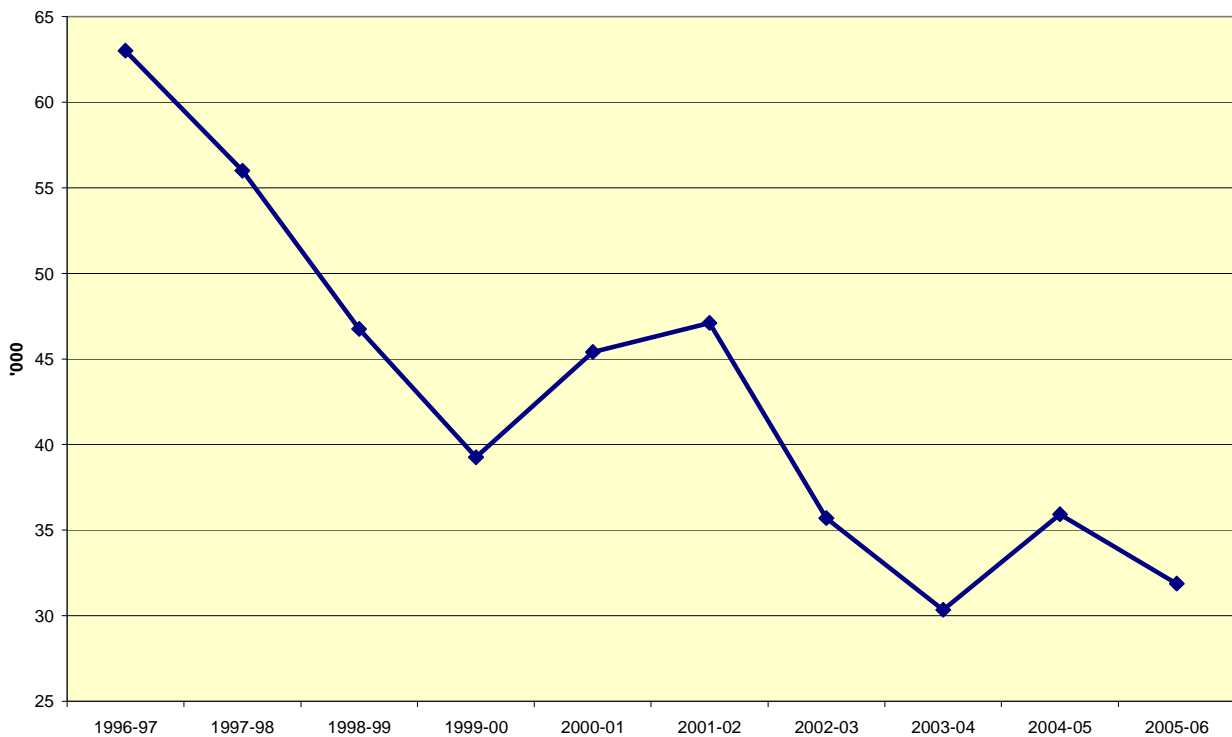
Source: ABS 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2006

increasingly base fixed-term employment arrangements in countries in which wage levels are low and then circulate these workers to more expensive locations such as Australia as part of 'ongoing HR development programs'.

3.1.10. Table 3.2 summarises the growth rates of total employment across skilled trades occupations. Growth has been varied across the period 1996 to 2006. Only employment of construction tradespersons has grown at a rate consistently faster than for the labour market as a whole. Growth in other trades occupations has been generally slower than for the economy overall, with the exception of electrical trades viewed in the short run. Employment of Electrical and Electronics tradespersons grew at a rate of 21.6% over the past six years, in excess of employment growth for all workers (14%). Despite this surge in employment growth and the continued strong growth in Construction trades, **employment growth for Tradespersons and related workers as a whole remained significantly slower than for All Workers, even when viewed in the short run.**

3.1.11. As Figure 3.2 shows, a third relevant labour market indicator is unemployment. The number of unemployed persons in trades or related occupations has been on a long decline over the past decade.

Figure 3.2 Tradespersons and Related Workers Unemployment, Annualised Average

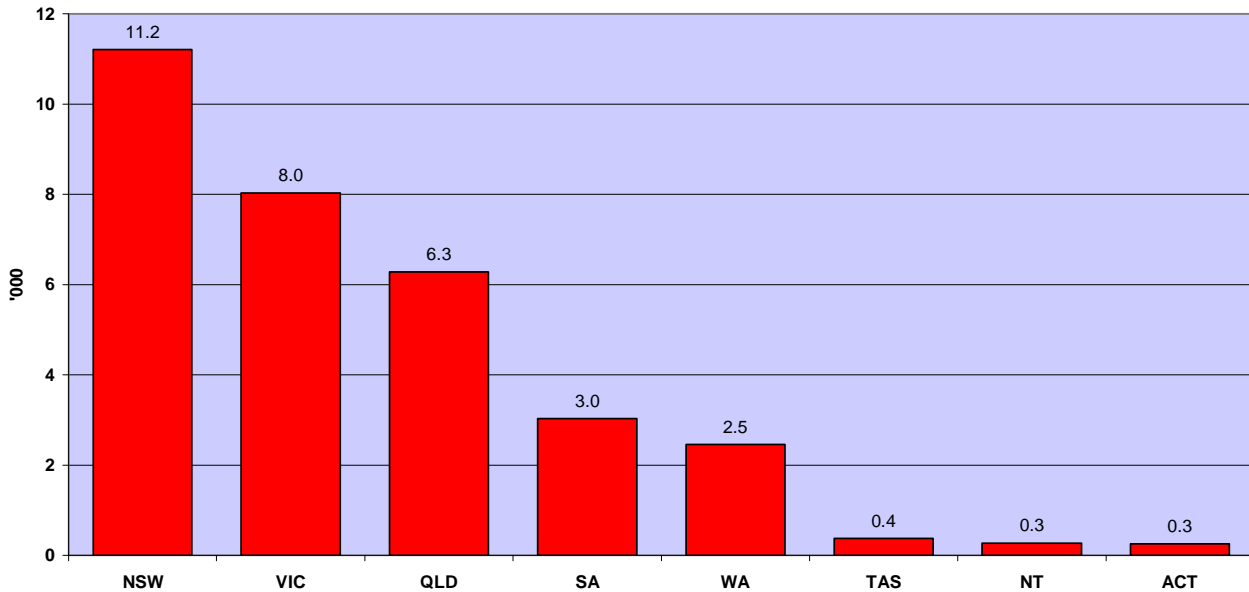


Source: ABS 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2006

3.1.12. Nevertheless, the annualised average for 2005-06 was 31,900 unemployed Tradespersons and Related Workers across a range of industries. The actual number of unemployed persons varies substantially by occupation group.

3.1.13. If we look at unemployed tradespersons at a state level we can perceive significant variance in the number of unemployed. For example there were on average 11,200 tradespeople unemployed in NSW during 2005-06.

Figure 3.3 Tradespersons and Related Workers Unemployment, 2005-06, by State



Source: ABS 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2006

3.1.14. The data on unemployed tradespersons does not include the many tradespersons who have left the occupation and are now working elsewhere or the many tradespersons made redundant in their fifties who have retired early or moved onto disability support pensions. The labour market for tradespersons in manufacturing industry was not particularly strong during much of the last twenty years.

3.1.15. In summary, the aggregate labour market data provides conflicting indicators of the breadth and depth of skills shortages. On the one hand, little or no upward pressure on wages in trades and related occupations, with the apparent exception of the mining sector in WA. There has also been relatively slow growth in employment in trades occupations apart from construction trades. On the other hand, there has been a significant decline in the pool of unemployed tradespersons.

3.1.16. **This data is more consistent with the existence of shortages that are more severe in certain trade occupations and geographic locations.** There is most likely to be a mismatch between the geographic location or skills of the relatively modest pools of unemployed tradespersons and available trades work at a national level. Unemployed tradespersons with families may not be prepared to undertake significant geographic re-locations for work that is essentially on a project or contract basis and therefore not necessarily ongoing. Others may not be prepared to take up start-up or other fixed-term contract work away from family unless rewards are relatively high. There are insufficient market incentives to attract the moderate numbers of unemployed tradespersons to take up job vacancies of all types and in all locations.

3.1.17. Although skills shortages undoubtedly exist, the worst of these would appear to involve localised effects in terms of locality and occupation. **The reliance on temporary entrants to address skills shortages reflects an unwillingness on the part of employers to address these shortages through the market mechanism of supply and demand. These localised shortages reflect a failure to provide wages and conditions sufficient to attract skilled workers. By using temporary entry labour flows employers avoid paying what the market would have otherwise dictated.**

3.1.18. Recent studies such as the Victorian Government Inquiry into Vocational Education and Training confirm that the major issue for the Australian economy is not current skill shortages but emerging skill shortages. Often employers and commentators claim there is a skill shortage when they cannot get workers at the rates and under the conditions that employers want to pay. What is beyond doubt is that serious skills shortages will develop due the decline in training rate for apprentices over a sustained period combined with the lack of any significant public or private investment in upgrading the qualifications of existing workers and the very significant ageing of the population and the even more significant ageing of the trades workforce. The priority must be to lift and sustain an increase in training effort and the focus on short term temporary migration may actually undermine the capacity to effectively address this priority.

3.2. **Why is there a skills shortage in certain trades and geographic locations?**

3.2.1. If we understand why there are skill shortages in certain trades and geographic areas this will give some indication as to whether increases in temporary skilled migrations can provide a solution.

3.2.2. There is an inadequate supply of tradespersons due to a long period of under-investment in apprentice training. The annual average apprentice training rate over the eleven years between 1982 and 1992 was 13%; between 1993 and 2003 it declined to 11%. This is a reduction of 16%.

3.2.3. A further critical factor is the declining completion rate for apprenticeships which has been tracking down for some considerable time. Completion rates for trade apprenticeships are between 55 and 70% depending on the trade which is a serious decline.¹¹ Increasing commencements is a wasted effort if the result is they don't complete. The 'recent lift' is a lift in commencements that has not yet translated into qualified tradespeople hitting the market.

3.2.4. The problem of skills shortages has a number of critical dimensions:

- stagnation of training numbers;
- ageing population;
- apprentice rates of pay;

¹¹ According to the National Centre for Vocational Education Research (NCVER) completion rates for traditional apprenticeships have declined from 64% in the years 1998-2002 to 57% in 2002-2005 (Australian Financial Review, 9/1/07, p.3)

- decline of public sector organisations due to privatisation and microeconomic reform by state governments;
- reliance on ‘pyramids’ of subcontracting and labour hire firms;
- major decline in training effort by large firms;
- industry and industrial relations policies which encourage a focus on short term reduction in labour costs as opposed to investment in skill;
- government incentives which favour short term low level training;
- changing nature of employment relationships; and
- too high a focus on university education.

3.2.5. Training rates have been insufficient in many industries and in many skills areas. Despite a recent surge in apprenticeship numbers this trend needs to be maintained in the medium term to make inroads on the number of skilled tradespersons. This also involves making skilled trades occupations attractive to young people again.

3.2.6. The ageing population means a large proportion of skilled workers are approaching retirement age, particularly in manufacturing and building and construction. The same can be said of the trainers in the VET system, many of whom will be leaving the workforce in the near future.

3.2.7. Public sector organisations, which formerly provided large numbers of jobs for apprentices have been privatised and corporatised. Numbers of skilled jobs for young people during the period of their skilled formation have declined. Private sector organisations are less likely to want to support off-site components of training. State Governments train 80% fewer apprentices than 15 years ago.

3.2.8. Subcontracting and the use of labour hire firms, particularly in the construction industry mean smaller work organisation units and less opportunity to take on younger and less experienced workers with a view to the future. Jobs are increasingly project or contract based, not firm or career based, meaning that the opportunities for skill formation over the 3-4 year period of typical apprenticeships are reduced. The take up of apprenticeships by large firms has declined when compared to the take up by smaller firms. The contracting out of maintenance to labour hire and contract firms has decreased investment in training.

3.2.9. Over the nine years between 1996 and 2004 there was a 95% increase in commencements of ‘traditional apprentices’ in Australia. Annual commencements increased from 29,400 in 1996 to 57,500 in 2004. Most of the growth in commencements occurred in recent years with 39% of the increase occurring in 2004.

3.2.10. The number of traditional apprenticeship completions has remained relatively stable over the last four years, declining slightly from around 21,600 in 2003 to 21,100 in 2005. The rapid rise in traditional trades commencements in 2004 and 2005 can be expected to impact on the total number of completions from 2008.

3.2.11. However, the decline in apprenticeship completion rates will also need to be addressed. This requires a review of the structure of Commonwealth incentives which have encouraged short term, low level training and which inadequately encourage completions. It also requires further work to increase apprenticeship wages and to allow for accelerated completion without undermining quality. The quality of

employment for apprentices must also be addressed with better mechanisms to protect them from inadequate training and poor treatment in the workplace.

3.2.12. The current lift in the apprenticeship training rate will have to be maintained for around 10 years and the current decline in apprenticeship completion rates will have to be reversed to compensate for the under-investment in training that occurred in the previous decade. Just as there are a myriad of causes of the current skills shortage, there are a number of policies that need to be implemented to rectify the situation centred on maintaining the increased apprentice rates and upskilling existing workers. However, skills shortages are not solvable through recourse to temporary entry labour flows. Skills shortages require a systematic approach to domestic training and career development supplemented by stocks of permanent skilled migrants.

3.3. Conclusion

3.3.1. Temporary labour flows facilitated by 457 visas may be addressing some particular occupational and geographic skills shortages, with the WA mining sector being the obvious example. However, there are also significant flows of 457 entrants intending to stay long-term who are working in traditional industries in the major eastern states. These flows are not addressing specific occupational and geographic shortages, but rather are flowing into key employing industries in metropolitan areas (construction in Sydney and hospitality in Melbourne for example). These flows are attributable to employers exploiting a wage gap between the legislated minimum wage condition (\$41,850) attached to 457 visas and the market rate that Australia-based tradespersons would demand, particularly if geographical re-location would be required in order to take up the work.

4. Explanations for 457 Visa Growth

4.1. Introduction

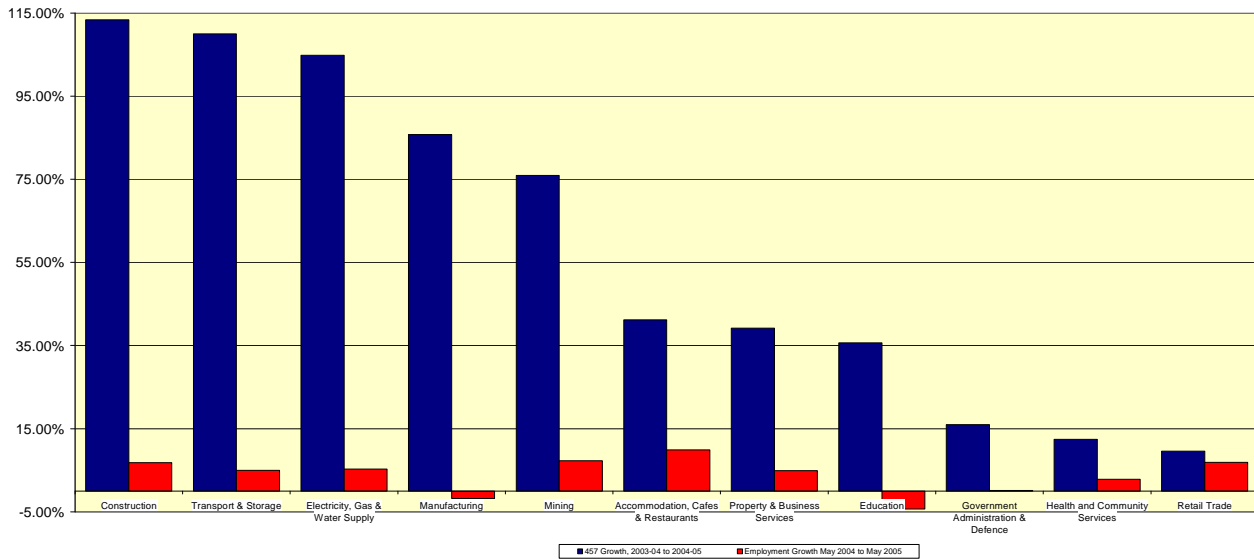
- 4.1.1. If a skills shortage that is limited to certain skills and specific geographic areas explains part of the growth in the use of 457 visas, what other explanations are relevant?
- 4.1.2. There are a number of advantages for government and employers in pursuing a policy of temporary entry labour flows.
- 4.1.3. Temporary labour flows are directed by the sponsoring enterprise or industry association level to particular work sites, whereas skilled migrants will tend to base decisions on where to settle on a range of factors including non-work factors such as lifestyle, family or social ties. Hence the explosion in use of 457 visas is another example of the growing dominance of Australian business interests.
- 4.1.4. From 1 July 2001, the concepts of “key/non-key activity” and “labour market testing” were replaced as requirements for sponsoring businesses by skills and salary thresholds. There is no longer any requirement for employers to test the labour market before hiring offshore. A rapid expansion of 457 visa approvals has followed the introduction of these changes. In recent Senate Estimates, Immigration department officials admitted that they abolished labour market testing because it cause delays to employers trying to bring in immigrant labour. **The Department admitted that**
- “...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 judgments that can only be made by an employer. Public servants cannot be involved in second-guessing those sorts of judgments.”¹²*
- 4.1.5. In other words, the Department has no idea about whether there are skilled workers available locally to fill those positions. They are happy to rely on the employer and assume that there is a widespread skills shortage, ignoring the regional dimensions of skills issues and the fact that there are considerable pockets of unemployed skilled tradespeople.
- 4.1.6. If indeed 457 visas are being used to plug skills shortages, then one would expect the vast majority of visas issued to be in the states, industries and trades with the greatest employment growth. But is this the case?
- 4.1.7. In the following paragraphs the submission analyses the growth and distribution of 457 visas by industry, trades and regional exemptions. In all three cuts of the data, there is no conclusive evidence to support the assertion that 457 visas are being overwhelming used to plug skills gaps.

¹² Senate Hansard, Op.cit, p.70

4.2. 457 visa growth by Industry

4.2.1. Figure 4.1 below demonstrates there is no clear linkage between general employment growth at an industry level and the explosion of 457 visas. There has been quite small employment growth in some of the areas experiencing the highest number of 457 visa approvals, in some instances such as manufacturing and education very large increases in 457 entries have been matched by an actual fall in employment in those industries.

Figure 4.1 457 Growth and Employment Growth, 2003-04 to 2004-05



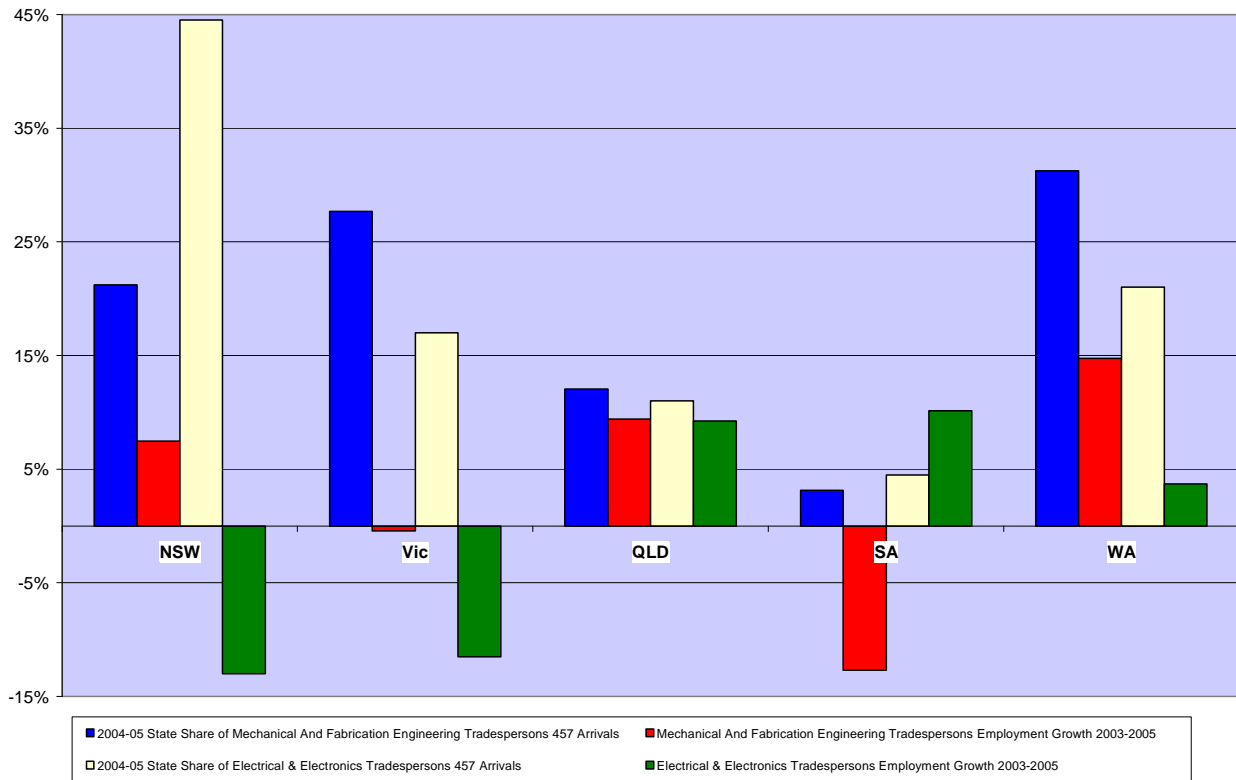
Source: DIMA and ABS 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2006

4.3. 457 visa growth by trade

4.3.1. If there is no clear linkage between the employment needs of an industry and the number of 457 visas being approved, is there a relationship between employment growth in trade occupations at a state level and the destination of arriving 457 visa holders? Figure 4.2 below clearly shows there is no such relationship.

4.3.2. Figure 4.2 charts individual state's share of 457 visa arrivals of mechanical and fabrication engineering and electrical tradespersons against the employment growth in that state of that specific trade. If temporary migration is being used to plug skills shortages in the faster growing states in the national economy one would expect the states with the fastest growth rates in trades employment to be the states with the biggest share of 457 arrivals. This is clearly not the case. For example, NSW had 44.5% of 457 arrivals in electrical and electronic tradespeople in between 1 January 2004 and 31 December 2005, yet employment in this trade in NSW shrank by 13%. In a similar vein, Victorian employment in mechanical and fabrication engineering fell by 0.4%, while it had the second biggest share of 457 visa arrivals in that trade at 27.7%.

Figure 4.2 457 Visa Arrivals by Trade versus Trade Employment Growth

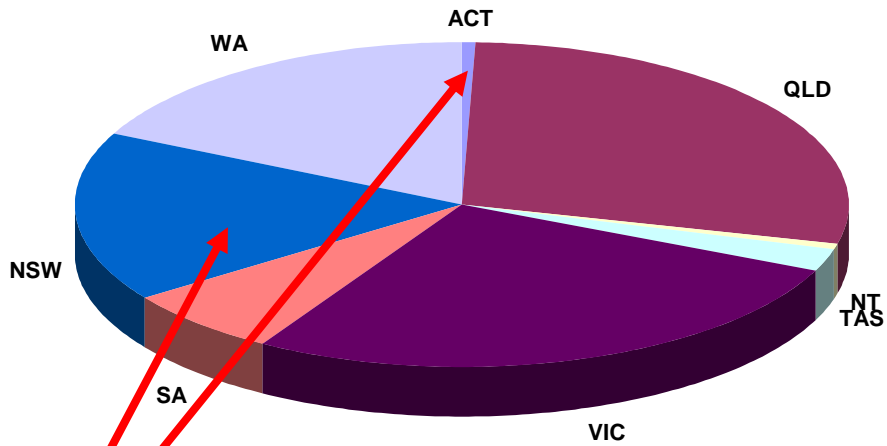


Source: DIMA and ABS 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2006

4.4. 457 visa growth by regional exemption

4.4.1. If we break down the use of regional exemption to either pay guest workers less than the gazetted minimum or to import workers with lesser skills, as Figures 4.3 and 4.4 do, we can see that there is significant divergence between the employment growth in states and their use of regional exemptions. This undermines the argument that the growth in 457 visas is to help sustain the boom in WA and QLD. The dominant user of regional exemptions is clearly NSW, despite the fact that employment growth in NSW is not nearly as large as a proportion of Australian employment growth.

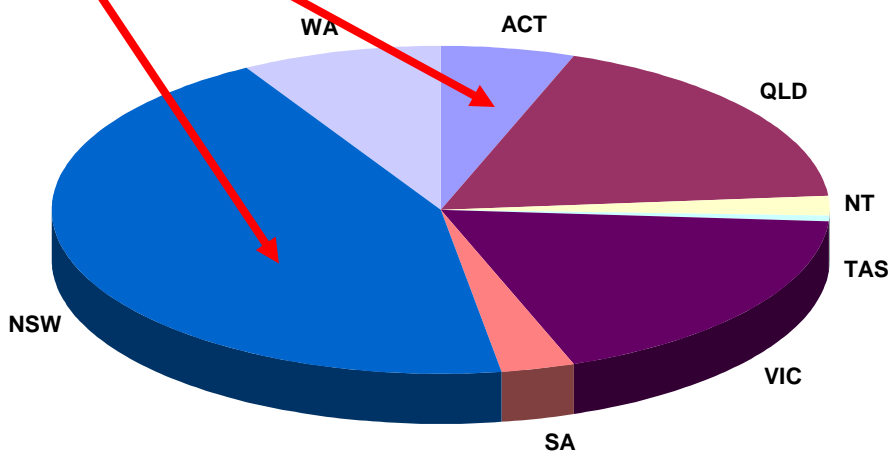
Figure 4.3 State Share of Employment Growth, 2003-2006



Source: ABS 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2006

NSW and ACT employers are driving the use of sub-skill and sub-wage 457 visas, but it's not because employment is booming

Figure 4.4 457 Visa Regional Exemptions, by State



Source: Senate Hansard, 14/6/2006, p.102

4.5. Conclusion

- 4.5.1. The AMWU submits that there is no clear relationship between the massive surge in use of 457 visas and the looming skills shortage. If this is the case, what then are the motives driving employers to utilise temporary migration more and more?
- 4.5.2. Skilled migrants, who arrive under the general migration program, have their wages and conditions determined by the market and broad industry conditions. In contrast, temporary entrants are entirely dependent on their employer for their access to the Australian labour market and most are in a weak bargaining position to negotiate individual agreements on wages and conditions. Although the business long-stay visa sub-class (457) contains a minimum wage condition there is considerable evidence that some 457 visa holders are being paid considerably less than this minimum wage.¹³
- 4.5.3. New regulations that came into force on 1 July 2004 introduced sanctions for sponsors who failed to comply with their undertakings under the terms of 457 arrangements. These undertakings are designed to ensure 457 nominees are paid the gazetted minimum wage and that those 457 nominees recruited to work in regional areas are limited in their ability to change locations. Despite these measures, which themselves indicate problems with compliance, serious questions remain regarding the monitoring and enforcement of 457 visa conditions.
- 4.5.4. Even if most employers pay the agreed 457 wage, this is significantly below what a permanent migrant or an Australia worker would command for performing the same job. The AMWU submits that the system was designed to undermine wages from the inception of the current requirements. In 2001, labour market testing was removed completely from the 457 visa rules (with the exception of regional exemptions). At the same time, as a trade off for removing labour market testing, the government introduced several measures, most significantly a minimum wage level.¹⁴
- 4.5.5. At what level was the minimum annual salary set? \$34,075 which was derived from the ABS survey of average weekly earnings, specifically the trend average weekly earnings for all employees in all skill categories (including categories such as unskilled labourers not eligible for 457 visas) and part time workers (while 457 visas are restricted to full time workers).¹⁵
- 4.5.6. This minimum salary is considerably lower than other wage benchmarks for skilled workers (ASCO 1-4). It was less than the 2001 median starting salary for new university graduates (\$35,000) and was nearly \$8,000 less than ABS average weekly ordinary time earnings for full time persons (all occupations) in February 2001 of \$42,104.¹⁶ It was \$12,000 below the average of ASCO 1-4 occupations full time ordinary earnings at May 2000 of \$46,083.¹⁷

¹³ A DIMA commissioned survey of 457 visa holders conducted by Khoo et al (2005) and available from the Department website found that more than 6 per cent of respondents being paid less than \$35,000 (the threshold at the time of the survey was approximately \$AUD 37,000).

¹⁴ Kinnaird, 2006, Op.cit, p.50

¹⁵ Ibid., p.51

¹⁶ Ibid

¹⁷ ABS 6306.0 - Employee Earnings and Hours, Australia

- 4.5.7. It is reasonable to conclude from this that the wage was set to undercut the wage levels earned by Australians. This is especially evident in the failure of the 457 minimum wage, already set an artificial low, to keep up with the wage indices it was set against. The wage level has failed to keep up with the trend average weekly earnings for all employees in all skill categories and part time workers which as of May 2006 was \$43,160.¹⁸
- 4.5.8. Thus if the Commonwealth was to be at least consistent with its flawed logic, the minimum 457 salary should be \$43,160, not \$41,850. If it was to equal the average ordinary earnings of a full time worker (since all 457 workers must be employed full time) it should be \$12,400 higher at \$54,267. Or if it was to be the equivalent of the lowest paying of the 4 ASCO grades that the s.457 visa is restricted to, that is ASCO 4 tradespersons, it would be \$51,500 or \$9,650 higher.
- 4.5.9. The Immigration Minister herself has admitted that the motive of many employers utilising 457 visas is to suppress wage claims.
- “Immigration Minister Amanda Vanstone has come under fire for admitting that importing foreign workers helped suppress wage claims. Senator Vanstone defended the controversial foreign guest worker scheme, saying it stopped unions from pushing excessive wage demands.*
- “(Some parties) are opposed to the recruitment drive because it opens up the industry to other pools of employees, which undermines the unions' ability to exploit high wages amid the skills shortage,” she told the West Australian.”¹⁹*
- 4.5.10. The key reason that employers can use 457 visas to suppress wage claims is that the Commonwealth continues to set a minimum wage level nowhere near commensurate with what our society considers appropriate for those skills.
- 4.5.11. It should also be noted that increases in the minimum salary levels only apply to 457 visas issued after the specified date.²⁰ All 457 visa holders approved in earlier years at lower minimum salaries can therefore continue to be paid at those lower rates. As the maximum duration for a 457 visa is 4 years, some 457 visa holders could be on much less.
- 4.5.12. Even with a minimum wage that is artificially low, a significant number of employers pay less than it. The Department of Immigration’s official statistics show that in 2003-04 25% of tradespeople on 457 visas were paid less than \$35,000, this is despite the minimum salary at that time was at around \$37,000.²¹
- 4.5.13. The government’s own research also revealed that 33.8% of tradespeople on 457 visas had a dispute with their employer over salary level or hours worked.

¹⁸ ABS 6302.0 - Average Weekly Earnings, Australia

¹⁹ Shaw, M., Op.cit

²⁰ Kinnaird, 2006, Op.cit, p.52

²¹ Khoo, S., McDonald, P. & Hugo, G., “Temporary Skilled Migrants in Australia: Employment Circumstances and Migration Outcomes, June 2005, Table 4

- 4.5.14. As there is no requirement for 457 visa holders to be paid overtime, these migrants could be working incredibly long working weeks to earn their salary. For example in 2003-04, the median salary for tradespeople on 457 visas was \$41,100, while 44% of these migrants worked between 41 and 50 hours a week and 9% worked in excess of 50 hours a week.²² Thus, for someone working say a 47 hour week, the median salary equates to an hourly rate of \$16.82. If an Australian tradesperson earned this on their 38 hour week, it would be a salary of \$33,236.32 or \$14,263 below the average annual earnings (full-time, ordinary hours) of a tradesperson.
- 4.5.15. In summary, all the available data along with anecdotal experience and the then Immigration Minister's own admission leads to the conclusion that the central reason for the continuing popularity of the 457 visa is the ability it grants employers to drive wages down.
- 4.5.16. Another reason for the growth in 457 visas is that they provide a cheap substitute for firms training workers. While there is a requirement that companies applying for 457 visas demonstrate a commitment to training, there are real questions around how seriously this requirement is taken. In one case discussed recently in Senate Estimates, a construction company was able to get 80 s.457 visas approved on the basis that it had 8 apprentices on the book on the exact date the application was made (they have subsequently had another 90 457 visa applications approved).²³ There was no follow up to determine whether those apprentices remained, or any serious examination of the company's past training record.
- 4.5.17. We are even seeing moves by the Chinese Government to try and include in FTA negotiations access for unskilled Chinese workers into Australia. Numerous media reports cite Chinese interest in point-to-point Chinese owned and staffed shipping line stretching from inland Australia to inland China.²⁴ The motive for Chinese labourers working on Australian ports and construction sites was supposedly to reduce the high costs associated with China's appetite for minerals. The question has to be asked if Chinese companies are allowed to bring in unskilled Chinese workers to reduce their costs, how long will it before all employers are allowed to do this?

²² Ibid

²³ Senate Hansard, op.cit, p.32

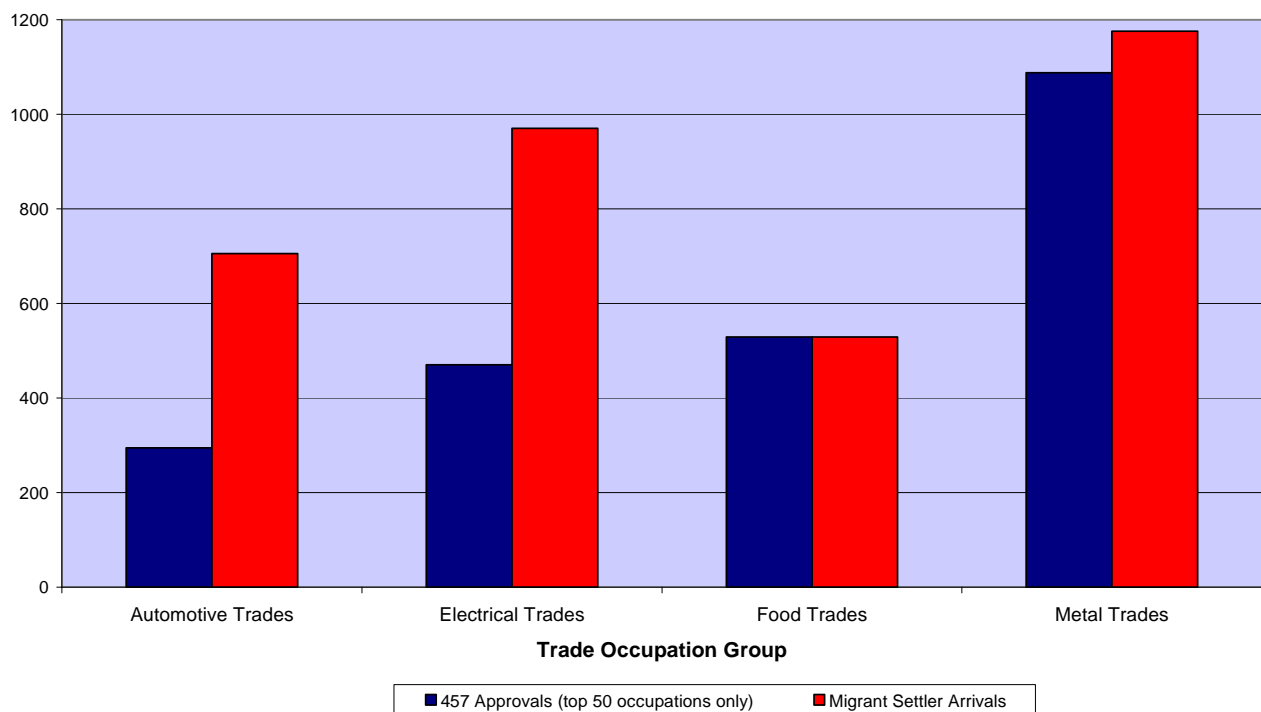
²⁴ Sutherland, T & Ryan, C, "FTA a platform for visa push", Australian Financial Review, 20/06/2006, p.8

5. Impact of Temporary Migration

5.1. The impact of temporary labour flows on skills formation

5.1.1. The internationalisation of labour markets is having a significant impact on trades and related occupations. Australia has been successful in developing and maintaining a strong skilled migration program in this increasingly competitive context. However, recent changes (2001) to policy settings in relation to temporary entry (457) visas have opened up some trades labour markets to increased international flows of temporary workers that will have longer-term impacts on skills formation. A comparison between levels of skilled settler migration arrivals and temporary entry approvals in selected trades occupations are shown in the figure below.

Figure 5.1 Selected Trade Occupation Groups, 457 visa approvals and settler arrivals



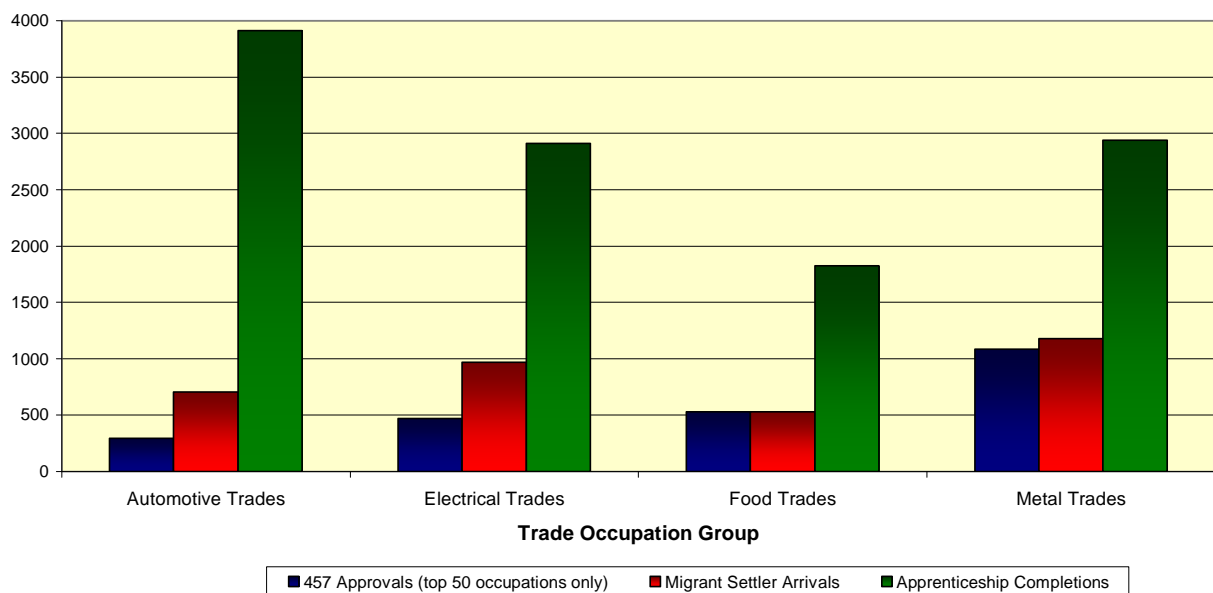
Source: DIMA. * Automotive trades include motor mechanics; Electrical trades include electrical powerline tradespersons and general electricians; Food trades includes cooks; Metals trades includes metal fabricators, welders (first class) and fitters.

5.1.2. As the figure above suggests, the relative number of temporary entry approvals as compared to migrant settler arrivals in 2004-05 was significant. In the metal and food trade occupations, temporary entry approvals are approximating the numbers of migrant settlers arriving. The level of approvals for each of the occupations shown is also substantially understated as only those specific occupations that were within the top 50 occupations by 457 visa sponsorship in 2004-05 are included. In addition, a certain proportion of 457 visa sponsorship approvals are likely to enter in the following year. Figure 5.1 provides a sound indication of the relative levels of international inflows to these skilled trade labour markets from settler arrivals and temporary entry.

5.1.3. What Figure 5.1 highlights is that temporary entry labour flows are a significant proportion of total international inflows. What is also apparent is that temporary entrants are becoming the predominant inflow in some occupations, in excess of total migration program numbers. This is particularly the case in the areas of metals and food trades.

5.1.4. The figure below includes traditional trade apprenticeship completions for 2005 with the data shown in the figure above.

Figure 5.2 Selected Trade Occupation groups, 457 approvals and settler approvals, 2004-05 and traditional apprenticeship completions Australia 2005



Source: DIMA, NCVER. * Automotive trades include motor mechanics; Electrical trades include electrical powerline tradespersons and general electricians; Food trades includes cooks; Metals trades includes metal fabricators, welders (first class) and fitters.

5.1.5. Total international inflows (migrant settlers plus temporary entrants) are particularly significant in comparison to domestic production of tradesmen in metal trades (equivalent to 76.2%), but also in food (58.0%) and electrical trades (49.6%). More importantly in relation to skills formation, the number of 457 visa approvals for metal tradespersons was equivalent to 36.8% of the number of metals apprenticeship completions in 2005. It should be remembered that these proportions are an underestimate as data for 457 approvals were not available for all trades occupations and additional approvals would have been issued to tradespersons in other occupations within the groups shown.

5.2. Potential adverse effects on trade training

5.2.1. The significance of this high proportion of 457 approvals in selected trades areas in relation to skills formation is twofold:

- In relation to the availability of suitable work and appropriate jobs for newly qualified apprentices; and
- In relation to the proportion of tradespersons in organisations or on work sites who will not be fully available or committed to imparting on-the-job knowledge and skills over the medium or longer-term due to the often short-run nature of their participation.

5.2.2. An imbalance of ‘fly in – fly out’ temporary workers has a deleterious effect on the ongoing working relationships that are crucial to junior tradespersons gaining vital experience and critical ‘know-how’. This is an even more significant factor when it is considered that approximately 37% of migrant settlers who entered Australia as tradespersons no longer work in trade occupations, diluting the inflow of those who are likely to be part of the skills formation system in a full and continuing manner even further.

Case Study 1 – Maxi Rorts in Ballarat

Thirty five regional Victorians were thrown out of work by a manufacturer exploiting the federal government’s guest labour rules. Ballarat-based, MaxiTrans, sacked the locals in 2006 while retaining 25 Chinese welders it imported in 2005. The federal government is fuelling the skills crisis and costing young people jobs by having such weak conditions for the importation of guest workers. The Australian workers had been employed for years as casuals and not offered the training they needed to become skilled welders. Instead, the company used the government’s scandalous policy on guest workers to import and keep Chinese welders who are only paid the minimum wage.

If companies can import guest workers who can be paid lower wages than local tradesmen, and it is cheaper than training young Australians, that is what they will do.

Youth unemployment in the area is around 18 percent and many local youngsters would have jumped at the opportunity to get a trade. The company is a champion of the federal government’s campaign to drive down Australian wages. It hit the headlines in 2005 when its use of cheap “guest labour” was labelled a maxi-rort. MaxiTrans brushed nine locals who had been promised starts through a group training company in favour of the imported tradesmen it could put on individual contracts that undercut negotiated wages and conditions.

At least one local had got his medicals, only to be told his deal was off. The claim was vindicated when Chris Walters, 26, told local media his promised steel fabricator’s apprenticeship had been shelved.

He called the MaxiTrans about-face a “kick in the guts’.

5.2.3. The reproduction of occupational skills is a complex matter. There are a number of serious implications for the skills formation system arising from the rapid growth in temporary labour flows that is part of the increasing internationalisation of skilled labour markets.

5.2.4. One of the key arguments for the focus of the Migration Program on the skilled stream is that the higher level of productivity of skilled migrants will raise the overall productivity of the labour force over time. Skilled migration also represents a form of

technology transfer, human capital as embodied expertise in relation to processes and techniques. Temporary entry visas such as business long-stay (457) eliminate the qualifications and work experience requirements associated with skilled migration. Temporary entry will undermine key objectives of skilled migration and run counter to the primary goal of raising the overall productivity level of the workforce.

5.2.5. Increasing reliance on temporary labour flows will have adverse consequences for skills formation. Temporary entry exacerbates many of the problems identified as underpinning shortages in key skills. Employers and employer associations identify skills shortages as impacting in three ways:

- on their immediate needs;
- on the quality or appropriateness of the skills held by available workers; and
- a longer-term gap in the supply of skills.

5.2.6. Temporary entry is concerned primarily with employers' immediate needs. Temporary labour flows will not contribute to skills formation through vocational training to a significant extent. Skills learnt or developed by temporary entrants will be enterprise-based and not necessarily broadly portable. Temporary entrants are less likely to be available to train and mentor junior workers in the medium term, or to move into the VET sector as teachers. Over reliance on temporary labour flows will exacerbate rather than ameliorate the impact on employers overall in relation to the quality and appropriateness of available skills and the longer-term skills gap.

5.2.7. Approximately 12% of business long-stay visa approvals are in Tradespersons and related workers occupations.²⁵ Over time this will alter labour market conditions for tradespersons in Australia by reducing wages and increasing the reluctance of Australian employers to train. Labour market outcomes that lead to a reduction in the attractiveness of skilled trades careers in Australia amongst skilled migrants, or in the taking up of a trades career amongst school-leavers, would have a negative impact on skills formation.

5.2.8. The dramatic increase in temporary trades labour inflows will undermine the recent lift in domestic apprenticeship training effort:

- Firstly, from the point of view of employers, given the intensification of competition within the economy firms that do not train gain a short run competitive cost advantage over those that do train.
- Secondly, from the point of view of prospective apprentices, if temporary labour inflows lower the market wage rate of tradespersons this reduces the incentives for high quality applicants to participate in apprenticeships.

5.2.9. The rapid recent upsurge in traditional trades apprenticeships will likely see increased numbers of newly qualified tradespersons from 2008, which will need to be maintained for at least eight years to address skills needs. There is a need for sufficient work and appropriate jobs to be available for these increased numbers of newly qualified tradespersons. Otherwise there is a risk that trades careers will again appear unattractive in comparison to alternatives and commencements will decline just as

²⁵ Kinnaird, 2006, Op.cit, p.56

rapidly as they grew. Evidence for this comes from the IT sector, where a study by Kinnaird found that an overemphasis on IT skills in migration program outcomes, caused by linking migration to education policy, had led to a decline in enrolments in IT degree courses by domestic students.²⁶

5.2.10. A significant aspect of rising 457 approvals in skilled trades is that all entrants work in the occupation of their sponsorship. This means that 457 visa holder flows have a more concentrated effect on skilled trades labour markets compared to skilled migration, as approximately 37% of migrant settlers who entered as tradespersons no longer work as tradespersons.

5.2.11. In conclusion, the precise policy settings that apply to the burgeoning flow of temporary labour is undermining the system of trade skills formation. A system that over the last three years has shown strong growth after a prolonged period of under-investment in training that led directly to skills shortages and to problems with ongoing workplace skills formation.

5.3. **Social implications of temporary labour flows**

5.3.1. There are a number of potential social implications and risks of exploitation associated with employment arrangements for overseas persons with temporary entry rights. These arise from both failures to monitor and enforce the regulations surrounding the 457 visa system, but also significant flaws in the system itself. Workers on 457 visas are being dreadfully exploited and are being used to drive down the wages and conditions of Australian workers.

²⁶ In evidence to the Joint Standing Committee on Migration enquiry into skills recognition, upgrading and licensing, the President of the Australian Computing Society Philip Argy reported that in 2002-03 only 12 percent of ICT skilled migrants “had skills that were identifiable as being genuinely in shortage in Australia. The remainder, half of whom were recent graduates “were classified as programmers, which were, objectively, in oversupply”. This was mainly attributable to a lack of “granularity” in the classifications DIMIA uses, which do not reflect the specialised nature of IT skills shortages. In this evidence it was also stated that 457 visa requirements are frequently not adhered to by the sponsoring organisation (JSTCOM 2005).

Case Study 2 - Hanssen Construction: The Future of Guest Workers

West Australian construction company, Hanssen Pty Ltd is at the forefront of the new workplace divide. Hanssens have approval to import 170 guest workers, mainly of Filipino origin. The Australian Financial Review has quoted Gerry Hanssen as saying that he likes Filipinos because they "...assimilated easily and worked hard." (23/6/06)

Hanssen's Administration Manager Dick Smith has said that:

"We've found that by using this migrant labour we could show them what needed to be done and they'd just follow it and do it the way we wanted. They wouldn't sort of put their own influence on how they thought it should be done...some (the guest workers) were prepared to do it for longer than others, that, you know, I suppose the boredom factor sets in.

I suppose from the Philippines side of things, I'm not saying that they're of a lower level of intelligence or anything like that, it just seemed that they can do one task and not want to do something different until they're told to do something different.

Of course, with the resources boom, we're finding it difficult getting labour. We have a strict pay structure, which is based on the award system, but because of the shortage of labour there are lots of companies that are willing to pay well in excess of the award system. And of course our guys see the big dollars flashing in front of them and they will leave.

Engaging people from the migrant side of things, we have to guarantee them, I think it's about \$40,000 a year in pay. But likewise if they want to change employer they then have to go back home.

So once we have the labour... I suppose, you know, it's not such a captured market, but you know where you are with them. You know that they're going to turn up and you know that they're not going to swap employers."

("Australian workers passed over for imported labour", PM - Friday, 12 May, 2006 18:10:00)

5.3.2. Australian workers have a deeply entrenched cultural belief in the principle of equal work for equal pay. This principle has been to the benefit of all workers, including newly arrived skilled migrants, and has underpinned the notion of a fair go for all in Australian workplaces. This principle will be undermined if temporary labour flows give rise to significant disparities between the terms and conditions of workers within workplaces, even where they are performing essentially the same work.

5.3.3. The increased presence of temporary workers with different employment arrangements in Australian workplaces presents a challenge to employee solidarity and bargaining strength. In the context of WorkChoices, these arrangements accelerate legislative efforts to undermine collective organisation within the workplace. In this sense, temporary workers on 457 visas may find themselves caught up in the repercussions of the Federal Government's changes to industrial relations, about which they may have relatively little historical or contemporary understanding. Guest workers will find themselves caught in the middle of an increasing conflictual workplace situation.

- 5.3.4. The fragmentation of employment arrangements places overseas temporary workers in a potentially difficult position in the event of industrial conflict between employers on whom they are wholly dependent and their work colleagues. This, of course, has potentially undesirable implications for 457 workers experience of social acceptance during their stay in Australia.

Case Study 3 – 457s used to force Australian workers onto AWAs?

Beef processor Teys Bros, in Naracoorte, locked out 20 workers who refused to sign Australian Workplace Agreements. At the same time 20 Chinese workers were operating in the plant on 457 visas.

On ABC Radio, Teys Bros chief executive Brad Teys said it was “purely coincidental” overseas workers had recently begun. Immigration Minister, Senator Vanstone said workers employed on temporary work visas were not cheaper.

“Temporary work visa-holders must be given at least the same wages, conditions and entitlements provided by Australian law,” she said. The Minister is being misleading here when she argues that 457 visas can’t be cheaper. They have to be paid \$41,850, but if Australian employees working alongside them are paid more, there is no obligation to pay the same to the 457 visa holder.

- 5.3.5. Overseas workers with temporary entry rights have historically been exploited through the simple mechanism of being paid lower wages than domestic workers for the same work. Additionally 457 visa entrants are unlikely to receive the same benefits or conditions that other workers doing the same job receive. In recent Senate estimates hearings Immigration Department officials admitted that when it alerts 457 visa holders to the obligations their employers enter into, this written advice is only issued in English. It is appalling to think that the Federal Government believes that it is adequately familiarising imported workers to their rights by issuing a pamphlet in only one language.

Case Study 4 - The experience of Korean Welders in Western Australia

Twenty Korean welders have been heartbreakingly exploited under the 457 visa program. All were imported by a labour hire firm that farms out tradespersons to various fabricators and construction companies.

- All were told that they must bring their family with them, thereby placing them in an even more vulnerable position.
- All were promised quick approval of permanent residence.
- The labour hire company was paid \$40 per hour for their labour, while the workers themselves only received \$15 per hour. When the labour hire firm discovered that the workers had discussed this with employees of the company they were seconded to, the labour hire firm had them removed from the site.
- One Korean was visited early in the morning at his home by the labour hire firm’s solicitor and told to sign a new contract. The contract was written in English only, no negotiations were entered into and his request for a copy of the contract was refused.
- Several were compelled to purchase cars on their first day in the country at prices up to three times the vehicles’ true value.
- One worker was promised a salary of \$72,000, but received only \$840 (\$43,680 p.a.) for a 56 hour week.

- 5.3.6. There is already evidence that 457 visa-holders are isolated and in a very vulnerable bargaining position in dealing with sponsoring employers. This is particularly the case where promises made prior to the arrival of the worker in Australia remain unmet. In some such cases 457 visa holders have turned to, and received assistance from, the union movement. These workers will also be more vulnerable in relation to unfair dismissal or unilateral termination of their employment than domestic workers.

Case Study 5 – 3 to a Mobile Home in Junee

11 workers from the Qiqihar Rolling Stock Company spent three months over the 2006 summer living 3 to a mobile home in a caravan park in Junee. They were fulfilling 'warranty' requirements of a contract Pacific National had with their Chinese company at the Junee rail workshop.

They were all on 456 visas and none spoke English and were unable to mix with any of the Australian workers at the rail workshop, anyone at the caravan park or in Junee itself. They worked 50-80 hours a week for their regular Chinese wage (paid to their family in China) and some unspecified bonus to be paid at the end of the work.

These workers were being paid a fraction of the wage Australian workers would receive for comparable work. There are numerous workshops in the Hunter Valley which may have been able to do this work without the need to create a ghetto at the local caravan park.

- 5.3.7. There are restrictions on the movement of 457 visa-holders within Australia, particularly those who have been sponsored by employers to work in regional areas and requirements for DIAC to be notified within five days of such an employment relationship being terminated. Limitations on the free movement of persons who are legally in Australia highlights that policy settings are moving dangerously close to creating a situation akin to 'bonded labour'. Such restrictions are totally antithetical to the ethos of migration for settlement and the personal freedom that has been fundamental to the success of Australia's migration program.
- 5.3.8. The general requirement is that 457 visa holders have only 28 days to find a new sponsor, should their old employer end the sponsorship. This grants the employer enormous bargaining power over the migrant worker as the following case study highlights:

Case Study 6 – Given 3 hours to leave the country

Victor Castor was a s457 visa holder working for Phillips Engineering in Henderson WA. Victor had complained to management about receiving only a portion of the pay rise he was promised in his Filipino contract. The rate paid to the workers was less than half the market rate for the area but did meet the minimum salary requirements set by DIMA.

Being bitter about not being paid the promised increase Victor decided to seek further employment. A firm that Victor approached was a client of his employer and they chose to tell his host employer that he had approached them. His host employer then decided to sack Victor and to book him a flight home to the Philippines. The reasons stated in his termination letter were listed as an alleged fall in productivity, timekeeping regarding doing eight hour days rather than ten hour days and attempts to find work elsewhere without the employers consent.

The termination letter was dated 31st October 2006 but he did not receive it until 7/11/2006 at 9:30 am in a meeting with company management and his recruitment agent. At that meeting he was told he was to leave the country immediately and was given a ticket home for 1pm that afternoon. At that meeting Victor asked to see DIMA about his visa status and he was told he could not go to the department as his plane was leaving soon. When Victor maintained that he wished to stay in the country and he wished to talk to his union representative the company and his agent agreed to allow him to do so but protested about the fact that they had just wasted \$1000+ on his return flight.

Victor found further employment but had no legal recourse to recoup monies promised in his Filipino contract or file an unfair dismissal case with the Industrial Relations Commission.

5.3.10. There are also numerous complaints regarding 457 visa holders entering the workplaces to undertake skilled occupations, but then being used as cheap manual labour. Efforts by the Department of Immigration to prevent this appear to be grossly incompetent. At recent Senate Estimates, departmental officials admitted that in most cases when they visit sites to ensure that employers are fulfilling their obligations are being met they inform the employer beforehand.²⁷

5.3.11. Secondly, the Department admits that DIAC officers are not experts in the skill levels of each individual occupation so when they do visit a site to ensure 457 visa holders are performing the appropriate tasks, they have no way of determining whether the immigrants are engaged in skilled work..²⁸

5.3.12. The following case study is the most dramatic example of the safety of workers, both Australian and 457 visa holders, being placed at risk. The Department did nothing to prevent this and it was only intervention by the AMWU that led a safe resolution of the matter.

²⁷ Senate Hansard, op.cit, p.44

²⁸ Ibid.

Case Study 7 - ABC Tissues

“Claims company using poorly-trained Chinese workers

TONY JONES: The Labor Party and trade unions are steadily intensifying their campaign against the Federal Government's program of guest worker visas. At the heart of the debate is whether guest workers bring desperately needed skills to Australia or merely are a source of cheap labour. Tonight, Lateline investigates the case of ABC Tissues - where Australian tradesmen claim poorly-trained Chinese workers are being used to build a giant tissue machine and the owner says skilled Australian workers are just not available in big enough numbers. Stephen McDonnell reports.

STEPHEN McDONELL: A conflict is brewing in Australia over the use of foreign guest workers. The Government says they fill a skills shortage, but unions say it's just cheap labour by another name...The union movement claims guest workers with inadequate skills are being brought in all around Australia.

The Manufacturing Workers Union brought to our attention the case of ABC Tissues in western Sydney, where Chinese workers have been given temporary visas to build a giant \$60 million tissue-making machine. Some local tradesmen are also employed on the site, but they're unable to communicate with the Chinese, who can't speak English.

PAUL BASTIAN, AMWU NSW STATE SECRETARY: They're treated as some sort of lower-class workers. They're not given anything in relation to the rights to occupational health and safety, none of their tools or equipment meet Australian standards. They are in a situation where an accident is ready to happen.

STEPHEN McDONELL: So we went out to the ABC Tissues site to investigate the union's claims. There, an Australian worker, who wouldn't go on camera, claimed the Chinese workers not only lacked the skills to build this new machine, but that local workers were using an interpreter to train the guest workers in basic skills. An Australian tradesman spoke to Lateline on condition of anonymity.

SYDNEY TRADESMAN: We're skilling them in good welding, in safety, in everything.

STEPHEN McDONELL: The local workers, who subcontract to other companies, say they could've built the machine because they've already done a similar job for ABC in Brisbane.

SYDNEY TRADESMAN: They knew we could do the job because we do the job every single day. This isn't about race - we have some Australian-Chinese workers who are very skilled and they get paid properly.

STEPHEN McDONELL: It's claimed the Chinese workers brought their own power tools, which don't meet Australian safety standards and that at times, they've worked on the roofs with no harnesses.

STEPHEN McDONELL: The owner of ABC Tissues is respected Chinese-Australian businessman, Henry Ngai, who is widely known for his charity work.

HENRY NGAI: This country is short in workers - not easy to get. And good men, good worker is more difficult.

Case Study 7 - ABC Tissues (cont.)

STEPHEN McDONELL: Mr Ngai said the decision to employ the Chinese workers was not his, but that of the Italian company, Acelli Paper, who supplied the machine on a turn-key payment basis.

We've spoken to some people who work here, who've said that with these guest workers coming here from China, they don't have the appropriate training, so your construction site is not - is becoming unsafe. What do you say to that?

HENRY NGAI: Well, people report to me and then I take care immediately. And then I get my project manager, Carlo - he also managing the people to teach them the local safety feature.

STEPHEN McDONELL: But it's a bit late teaching them when they're already here, don't you think?

HENRY NGAI: On-site teaching is better than you teaching the classroom.

STEPHEN McDONELL: Henry Ngai said he didn't know how much the Chinese workers on his site were being paid. A manager from the Italian company Acelli said he didn't know either. We wanted to ask the Chinese workers first hand, but were asked to leave the site before we could speak to them.

Tonight, ABC Tissues hand-picked two workers, who told us on the telephone they earn \$4,000 a month. The union says this is nonsense, and that they've already been told through an interpreter the workers earn their Chinese pay plus a bonus. If they're earning the same as they do in China, these guest workers are being paid at most \$250 a month. Stephen McDonell, Lateline." (ABC Lateline 8/06/2006)

Work at the tissue-paper mill was closed down by WorkCover after 39 safety infringements. The Chinese guest workers were unable to communicate with other workers or read safety signs and lacked correct licences. Australian workers were stood down without pay while Chinese workers kept on pay.

In October 2006, the Office of Workplace Services recovered \$650,972 in back pay on behalf of 38 employees over 6 months.

5.3.13. The exploitation of 457 visa holders through exorbitant rent in company accommodation, health care deductions etc. is rife. It is something the department has shown no preparedness to police adequately. The following two case studies highlight incidences of this:

Case Study 8 - \$2000 weekly rent for a company home

Romeo Berdan and Lawrence Laynesa were s457 visa holders working at Phillips Engineering in Henderson WA. The company's original visa workforce was 25 Filipino s457 workers. Accommodation, transport and Filipino satellite TV was supplied for them by the company for which they paid a fortnightly payroll deduction of \$445 each (rent \$320, \$100 transport, TV \$25). The total Filipino workforce shared two homes. Land records showed that one of the company homes was owned by the General Manager and a spouse.

Several months after his arrival Romeo chose to move out with his girlfriend in December 2005, Lawrence did the same in July 2006. In line with a company memo both workers forwarded management a written request to have the deductions stopped. After each sending management three written requests to stop the deductions neither worker received a written response but Romeo received a verbal response informing him that the homes were a company investment and they could not allow him to stop the deductions because the homes were a company investment.

Both workers approached the AMWU with their grievance and the union intervened. After media exposure and discussions with the union the company agreed to pay back the deductions to the day they first received a request. The combined total of money back paid was approximately \$8700.

Case Study 9 – 40 Filipino welders exploited at Darbridge Welding

These workers signed illegal AWA's in the Philippines, were underpaid and forced to live in massively overpriced housing owned by their employers. Three were then sacked and faced deportation after seeking help from the AMWU.

Darbridge Welding interviewed and recruited the men in the Philippines. Each worker was asked to sign Australian Workplace Agreements, but they were only given the signature page and were not able to view the full agreement, making the agreements illegal.

When the workers arrived in Australia they were put in housing owned by the company. Straight from the airport, the men were taken to open bank accounts that give Darbridge Welding direct debit access. \$175 per week is taken directly from their accounts for transport and a shared bedroom in 5 houses owned by Darbridge Welding. The men say they had no choice in their accommodation. The company is making nearly \$1400 per week in rent for a four bedroom house on the outskirts of Brisbane.

The conditions of the agreement leave the men without effective access to overtime payments, penalties and holiday pay.

A \$3000 fee is being paid by all 40 men to Pax, a Filipino recruitment company. The fee was to be paid to be paid back over 6 months at a hugely inflated interest rate (66%). The men were told that once they have paid back the fee, they will probably be sent back to the Philippines, but they could re-apply to pay another \$3000 fee to return to Australia.

After they spoke to the AMWU, three of the workers were sacked and given two days to vacate their accommodation. Another five were threatened with termination. They were told the company was cutting down their workforce, yet up to four more workers from the Philippines are expected to arrive this week.

These skilled Filipino workers were supposedly being paid the gazetted minimum rate for 457 visas of \$41,850. However, as stated above the workers were charged \$175 per week each for 8 to share a 4 bedroom house and travel to and from work. They were then charged \$49 per week for private health insurance thus removing government obligations on the employer to provide health care.

The workers were classified as casuals resulting in their weekly pay being effectively reduced by \$201.20 (25% loading). An agent's fee of \$3660 was deducted at \$195.75 per week over six months resulting in an effective interest rate of 66% and a total payment of \$4698.

Tax on \$41,850 was \$167 per week. From a yearly salary of \$41,850 these workers would pay \$8,684 tax resulting in a net take home pay of \$33,202.

Additional deductions come to, \$16,346 leaving the Filipino workers with \$16,856 or \$324.15 per week for living costs in Australia and to keep their families in the Philippines.

- 5.3.14. The role of migration agents and employment agencies is another aspect of the system that requires urgent attention. These agents have the ability to exploit workers who are desperate to escape from extreme levels of poverty in their homelands. The case study detailed below involving Mr. Zhang highlights the level of exploitation occurring. The Department of Immigration had no idea this was occurring and justice was only achieved when Mr. Zhang approached the AMWU.

Case Study 10 – Aprint

Chinese Print worker, Jack Zhang paid \$10,000 to Chinese employment agency in an effort to get work in Australia. In September 2005, Jack Zhang and four others were brought to Australia on 457 visas.

Mr. Zhang was paid a very low wage of \$751.92 for 60 hours work per week as a printer with no overtime rates. This equated to an hourly rate of \$12.53 or an annual salary for a normal working week of \$24,763.

Mr. Zhang was forced to pay \$200 per week for "lawyer expenses" to his employer. He also paid \$120 per week to live in very poor accommodation with three other guest workers. Mr. Zhang was sacked once had paid \$10,000 back to employer.

In August 2006, Mr. Zhang contacted the AMWU after he was sacked from his job as a printer at A-Print. After considerable attention, in October 2006, the Office of Workplace Services orders \$31,700 in back pay for Zhang, \$93,677 for other workers.

- 5.3.15. 457 visa holders injured on the job are in an incredibly tough situation. There has been numerous examples highlighted in the media across all industries highlighting the precarious position 457 visa workers are in if they are injured on the job and attempt to get treatment and/or access the workers compensation system.

Case Study 11 – Lakeside Packaging

In November 2005 Fu Zhihong arrives in Australia. At a later date brings wife and daughter to Australia to join him. He paid \$27,000 to WorkLink (an Australian company based in Box Hill) to broker a visa. His contract included illegal clauses, namely non-union and discriminatory clauses.

In April 2006, Fu injures himself falling off a ladder, breaking his arm. The manager's son allegedly prevents him going to hospital directly because of previous problems the company has had with WorkCover.

Fu has a few days off before being forced back to work. In June 2006 Fu injures his other arm. Goes back to work but is finds he is unable to function. Throughout this entire process Fu has doctors' certificates supporting his case.

In August 2006 his company stops pay then dismisses Fu. In September 2006, Fu approaches the AMWU and WorkCover and other legal processes are initiated.

5.4. **Conclusion**

- 5.4.1. As this chapter has shown, the increase in use of 457 visas workers is undermining skills formation in Australia, thereby reducing the long term productive potential of the Australian economy. At the same time, the growth of these visas has set worker against worker, potentially divided communities and exposed temporary migrants to distressing levels of exploitation.
- 5.4.2. Temporary entry is concerned primarily with employers' immediate needs. Temporary labour flows will not contribute to skills formation through vocational training. Skills learnt or developed by temporary entrants will be enterprise-based and not broadly portable. Temporary entrants will not be available to train and mentor junior workers in the medium term, or to move into the VET sector as teachers. Over reliance on temporary labour flows is short termism at its worst and will exacerbate rather than ameliorate the impact on employers overall in relation to the quality and appropriateness of available skills and the longer-term skills gap.
- 5.4.3. The dramatic increase in temporary trades labour inflows will undermine the recent lift in domestic apprenticeship training effort by reducing the incentives for employers to fund training due to competition from firms that instead rely on s.457 workers and by making apprenticeships less attractive to prospective apprentices by 457 visas holders lower wage rates.
- 5.4.4. As the case studies have shown, 457 visa holders are being used to undercut the wages and conditions of Australian workers and permanent migrants. They are being used to replace locked out workers and reduce the bargaining power of employees. As part of this process these migrants are being heartbreakingly exploited by unscrupulous employees. They are being underpaid, forced to work incredibly long hours, massively overcharged for company accommodation and transport, preyed upon by predatory migration agents and if they attempt to exercise their rights, some as basic as to access medical care after a workplace injury, they are threatened with deportation.
- 5.4.5. This is a system that brings no credit to Australia. It was conceived to provide short run profits to the most unscrupulous of employers. Myopic employers who refuse to invest in their workforce, instead choosing short term fixes that ultimately undermine Australian skills development, reducing equity and fairness and dividing workplaces. In the end, Australia will be both poorer materially and in terms of our international reputation.

6. Recommendations

6.1. Introduction

- 6.1.1. The Federal Government and some employer organisations have hyped up talk of a skills crisis in order to promote crisis solutions which have nothing to do with the issue of increasing the pool of qualified workers to sustain a high value added, flexible economy. They have only one strategy to address the competition from China and that is labour market deregulation and reducing workers bargaining power.
- 6.1.2. They have two complementary measures that dominate their skills policy. Firstly, the promotion of temporary migration to undercut market rates for skilled labour. Secondly, to promote the fragmentation of skilled trades qualifications and instead to encourage narrow skills sets to meet immediate enterprise needs, encourage deskilling and reduce the value of such workers in the market.
- 6.1.3. What is required is a strategy to address the question of emerging skill shortages and to provide the basis for improved productive performance through broad based skills and qualifications.
- 6.1.4. An essential part of this to reform the system for temporary visas. The AMWU has put forward a series of recommendations that will ensure that 457 visas do not undermine the training and skills system of Australia or lead to exploitation of those visa holders.
- 6.1.5. When examining ways to improve the system it should be noted that the equivalent US and UK temporary skilled migration schemes (H-1B and work permits) there exists labour market testing, both schemes require payment at market rates and in the US scheme the minimum qualification level to access the scheme is a bachelor degree.²⁹ Neither of their economies appears to suffer from these policy settings.
- 6.1.6. Our recommendations are divided into 2 categories:
 - Improvements to the system; and
 - Changes to the system of monitoring and compliance.

6.2. Improvements to the system of temporary skilled migrations

- 6.2.1. As discussed in chapter 3 of this submission, flows of 457 visas may be compensating for skills shortages in specific localities or occupations, but on the whole the evidence points neither towards a general skills shortage or 457 being purely used to plug these gaps. In this context it is essential that an employer properly identify where the skills shortage is, how long the shortage is likely to last for and how the activity the skill is required for is central to the business applying.

²⁹ Kinnaird, 2006, Op.cit, p.50-51

Recommendation 1

The Commonwealth must introduce a requirement for employers to identify the skills shortage and demonstrate the requirement for a defined period. The temporary business visa program must restrict the use of temporary labour flows to only the purpose of addressing significant, short term, specialist skills shortages. The Commonwealth should reintroduce the requirement that the activity must be 'key' to the business applying.

- 6.2.2. Once an employer identifies the skills shortage and demonstrates that the activity is key to their business, they must test the local market to ensure that the position cannot be filled locally. As demonstrated in chapter 4, many employers are using 457 visas to drive down wages rather than fill skill shortages that cannot be filled by Australians.
- 6.2.3. The reintroduction of labour market testing (abolished in 2001) will significantly reduce the level of abuse of the system and move the system closer to its proper goal of filling short term needs that cannot be met locally.
- 6.2.4. The AMWU believes that there should be a requirement for strict market testing prior to any approval for employers to sponsor temporary skilled overseas workers. Such testing must be against the applicable market rate of pay. Advertising positions at the award rate of pay does not produce evidence of appropriate testing of the labour market.

Recommendation 2

Prior to approval to sponsor a temporary skilled overseas worker an employer should be required to demonstrate to the relevant authority that they have sought to fill the vacancy within Australia. Evidence must include advertising the position Australia wide and advertising the position at the market rates, that is the average rate paid by similar employers, or the prevailing agreement rate, whichever is higher. Advertising at the award rates or minimum wage level should not be acceptable.

- 6.2.5. Current 457 visa rules do not prohibit the displacement of Australian staff and their replacement by 457 visa holders. This is especially true when combined with the abolition of unfair dismissal protection for workers employed in firms with less than 100 employees and the severe watering down of protection for all other workers under the draconian WorkChoices legislation. Nor is there any prohibition on local staff being required to train their 457 visa-holder replacements.

Recommendation 3

An employer who has retrenched Australian workers should not be able to replace such workers with temporary skilled overseas workers in circumstances where the Australian workers were retrenched within the last 12 months and the employer failed to provide such workers with the opportunity to be re-trained. Temporary overseas workers should not be seen as an acceptable alternative to a reasonable obligation on an employer to both train and retrain workers.

- 6.2.6. Besides identifying the skills shortage, demonstrating that the activity is key to their business, showing through market testing that they are unable to fill the job locally and not retrenching Australian workers in the past 12 months, an employer must exhibit a genuine commitment to training Australian workers. As discussed earlier in the submission (paragraph 4.25) there are significant doubts surrounding how seriously the Department of Immigration takes the training record criteria. In this context the AMWU endorses the criteria established by the Australian Council of Trade Unions.

Recommendation 4

The use of temporary skilled overseas workers should not be permitted unless the employer can demonstrate:

- *A history of accredited training;*
- *A successful outcome (measured in employment outcomes) of the training;*
- *Retention of trained workers within workforce;*
- *On-going program of and commitment to training;*
- *Demonstrated financial investment in training in the identified skill shortage area.*

An employer should be barred from access to the scheme if they have been found to have abused the subsidy schemes available to employers for the training of skilled workers.

Approval as a sponsor of temporary overseas skilled workers must include (and be subject to audit) a requirement to enhance the skills of Australian workers through skills transfer and training. If temporary skilled overseas workers are required they must increase the skill base of Australia by passing on their knowledge and expertise to Australian workers.

- 6.2.7. It is reasonable that employers benefiting from the 457 visa program put in place long term strategies to alleviate the skills shortage the 457 visa holders are temporarily filling.

Recommendation 5

Employers utilising the 457 visa program must indicate what strategies they are adopting, including training solutions to overcome ongoing skills shortages in the skills they are importing through 457 visas. A failure to implement this strategy should preclude the employer from having any future 457 visa applications approved.

- 6.2.8. There must also be the re-introduction of the requirements for recognition of overseas qualifications prior to entry.

Recommendation 6

That the sponsored person's credentials be vetted by Australian accrediting authorities prior to approval of visa. If the application is offshore, the accreditation must obviously occur prior to arrival of the applicant.

6.2.9. There is no justification for the use of Australia to train foreign apprentices. This will not increase skills formation in Australia. The only justification for temporary skilled migration is to plug short term skills gaps when no suitable Australian worker can be found. The Trade Skills Training visa is clearly not consistent with this.

Recommendation 7

That the Trade Skills Training Visas (471) be abolished.

6.2.10. It is contradictory to have a requirement that an employer who employs a 457 visa holder have a proven training record and yet allow overseas businesses with no prior presence in Australia to access this program. This yet again demonstrates the veneer thin commitment by this government to skills formation.

6.2.11. In addition to the impact on skills formation, allowing overseas based companies to access this program leaves 457 visa holders open to gross abuse and exploitation with little prospect that Australian governments can prosecute these fly by night overseas based 457 sponsors. Complex contractual arrangements evidenced at many sites make it impossible to pursue non-compliance with Australian licensing, registration, insurance, remuneration, safety standards, local planning and environmental standards, etcetera. It is extremely difficult to perform adequate probity checks on overseas companies.

Recommendation 8

Only businesses with an active Australian commercial presence should be allowed to be 457 sponsors.

6.2.12. As shown in earlier parts of this submission, a significant number of companies with the implicit agreement of the Commonwealth Government have been using 457 visas to undercut local wages and conditions. In conjunction with market testing to establish that the skills shortage cannot be filled locally, employers must pay the market rate of pay to the 457 visa holder.

6.2.13. If the 457 visa system is designed to plug skills gaps, rather than undercut wages, then an employer can have no objection to paying the market rate of pay for the skills of the temporary migrant. The principle of equal pay for equal work is paramount.

6.2.14. What possible argument could there be against paying 457 visa holders the market rate?

6.2.15. If 457 visa rules allow employers to pay below market rates, the visa is in effect giving their business an unfair competitive advantage over businesses that do the responsible thing and employ permanent migrants or Australians at market rates. The current rules mean that the government is effectively providing a form of subsidy to those businesses employed 457 visa holders.

6.2.16. It is pertinent to the late Milton Friedman's view of 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.”³⁰

6.2.17. The government’s own research reveals the extent of discontent among 457 visa holders with the program. 80.4% of all 457 visa holders surveyed had a dispute with their employer. In the trades category 21.1% of visa holders had a dispute over their salary level and 12.7% had a dispute over working hours³¹

Recommendation 9

Employers utilising the 457 visa program must pay to the migrant the market rate of pay. In the first instance if there is an above award rate of pay (through an enterprise agreement) this is the rate of pay that must be made to 457 visa holders. If there is no enterprise rate then a minimum enforceable rate of pay should be determined that is in excess of the award rate and takes into account the average hourly rate of pay within the local area for the work required to be undertaken. That is, if there is no agreement a rate determination should be made specifying a rate that acknowledges local market rates for the work. Whatever the rate is, it must be enforceable and be able to be enforced by the OWS (or other appropriate government body), by unions or other means. In any event, no 457 visa holder should be paid below the determined rate. The rate should not be artificially discounted by exploitative accommodation, health fund or other arrangements designed to maximise employer profit at the expense of Visa workers being paid market rates.

If a rate is determined under these provisions it must be adjusted annually by the average annual wage increase in agreements as currently measured by DEWR.

6.2.18. The AMWU understands that, should a 457 visa holder be entitled to a specified rate and the employer fails to pay this rate, the Office of Workplace Services has no capacity to take action to enforce payment of the specified rate unless that rate falls below the proscribed minimum. This makes the rates meaningless. Non-payment of the specified rate of pay – however it is derived, must be enforceable through the Office of Workplace Services or by direct action of the temporary overseas skilled worker, a trade union or other body.

6.2.19. As discussed earlier in the submission, the system of regional exemptions is incredibly flawed and open to abuse. The AMWU sees no justification for regional exemptions.

6.2.20. In particular there is no justification for exemptions from skill requirements. Unemployment levels in many non-major city areas of Australia are well above 5 per cent (the national unemployment rate). Youth unemployment is as high as 40% in some regional areas.³² In addition, according to the ACTU under-employment is currently at 6 per cent of the labour force.³³ These are the people that the government and employers should be attracting to the positions in regional areas. Enabling employers to take on temporary skilled overseas workers at skill levels below ASCO1-4 and at below market rates does not encourage employers to use Australian labour.

³⁰ Ibid., p.53

³¹ Khoo, Op.cit, Table 12

³² ABS Cat. 6105.0 Vol. 2006

³³ ABS, unpublished data

6.2.21. The AMWU does not believe there should be any lower minimum salary requirement based on geographic location. Such a system does not operate with respect to wages generally in Australia and should not be applied to 457 visa holders.

Recommendation 10

That regional exemptions for minimum wages or skills be removed.

6.2.22. With the abolition of regional exemptions, there is no reason to maintain the Regional Certifying Bodies (RCBs). As discussed earlier, RCBs vary greatly in independence and performance and are responsible for the undercutting of wages in regional areas.

6.2.23. With proper legislation and regulation in place, the relevant Department (DIAC) should be resourced to undertake certification of applications made by employers when applying to sponsor temporary overseas workers. This certification process should include verification of claims made with respect to local labour market testing and commitment to and engagement in training. Verification should be stringent and undertaken in consultation with relevant organisations including training organisation, State government authorities, unions, employer associations and job network providers.

6.2.24. The AMWU's view, as already stated, is that there should be no regional exemptions from skill levels of salary requirements. As such regional certifying bodies, to the extent they determine eligibility for exemptions are not required. There is however an arguable case for the establishment of appropriately structured bodies to provide advice on compliance with sponsorship requirements by employers. Regional bodies – extended to cover all areas – may be a useful mechanism for undertaking such a task.

6.2.25. The current Regional Certifying Bodies (RCBs) should be restructured, having the same composition regardless of their location, and have a clearly defined area of responsibility such that their role can be properly fulfilled and there can be confidence in the outcomes of their deliberations.

6.2.26. The current structure of RCBs is highly inconsistent with such a principled approach. Depending on the State and/or region, the function is performed by officers in a State Government department or undertaken by the local employer peak body in other regions or some structure in between. Neither of these extremes or what is in between is satisfactory for the purpose.

6.2.27. Apart from restructuring the RCBs, the role of the RCB must be properly defined. They cannot be a rubber stamp for employer requests to use temporary skilled overseas labour. The RCB must be given the authority to properly check all of the information required to be provided by an employer seeking to utilise temporary skilled overseas workers. Every employer application for the use of temporary skilled overseas labour in the area must be assessed by the local RCB. The implication of this is that a national employer in Brisbane cannot lodge an application in Brisbane for assessment by the Brisbane RCB for the employment of labour in Kalgoorlie. Such an application would have to be assessed by the RCB covering Kalgoorlie.

Recommendation 11

That the Regional Certifying Bodies be reorganised to include representatives from State and Local Governments, training providers, employment agencies, union and employer representatives. That the RCBs be tasked with assisting the department in verifying that market testing has occurred by the applicant and monitoring the implementation of the 457 visas in their local area.

6.3. Changes to the system of monitoring and compliance

- 6.3.1. The protection of temporary migrants once they arrive is paramount. As discussed in section 5.3, monitoring and compliance of 457 visas is incredibly lax. The following recommendations improve the system to ensure that 457 visa holders enjoy adequate safeguards against the deprivations of some employers.

Recommendation 12

Accommodation

A temporary skilled overseas worker will not have any deductions made from their pay for rent or any other living costs without express written agreement of the worker. Any deductions for rental costs associated with any property owned or controlled directly or indirectly must be verified by the relevant authority as fair and reasonable. A breach of this provision by a sponsoring employer will be considered a breach of sponsorship provisions.

Healthcare

Temporary skilled overseas workers must have access to the public health system either through payment of the medicare levy or an equivalent health insurance scheme. Any additional cost of such insurance over and above the standard medicare levy is to be met by the employer.

Costs

An employer should not be able to deduct money from the pay of a temporary skilled overseas worker for the payment of airfares, migration, legal or other costs.

Allowances

Any rate of pay payable to 457 visa holders must exclude allowances normally paid to workers that are in excess of their specified hourly rate of pay including penalty rates, allowances, accommodation etc. That is the rate of pay struck for a 457 visa holder cannot be an “all in” rate unless this has been established for work at the site through collective bargaining.

In addition, 457 visa holders must be entitled to all other benefits an Australian worker would receive with respect to terms and conditions of employment including any rights to ‘return trips’ to capital cities for remote workers.

Occupational Health and Safety

In order to ensure occupational health and safety applicant employers must be able to demonstrate that visa holders have received appropriate safety induction training, and have an understanding of Australian safety standards and requirements. Applicant employers must be required by DIMA (Now DIAC) to demonstrate that they have provided safety induction training, compliant with the local statutory and regulatory requirements; that the company has a 'safe system of work' plan for the local site and has otherwise complied with all relevant legislation and regulations before work commences.

- 6.3.2. As the case study around APrint (Case Study 11) demonstrated, the role of migration agents is central to systematic abuse of 457 visa holders. The AMWU of the view that significant reform of migration agents' involvement in 457 visas is merited and we endorse the reforms proposed by the ACTU. These reforms are set out in the recommendation below.

Recommendation 13

Migration agents working in the area of temporary skilled overseas workers must be licensed to do so. A strict code of practice for such migration agents will be established and enforced with violation of the code a valid reason for withdrawal of a license.

Migration agents must be prohibited from receiving monies directly or through associated companies for the payment of costs, over and above an accepted standard administrative fee, associated with the recruitment or provision of temporary skilled overseas workers.

Migration agents must be prohibited from operating in conjunction with labour hire firms – either directly or indirectly.

The only way to ensure that the desire for work does not lead to exploitation is to set the rules and regulations by which migration agents operating in this sphere are allowed to work.

Migration agents must be subject to auditing and spot checks.

- 6.3.3. The inability of the Department of Immigration to adequately investigate breaches of the 457 visa system is probably the worst aspect of the entire temporary migration system. As the case studies detail, the department has been particularly inept at investigating breaches and without the action taken by unions and other organisations, most 457 visa holders suffering abuse by their employers would fail to gain assistance.
- 6.3.4. To rectify this situation, the following recommendations should be implemented:

Recommendation 14

State Notification

Employers sponsoring 457 visa holders should be required to notify relevant state government authorities and departments (e.g. WorkCover) that they have visa holders working for them. In addition, DIAC should be required to notify relevant state authorities of the commencement of temporary skilled overseas workers, including the name and address of the employer. Information provided to State Governments, regardless of source, must include the number of 457 visa workers at a particular employer site, the period of approval of the 457 visa and the skills/classification of those workers. The provision of such information will enable appropriate monitoring of employment arrangements by all relevant agencies.

457 Registry

DIAC should maintain a register of 457 visa sponsors, projects and migrant numbers that is accessible to state authorities.

Information

The DIAC website should provide links to the State WorkCover sites and set out the various state legislative requirements with their visa application kits. DIAC should also provide individual 457 visa holders with brochures (in the appropriate language) detailing their rights and setting out the various state contact points.

Co-operation

The AMWU believes that there is an urgent need to increase the level of co-operation between all agencies involved in monitoring of workplaces, including employment rights, occupational health and safety, wages, visa inspection and integrity services and so on.

In addition it is imperative that a breach uncovered by any agency of standards that are required to be applied in the workplace and in particular to temporary skilled overseas workers should result in an immediate, unannounced, inspection for compliance with all visa requirements.

Co-operation between relevant agencies in breaches must be conducted in an environment where the right to privacy of the temporary skilled overseas are respected and maintained.

Confidentiality

It is important that a temporary skilled overseas worker has access to mechanisms whereby they can raise issues relating to breach of conditions without fear that they will be named by any investigating department. The fear of loss of job (and of course they have no access to remedies against unfair or unlawful termination), and hence a

requirement to leave the country if no new sponsorship is found, is a major impediment to reporting breaches or mistreatment by temporary skilled overseas workers.

Program Exclusion

Any employer found abusing the system, including exploiting or assaulting temporary skilled overseas workers, should be excluded from further participation in the scheme and be subject to civil and criminal penalties.

- 6.3.5. Employers have enormous power over 457 visa holders, because 457 visa holders have only 28 days to find a new sponsor, should their old employer end the sponsorship. In numerous instances this power is being abused (see case study 6), it is imperative that the Australian system be moved into line with international standards.

Recommendation 15

International standards provide that temporary entrants should be given 3 months in which to find alternative employment following the termination of employment. This standard should be implemented for temporary skilled overseas workers in Australia with the three month period extended if the worker has a workers compensation or employment litigation in place. During this period the temporary overseas skilled worker should be provided with access to employment placement services to assist in finding alternative employment.

Furthermore, the sponsorship cannot be withdrawn without a valid reason with access to an appeals process.

Recommendation 16

457 Visa holders should be provided with information on the appropriate union which covers the scope of work covered by the Visa.

6.4. Conclusion

- 6.4.1. The AMWU is confident that should these 16 recommendations be implemented the result will be a system of temporary migration that adequately fulfils the only role temporary skilled migration has; that is, as a last resort, to fill short term skill gaps.
- 6.4.2. It is only fair that the employer must demonstrate that they have attempted to fill the position locally, they have a good training record and have not made Australian workers redundant in the area of skills shortage or refused to train redundant workers into the area of shortage.
- 6.4.3. As companies must have a good training record prior to visa approval, it is necessary to exclude any overseas based company from this program. If they have no Australian presence how can they demonstrate a long and series commitment to training?
- 6.4.4. The qualification of the 457 visa applicant must be accredited prior to approval; this is the essential to the integrity of the system.

- 6.4.5. While these gaps are being plugged the employer sponsoring the 457 visa worker will be executing a skills development plan to enable indigenous labour to take over.
- 6.4.6. As the only justifiable motive for temporary skilled migration is to plug a skills gap, rather than undercut wages and conditions of Australian workers, the temporary migrant will be paid the market rate for that skilled position in that locality. Anything less is unacceptable.
- 6.4.7. Once a migrant is working in Australia they must have the same rights and protections that Australian workers have, most especially in the area of occupational health and safety. He or she should not have any deductions made for accommodation, transport, healthcare etc... unless they have been independently advised of their rights and responsibilities, they freely agree to them and that the rates charged by their employer and related entities are fair.
- 6.4.8. Finally to ensure that these migrant workers are protected from exploitation the Immigration Department must be properly funded, given appropriate political guidance, provide information on rights and responsibilities to Visa applicants and ensure there is no exploitation when workers are within Australia. There must be the closest cooperation and coordination between the relevant Commonwealth and State authorities, for example the Department of Immigration and Citizenship (DIAC) and WorkCover.
- 6.4.9. With these improvements in place the 457 visa system can actually help the Australian economy, avoid retarding domestic skills formation, not undercut wages and conditions and afford temporary migrants the rights and protections all workers are entitled to.