

Submission No. 80

Date Received

R T Kinnaird & Associates Pty Ltd

ACN 008 627 496

Professional consulting and research services

RECEIVED
21 APR 2007

BY: mlb

PO Box 639
Balgowlah NSW 2093
Australia
Tel +61 2 9907 9797
Fax +61 2 9907 0575
Mobile 0403 070 405
Email bob.kinnaird@bigpond.com

23 April 2007

Dr Kate Sullivan
The Secretary
Joint Standing Committee on Migration
Inquiry into temporary business visas
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Dr Sullivan,

Thank you for the invitation to make a submission to this important inquiry.

The June 2006 issue of the Monash university journal *People and Place* published an article by me on the 457 visa. This article, "Current issues in the skilled temporary subclass 457 visa", addresses several issues in the committee's terms of reference.

Attached is a media release summarizing key points from that article. The complete article (pdf) is also provided.

The main conclusions of that article relevant to the Committee's terms of reference were, in summary:

1. There should be much greater transparency and public disclosure of information about the 457 visa program by the Department of Immigration and Citizenship (DIAC). Suggested priorities are listed at page 63 in the *People and Place* article.

2. 457 visa rules should require employers to pay market wage rates to 457 visa-holders.

3. DIAC should collect and publish regularly data on actual base salaries paid to 457 visa-holders (as distinct from 457 salary levels *approved* by DIAC when it approves the visas).

- Alternatively, a properly authorized body should do that through data matching of DIAC-approved 457 salary data against ATO tax records of 457 visa-holders (eg, perhaps an independent agency like the Commonwealth Auditor-General).

4. DIAC should notify the responsible State government departments of workplace relations of the names of 457 employers within their jurisdictions, and details of their 457 visa-holders.

5. Some form of labour market testing should be mandatory for 457 visas in all occupations, except those situations where labour market testing is clearly not warranted - for example, where there is agreement that shortages exist in specific sectors, supported by objective evidence.

The rest of this submission expands on the issue of market rates in ICT occupations.

Market wage rates

In my opinion, the single most important change needed to 457 visa rules is to require all 457 employers to pay 457 visa-holders at least the market (or 'going') wage rates for the occupation and geographic area in question; and to increase wage rates annually for all 457 visa-holders, in line with market movements in the relevant Australian wages.

That 'market rates rule' should be backed up with an effective system for monitoring and enforcing the payment of at least market rates to 457 visa-holders.

That regulation should replace the current rule requiring (according to DIAC) 457 sponsoring employers to pay the gazetted 457 Minimum Salary Level (MSL) or the wage stipulated in the relevant award or industrial instrument, whichever is the higher.

(The Committee might wish to inquire how DIAC in practice establishes the wage level stipulated in "the relevant award or industrial instrument", before it approves a salary for a 457 visa.)

The MSL for ICT occupations

In the case of selected ICT occupations¹, the government has gone part of the way towards accepting a market rates principle in the 457 visa program.

In February 2004, the Immigration Minister introduced a higher MSL for these ICT occupations and has since progressively increased the ICT MSL at a faster rate than the standard 457 MSL. The February 2004 ICT MSL was \$46,620 (vs the then standard 457 MSL of \$37,720) and, from May 2006 was \$ 57,300 (vs \$41,850).

Those increases will have narrowed the gap between the 457 ICT MSL and market rates for ICT positions. But even now, the 457 ICT MSL is probably well below market rates for skilled ICT professionals, especially rates for ICT professionals with skills in short supply.

As the *People and Place* article pointed out, in the first half of 2003-04 the national average advertised rate for Analyst programmers was \$68,000 and in Sydney nearly \$73,000, based on one authoritative industry survey.

¹ Note that the higher ICT MSL applies only to the occupations of IT managers (ASCO 1224-11) and all Computing professionals occupations (ASCO 2231), but not to 5 other occupations generally classified by DIAC as ICT: two other professional occupations - Electronics engineer (ASCO 2125-13), Electrical or electronic engineering technologists (ASCO 2128-15) and three sub-professional - Electronic engineering associate (ASCO 3124-11), Electronic engineering technicians (ASCO 3124-13), and Computing support technicians (ASCO 3294-11).

- The February 2004 ICT MSL of \$46,620 was therefore almost \$21,400 less than the *national average advertised rate* for Analyst programmers (\$68,000) at the time, or only 69% of the national average rate.
- The May 2006 ICT MSL of \$57,300 would have been \$16,200 less than the national average advertised rate for Analyst programmers (\$73,500) at the time, assuming (conservatively) those rates increased only by the same amount as national ICT salary rates generally. (The AIIA salary survey, conducted by the Australian Information Industry Association, reported annual increases of 4% and 4.1% in the ICT sector in the 2 years to August 2006).
- Using another possible proxy for market rates, the May 2006 ICT MSL was \$5,000 less than the *median* average annual full-time pre-tax earnings of \$62,300 in August 2005 for computer professionals ASCO 2231 (Source: ABS Survey of Employee Earnings, Benefits and Trade Union Membership data on DEWR website).

As my June 2006 *People and Place* article points out, 457 visa rules allowing employers to undercut market rates amount to a Federal government subsidy to 457 employers against other employers.

The basis for determining the ICT MSL has never been made clear, one example of the lack of transparency in the 457 visa scheme. The Immigration Minister's 2004 announcement said "There will be a new separate minimum salary of \$46,620 a year for Information and Communication Technology professionals, reflecting *the typical salary for experienced professionals in that industry.*" (emphasis added)

But the Minister's 2004 statement did not explain exactly what the highlighted term above meant and neither have subsequent announcements of increases to the ICT MSL.

The Immigration Minister's May 2006 media release said of the latest ICT MSL that "this level was set following consultation with the ICT industry." In an answer to a Question on Notice in the Senate Estimates hearing, DIAC says the MSL for ICT professionals "is based on a series of annual salary surveys commissioned for the ICT industry and is set in consultation with the Minister for Employment and Workplace Relations."²

The particular salary surveys were not identified. As a result, it is not possible to say how representative they are of salaries for all employed ICT professionals in Australia. I understand one survey referenced may be the annual ACS salary survey conducted for the Australian Computer Society (ACS) by APESMA, the Association of Professional Engineers, Scientists and Managers, Australia.

The ACS survey is not necessarily representative of salaries of computing professionals generally. The ACS survey is confined to ACS members only who number only around 11,000, or around 5% of the total 206,000 IT managers and computing professionals employed in Australia in 2007 (ABS Labour Force Survey data).

Defining and measuring the market rate

² Answer to QON number 124, Supplementary Budget Estimates Hearing, 30 October 2006.

There are undoubtedly some definitional and measurement issues in identifying the market rate for particular occupations, in a way that can be factored into 457 visa program administration.

But those issues should not be a reason for avoiding the task. There may also be some additional costs in determining the market rates for 457 visa purposes. If so, those costs should be accepted as a necessary part of operating a temporary skilled work visa program with adequate protections for Australian workers and businesses.

The main options for market rates would seem to be:

- the same wages and conditions as Australian workers doing the same or similar work (easier to determine in a collective agreement situation but less so elsewhere)
- the median salary of Australian workers in the occupation concerned
- a rate above the median, such as the 75th percentile
- the advertised rate for vacancies in the relevant occupation

There is a good case for defining market rates (for 457 visa administration purposes) as *at least the median* salary for the particular occupation, if not the advertised rate for current vacancies.

If I can assist the Committee further, I would be pleased to do so.

Yours sincerely

Bob Kinnaird
Director

MEDIA RELEASE

People and Place
Vol 14., no.2, June 2006

People and Place is a quarterly journal of demographic, migration, labour-market and environmental studies. It is published by:

The Centre for Population and Urban
Research
Monash University, Clayton, Victoria Australia 3168
(03) 9905 2946

New study shows concerns about 457 visas are justified

A new study on the 457 visa program concludes that concerns about key aspects of the visa are justified, even on the limited evidence the government makes available; and recommends changes to the way the visa operates.

In summary, the study shows that:

- growth in 457 visas is so rapid that in 2006-07, for the first time there will probably be more temporary skilled 457 visas granted than skilled permanent residence visas.
- it is likely some 457 visa-holders are paid at below market rates, but the government does not even collect data on actual salaries paid to these workers.
- 457 visas have already adversely affected jobs and training for young Australians in ICT.

The study, 'Current issues in the skilled temporary subclass 457 visa', is published in the latest issue of the Monash University journal *People and Place*.

The projected number of 457 visas granted in 2005-06 is around 40,000 (primary applicants only), a massive increase of 43 per cent over 2004-05 (28,000 visas) – and even more are likely in 2006-07.

The 457 visa rules do not require employers:

- to show there is a skill shortage in Australia (there is no 'resident labour market testing', except in regional areas); or
- to pay market rates to 457 visa-holders (employers must pay the Australian award wage, or the gazetted 457 minimum salary, whichever is higher). From May 2006, the 457 minimum base salaries are \$41,850 generally and \$57,300 in some ICT occupations, and 90 per cent of those rates in regional areas (\$37,665 and \$51,570 respectively). These 457 minimum rates are below market rates for many skilled occupations.

Key study findings

The study examined whether 457 wages and salaries were undercutting market rates (and were therefore effectively a government subsidy to some employers, giving them an unfair competitive advantage); and the impact of 457 visas on jobs and training opportunities for Australians in ICT occupations.

457 salaries and market rates

The study found it is not possible to determine if actual salaries paid to 457 visa-holders are undercutting, market rates. This is because DIMA does even not collect information on *actual* base salaries paid by employers to 457 visa-holders, through its compliance monitoring system or any other regular means.

The DIMA 457 compliance monitoring system only asks employers whether 457 visa-holders are being paid the original base salary approved by DIMA when visa nominations were first approved.

The limited data available on actual incomes (not salaries) of 457 visa-holders suggests some are paid below market rates. A DIMA-sponsored survey of some 457 visa-holders in 2003-04 found some reported relatively low incomes:

- 25 per cent of 457s in the trades group reported average annual incomes of less than \$35,000; and one-third of 457 professionals reported incomes under \$50,000, including 3 per cent below \$35,000 (when the median starting salary for new graduates with a bachelor degree was \$38,000 in 2004).
- the survey concluded: 'it would appear that many 457 visa-holders in other than managerial and professional occupations were paid a salary that was rather close to the minimum required by DIMA for the 457 visa sub-class'.

A high proportion of 457 visas have been approved at the minimum salaries permitted which are below market rates for many skilled occupations. Between November 2003 and February 2006:

- 30 per cent of all 457 visas granted onshore were approved by DIMA at or below the gazetted 457 minimum salary - 18,300 out of 61,500 visas. (Gazetted 457 minimum salaries were between \$34,075 to \$39,100 in that time; and visa rules allowed wages *below* the specified minimums in "regional areas" of Australia, up to May 2006.)

Some employers are not paying even DIMA-approved rates. Unpublished DIMA 457 compliance data for 2002-03 shows that of the 2,422 employer site visits that year, 27 per cent or 655 employers were referred to DIMA for 'possible breach' of their sponsorship undertakings including payment of DIMA-approved salaries, but these were not separately identified.

457 visa impacts on jobs and training opportunities in ICT

The 457 visa program (along with other factors) has contributed to greatly reduced demand for IT graduates since 2001, to poor graduate job outcomes, leading to plummeting enrolments by young Australians in IT courses.

Since 2001 the proportion of Australian computer science graduates unable to find full-time work has been at record or near-record levels (25-30 per cent); and commencing enrolments by Australian students in university IT courses have fallen by probably 50 per cent, to less than 9,000.

At 30 June 2004, there were an estimated 5,000 foreign nationals on 457 visas working in ICT in Australia, including 2,200 persons under age 30 working as computing professionals. At the same time, some 2,000 computer science graduates and postgraduates were unable to find full-time work.

On the available evidence, some of these ICT workers on 457 visas have been substituted for Australian IT graduates.

DIMA data (mostly unpublished) shows that in ICT occupations in the period 2001-02 to 2004-05:

- DIMA continued to grant relatively large – and increasing - numbers of 457 visas (from 3,600 to 4,010) - one half of these foreign nationals were under age 30, and 80 per cent were under 35. This was despite clear evidence of serious oversupply of domestic ICT graduates.
- the number of 457 visas granted to Indian nationals grew by nearly 90 per cent (from 890 to 1,700 per year), accounting for all the growth in 457 visas in ICT. As a result, Indian nationals made up 42 per cent of all 457 visas granted in ICT by 2004-05.
- 457 visas in ICT, especially for Indian nationals, were approved by DIMA at low salaries compared to prevailing market rates, and even to graduate starting salaries. (Actual salaries paid are not known.) In 2004-05, in the computing professionals occupation (with 90 per cent of all 457s in ICT and where most graduates seek entry-level jobs):
 - nearly one in five 457 visas (19 per cent) were approved at or below the 2004 median starting salary for new computer science graduates of \$38,000, and 30 per cent at or below the minimum 457 ICT salary that applied from February 2004 (\$46,620).
 - the majority (53 per cent) of all 457 visas were approved at salaries below \$70,000 (when the national average rate for Analyst programmers at the time was \$67,724).
- DIMA-approved 457 visa salaries for Indian nationals were typically lower than for other nationals. Nearly one quarter (23 per cent) of Indian nationals were approved at salaries of \$38,000 or less, the median starting salary for computer science graduates (vs 17 per cent of others), and 43 per cent at or below the minimum ICT 457 salary (vs 24 per cent of others).
- there is no evidence that 457 visa-holders in ICT (as a group) have ICT skills which are in shortage in Australia, especially the younger workers.

Changes needed to 457 visas

If the government wants community support for the expansion of the 457 visa program, then it needs to address legitimate concerns about the visa. The study recommends:

First, there should be much greater transparency and public disclosure of information about the 457 visa program.

The government should disclose information about the *individual jobs* for which 457 visa nominations have been approved, including DIMA-approved salaries; and *aggregated data* on 457 visas approved, say by industry sector and/or detailed occupation groupings, such as ICT professionals, metal trades, nurses etc. This information should be posted on the DIMA website with open access to all, free of charge.

Second, 457 visa rules should require employers to pay market rates.

Third, DIMA should collect and publish regularly data on actual salaries paid to 457 visa-holders. If that data cannot be collected by DIMA, then a properly authorized body should do that through data matching of DIMA 457 data against tax records of 457 visa-holders held by the ATO (eg, perhaps an independent agency like the Commonwealth Auditor-General).

Fourthly, DIMA should notify the responsible State government departments of workplace relations of the names of 457 employers within their jurisdictions, and details of their 457 visa-holders.

Finally, DIMA should review its blanket opposition to labour market testing in the 457 program. There are clearly some situations where labour market testing is not warranted. But some form of labour market test should be mandatory in all other occupations.

The study's author is Mr Bob Kinnaird, immigration analyst with Sydney consulting firm RT Kinnaird and Associates Pty Limited.

Melbourne 18 July 2006

EMBARGOED UNTIL SATURDAY 22 JULY 2006 (AVAILABLE FOR SATURDAY'S PAPER)

Further inquiries:

Mr Bob Kinnaird
Author of article
Ph (02) 9907 9797
Mob: 0403 070 405
Email: bob.kinnaird@bigpond.com

Dr Bob Birrell
Co-editor of *People and Place*
Ph (03) 9905 2967