

Temporary skilled migration

- 4.1 As requested, the Committee examined the main temporary entry programs of Canada, Germany, Ireland, Japan, New Zealand, the United Kingdom, and the United States of America.
- 4.2 **Germany, Ireland and the United Kingdom** experience labour migration (skilled and otherwise) by virtue of their membership of the European Community. Community citizens are entitled to leave their home country to go to another of the 15 member states.¹ This form of internal European migration is outside the scope of the Committee's brief.

Country summaries

- 4.3 Table 4.1 summarises the main aspects of the key temporary skilled migration arrangements in the countries under consideration.

¹ Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom. *A Guide to the European Union*, www.ecdel.org.au/eu_guide/eu_guide.htm#EUMembers

Table 4.1 Selected temporary skilled migration programs²

Country	Program (s)	Duration	Quotas	2002 intake
Australia	Economic stream	Up to 4 years	No data	43,300
Canada	Foreign Worker Programs – work permit	Variable	No data	41,488
Germany	IT Specialists Temporary Relief Program (“Green Card”)	Max 5 year contract	None	12,500 issued 1/8/00-13/8/02
	Project tied	2 years	56,000/year	No data
Ireland	Work Visa/ Work Authorisation:	Usually 2 years Possibility of 2 year extensions	No data	No data
	Work Permit:	12 month, renewable	No data	23,326
Japan	Various Status of Residence visas	3 years or 1 year	None	386, 969
New Zealand	Work Permit/Visa:	Up to 3 years, renewable	No data	Principal applicants 2002/03 = 66,827. All work applications (incl WHM etc) =82,276
UK	Work Permit	up to 5 years	No data	2002 = 20,046 approved
	Highly Skilled Migrant Program	12 months initially, renewable for 3 years.	None	2002-3 (19 months) = 2,987 of 4,861 applications accepted
	Sectors based Scheme	12 months	20,000	2003 (2 months) = 2,559 applications
USA	H-1B Workers	Initially 3 years, maximum 6 years	195,000 in 2001-03; 65,000 in 2004	Admissions 370,490

Australia

4.4 Australia has a popular short term business visa designed essentially for:

business visitors who come to Australia to meet with partners or prospective business partners Most of these business visitors tend to come to Australia for very short periods—indeed, much shorter than the three-month length of visas that they have.³

4.5 The Committee therefore focused on Australia’s *Temporary Business Entry (Long Stay)* visa which enabled businesses to bring skilled overseas workers to Australia to meet their special skill needs for up

² For details of sources see Appendix F.

³ DIMIA, Evidence, pp. 4-5.

to four years,⁴ provided that the position met minimum skill and salary thresholds.⁵ Once the project for which the person was recruited was completed, the person should have left Australia.⁶ From 1 January 2004 skilled temporary workers and employers were able to apply for temporary business visas over the Internet allowing faster processing of applications.⁷

- 4.6 The Australian Temporary Business Entry (Long Stay), or “457”, visa applied to people:
- coming under a *Labour or Invest Australia Supported Skills* agreement;
 - working for companies operating in Australia; or
 - from offshore companies seeking to establish a branch in Australia, participate in joint ventures, or fulfil a contract awarded to an offshore company.⁸
- 4.7 All of these arrangements were employer-based, that is, the skilled temporary migrants required sponsorship to qualify for the 457 visa, and therefore they should enter Australia with a job already arranged.⁹ In 2000/1 four of every five primary applicants who arrived in Australia on a 457 visa were professionals, mainly managers/administrators or ICT professionals.¹⁰
- 4.8 The Australian *Labour Agreement* was a blanket arrangement, normally running for two or three years, which permitted Australian employers to recruit a specified number of workers aged under 45 with English language and other relevant skills from overseas to fill identified or emerging labour market (or skill) shortages. The agreement was the outcome of negotiations between DIMIA, the Department of Employment and Workplace Relations and an employer or an industry association.¹¹
- 4.9 The *Invest Australia Supported Skills* was a variant of the Labour Agreement, and was introduced on 1 July 2003 to replace the former

4 DIMIA, Letter to the Editor - *The Age* 30 July 2003, www.immi.gov.au/letters/letters03/theage_3007.htm

5 DIMIA, Fact Sheet 47: *Temporary Residence in Australia*, www.immi.gov.au/facts/47temporary_residence.htm#1

6 DIMIA, Letter to the Editor - *The Age* 30 July 2003, www.immi.gov.au/letters/letters03/theage_3007.htm

7 Minister for Immigration... *Workers To Save Time Online*, VPS 021/2003, 31/12/03, www.minister.immi.gov.au/media_releases/media03/v03021.htm

8 DIMIA, *Long Business Visits to Australia*, http://www.immi.gov.au/allforms/visiting_business_long.htm

9 DIMIA, *Frequently Asked Questions: Temporary Business (Long Stay) visa*, www.immi.gov.au/faq/temporary/temporary05.htm#how

10 Managers/administrators = 22.5% of total intake; ICT = 21.9%, other professionals = 35.9; associate professionals = 8.9%, trades & other = 10.8%. S-E Khoo, C. Voight-Graf, G. Hugo, P. Mc Donald, “Temporary Skilled Migration to Australia: The 457 visa sub-class”, *People and Place*, Vol 11, No. 4, 2003, p. 35

11 DIMIA, Fact Sheet 48: *Assisting Skilled and Business People*, www.immi.gov.au/facts/48assisting.htm#2

Regional Headquarters program. The skills program received priority over Labour Agreement applications and facilitated the temporary or permanent transfer of key managers/specialists of overseas companies to Australia.¹²

4.10 One of the conditions which could be attached to the 457 visa was that the sponsor had been unable to find a suitably-qualified Australian citizen or permanent resident to fill the the position.¹³ This was, however, not a requirement. Under the Labour Agreements employers were not required to labour market test each time they wished to recruit from overseas.¹⁴ It was claimed that skilled temporary workers did not disadvantage Australian workers in the labour market.¹⁵

4.11 The 457 visa arrangements drew comment in submissions and evidence. Rock Resourcing gave evidence that, in the ICT industry, the 457... works very well... When employers... cannot find the skills they require... we can get someone into Australia in a relatively short period to fill those requirements.¹⁶

4.12 A number of submissions expressed concern about the effect that ready access to overseas skills was having on the domestic skills market. The Construction Forestry Mining Energy Union (CFMEU) was convinced that, in the building trade:

the overwhelming majority of these workers are being paid inappropriately. We have particular concern about illegal practices in the tiling and stonemasonry industries.¹⁷

4.13 According to Mr B. Kinnaird:

DIMIA acknowledges that one of the main non-compliance issues... is that 457s are not being paid at market rates, or at the salary nominated by their sponsor.¹⁸

12 DIMIA, *Invest Australia Supported Skills Agreements*, www.immi.gov.au/migration/employers/iass.htm

13 DIMIA, *Frequently Asked Questions, Temporary stay in Australia*, www.immi.gov.au/faq/temporary/temporary01.htm#do

14 DIMIA, Submission to the Senate Community Affairs References Committee Inquiry Into Nursing, August 2001.

15 See: S-E Khoo, C. Voight-Graf, G. Hugo, P. Mc Donald, "Temporary Skilled Migration to Australia: The 457 visa sub-class", *People and Place*, Vol 11, No. 4, 2003, p. 27.

16 Rock Resourcing, Evidence, p. 183.

17 CFMEU to Minister for Immigration, 8/10/02, CFMEU Submission No. 45 , Appendix 1.

18 Mr. B. Kinnaird, Submission No. 38, p. 18.

4.14 The Committee noted that the Review of Temporary Residence had been completed as recently as June 2002 and that DIMIA reported that by late 2002, in the building industry:

interviewing of subclass 457 visa holders has commenced and enhanced liaison has occurred between the NSW Department of Industrial Relations and the Australian Tax Office and DIMIA.¹⁹

4.15 The CFMEU also presented the Committee with a selection of press reports on alleged misuses of the 457 arrangements, including:

- employer breaches of salary threshold requirements;²⁰ and
- recruiting of skilled overseas workers when there is local lack of work in the industry.²¹

4.16 Mr Kinnaird raised the latter issue in connection with ICT recruitment, pointing out to the Committee that employers could sponsor a 457 visa holder in any ICT occupation - including those in oversupply - and that this was:

clearly against the interests of unemployed and underemployed Australian residents.²²

4.17 He recommended that the 457 visa program should be made subject to the Migration Occupations in Demand List (MODL) and visas only be issued for skills which were in shortage in Australia.²³

4.18 The Committee was aware that the 457 visa had previously been subject to a labour market test, and that this had been ineffective:

there were any number of opportunities to circumvent the... arrangements... run ads in newspapers which were impossible for Australian job seekers to satisfy... Job classifications... massaged to make occupations... which were perhaps not very highly skilled appear to be skilled.²⁴

4.19 The Committee was aware that a study of the ICT issue had been commissioned,²⁵ so did not explore the issue in detail. However, it considered that, by identifying national skill shortages, the MODL

19 DIMIA: NSW State Director to CFMEU 7/11/02, CFMEU, Submission No. 45, Appendix 1.

20 "Builder Lured Workers as Slave Labour", *Sun Herald*, 12/2/00; "\$35 a day for Tunnel Crew", *Burnie Advocate*, 1/9/00, CFMEU, Submission No. 45, Appendix 5.

21 "South African Workers Sent Home" *West Australian*, 6/4/00, CFMEU, Submission No. 45, Appendix 5.

22 B. Kinnaird, Submission No. 38, pp. 6, 4.

23 B. Kinnaird, Submission No. 38, p. 6.

24 DEWR, Evidence, p. 41.

25 By the Australian Computer Society, S-E Khoo, C. Voight-Graf, G. Hugo, P. Mc Donald, "Temporary Skilled Migration to Australia: The 457 visa sub-class", *People and Place*, Vol 11, No. 4, 2003, p. 38.

operated as a generalised labour market test.²⁶ In the Committee's view, the imposition of a de facto labour market test through use of the MODL in such a way might interfere with one of the attractions of the visa, which was the speed with which it enabled skilled positions to be filled.

4.20 The Committee noted that, since 1 July 2001, the sponsors had been asked to provide details of the efforts they had made to fill the position from the Australian labour force.²⁷ In addition, during the Committee's review, new legislation was introduced concerning sponsors and reviewed by the Senate's Legal and Constitutional Legislation Committee. The Migration Legislation Amendment (Sponsorship Measures) Act enabled action to be taken against sponsors if they breached their undertakings. Sanctions included cancelling their sponsorships or imposing bars on them sponsoring further workers.²⁸

4.21 DIMIA claimed that local employment opportunities were being protected:

through the use of appropriate salary thresholds and identification by DEWR of highly skilled occupations in which there is some degree of shortage such that filling by an overseas temporary resident would be appropriate.²⁹

The business visitor visas are not designed for short-term low-skill work, for work which involves day-to-day wage and salary type payments.³⁰

4.22 In the following paragraphs the Committee examines the equivalent overseas schemes in the light of Australia's arrangements.

Canada

4.23 The Canadian temporary entry arrangements applied to all workers. They were not limited to those who would be identified as "skilled" under Canada's permanent migration program.³¹ Applicants had to have a job offer. Once the Canadian Government assessed the labour

²⁶ See Chapter *Permanent migration and the points test*

²⁷ DIMIA, *In Australia's Interests – A review of the Temporary Residence Program*, adoption of Recommendation at para 5.41, www.immi.gov.au/general/temp_res_report/chapter_5.pdf

²⁸ *Migration Legislation Amendment (Sponsorship Measures) Bill 2003: Second Reading*, Hansard, 4/6/03, p. 15921. Legal and Constitutional Legislation Committee *Provisions of the Migration Legislation Amendment (Sponsorship Measures) Bill 2003*. August 2003.

²⁹ DIMIA, Submission No. 25, p. 50.

³⁰ DIMIA, Evidence, pp. 4-5.

³¹ Citizenship and Immigration Canada, *FACTS and FIGURES 2002 Foreign Worker Population by Skill Level*, www.cic.gc.ca/english/pub/facts2002-temp/a

market and confirmed that a foreign national may fill the job, intending migrants could apply for a work permit which allowed them to work in Canada temporarily.³² The duration of their stay could be determined at the border by Canadian immigration officials.³³

- 4.24 Temporary workers could apply for permanent resident status and temporary status at the same time, but were advised that:

your application for temporary status may be affected because an impression will have been created that you do not intend to leave Canada upon the expiration of your temporary status.³⁴

- 4.25 Unlike Australia, Canada's approach to short term working visitors did not distinguish between skilled and unskilled. Canada, like Australia, was also cautious about admitting people whose real intention was permanent migration.

Germany

- 4.26 Germany's *IT Specialists Temporary Relief* ("Green Card") Program was inaugurated in August 2000 specifically to allow ICT specialists who had been offered a job paying at least €50,000/year to work for up to five years in Germany. This was intended as a short-term measure to bring in some 20,000 ICT specialists while the German government increased ICT-related education.³⁵ By August 2003 some 15,110 had been recruited; the restriction on numbers had been removed; and revisions were being proposed to the immigration laws which would permit:

highly trained workers from... all other sectors... to work and live in Germany without time limit.³⁶

- 4.27 Germany's "Green Card" approach was more limited in scope and duration than the Australian temporary migration arrangements for skilled people, and part of a more integrated approach to dealing with

32 Assessment is by Human Resources Development Canada (HRDC) CIC, *Working Temporarily in Canada: Overview*, www.cic.gc.ca/english/work/

33 "The officer at the Port of Entry will determine whether you may enter Canada and how long you may stay." CIC, *Working in Canada - Applying for a Work Permit outside Canada* www.cic.gc.ca/english/pdf/kits/guides/5487E.PDF

34 *FAQ - Canadian Skilled workers category*, Immigration firm.ca, www.immigrationfirm.ca/faqskilled.html

35 *Green Card*, German Embassy, Washington, (€50,000 = AU\$78,000) www.germany-info.org/relaunch/welcome/work/greencard.html

36 *Green Card - IT Experts Initiative*, Deutsche Botschaft, New Delhi, www.germanembassy-india.org/en/home/greencard.html; Chancellor Schroeder, quoted in *Germany extends green card...*, 11/7/03, www.computerweekly.com/article123328.htm

skill shortages. Its use of salary as a selection mechanism to avoid local workers being replaced by cheap labour resembled the Australian approach outlined above.

- 4.28 Germany also had a longer-running “project-tied” program which permitted up to 56,000 construction workers employed by foreign subcontractors to work in the construction industry in Germany at the prevailing German wages for two years.³⁷
- 4.29 There was no Australian equivalent to this. Evidence to the Committee had exposed the difficulties associated with the existing arrangements which permitted building workers to be recruited on a 457 visa.³⁸ The Committee judged that the German model, which inserted another agency between the employer and the employee, was not one which would improve Australia’s skilled migration arrangements.

Ireland

- 4.30 Ireland had traditionally been a country of net emigration but rapid economic growth in the 1990s meant that it became a country of net immigration for the first time.³⁹ The Irish Government was wary of:
- the introduction of a rigid form of centralised planning of labour needs by the State... the current system has had the benefit of being directly responsive to the needs of employers.⁴⁰
- 4.31 Irish *Work Permits* were issued by the Department of Enterprise, Trade & Employment to employers.⁴¹ They might be provided with a Work Permit for a non-EAA national if they showed that they had made every effort to employ an EEA or Irish national. Part of the labour market testing required was that the job vacancy be registered for four weeks with the Irish Government’s Training and Employment Authority (FAS) which advised its local offices and other EEA Public Employment Services.⁴² Work permits were valid for up to 12 months and could be renewed, but once accepted, the foreign worker could

37 P. Martin, *Managing Labor Migration: Temporary Worker Programs For The 21st Century*, International Institute for Labour Studies Geneva, September 2003, www.ilo.org/public/english/bureau/inst/download/migration3.pdf

38 See under “Australia” above.

39 Embassy of Ireland, Evidence, p. 154.

40 Address by Minister for Justice, Equality and Law Reform 10/12/02, Department of Justice, Equality and Law Reform www.justice.ie/80256976002CB7A4/vWeb/fsWMAK4Q7JKY

41 DETE, Work Permits Section, *Brief Overview of Economic Migration*, www.entemp.ie/lfd/wp-work.htm#Brief

42 DETE, Work Permits Section, Guidelines & Procedures, www.entemp.ie/lfd/wp-guidelines.htm

not change employers.⁴³ The labour force sectors to which these arrangements applied could be changed from time to time.

- 4.32 Ireland also operated a *Working Visa/Work Authorisation*⁴⁴ program run by the Department of Foreign Affairs as a faster alternative to the Work Permit. It was for suitably qualified people from non-EEA countries who had a job offer for up to two years in “designated categories” of the employment market which had skill shortages. The arrangements were instituted to meet acute skill shortages including information and computing technologies, construction professionals, and medical, health and social care professions.⁴⁵
- 4.33 A third avenue of recruiting skilled temporary migrants, the *Intra-Company transfer*, had been suspended when the Committee was conducting its review because of abuses of this procedure.⁴⁶
- 4.34 Ireland was better able to sustain a centralised and detailed supervision of labour market testing because it is was a unitary state, unlike Australia where there are both Federal and State jurisdictions and also a larger list of skilled occupations requiring monitoring.

Japan

- 4.35 Japan identified 14 different *status of residence* visas which permit temporary entry.⁴⁷ Applicants were assessed on a case-by-case basis against criteria set by the Minister for Justice,⁴⁸ but the scheme did not have a labour market test or a set of national labour market objectives.⁴⁹ The main status of residence visa categories (and the 2002 intake) were:
- *Entertainers* – also used as a “side-door” method of recruiting bar hostesses⁵⁰ (126,158);

43 Department of Enterprise, Trade & Employment and FÁS clarify operational arrangements of work permit procedures: 7/4/03, DETE, www.entemp.ie/lfd/wp-announcement.htm

44 Authorisations apply to those not requiring visas to travel to Ireland, Visas to all others DETE, *Information Leaflet Concerning Working Visas/Work Authorisations For Employment In Ireland*, www.entemp.ie/lfd/infoip5.doc

45 DETE, Work Permits Section, *Brief Overview of Economic Migration*, www.entemp.ie/lfd/wp-work.htm#Brief

46 DETE October 2003, *Work Permits Information Leaflet*, www.entemp.ie/lfd/wp-InformationLeafletOctober2003.pdf

47 Ministry of Foreign Affairs, *A Guide to Japanese Visas - Appendix 1*. www.mofa.go.jp/j_info/visit/visa/appendix1.html

48 Embassy of Japan, Evidence, p. 119.

49 R. Iredale, *International Approaches to Valuing the Professional Skills of Permanent and Temporary Migrants*, in M. W. Charney, Brenda Yeoh and Tong Chee Kiong (eds), *Asian Migrants and Education: the Tensions of Education in Immigrant Societies and Among Migrant Groups*. Embassy of Japan, Evidence, p. 122.

50 T Tsuda, *Reluctant Hosts: The Future of Japan as a Country of Immigration*, Center of Comparative immigration studies, University of California, http://migration.ucdavis.edu/cmpr/feb01/Tsuda_feb01.html

- *Specialists in humanities and international services* – generally translation/public relations/fashion or interior design work (101,178);
- *Engineers* (40,446);
- *Intra-company transferees* - a special category of engineer or specialist in humanities (43,068);
- *Investors and business managers* (36,420);
- *Instructors* – foreign language teachers or vocational school instructors (20,334); and
- *Skilled labourers* – 10 years experience as chefs, architects, civil engineers, gemstone/fur processing; animal training, mineral exploration, etc (12,547).⁵¹

4.36 With the exception of entertainers, all were required to receive no less salary than a Japanese national would for the same work.⁵² The foreigners might:

have temporary residence for up to three years in Japan. Renewal of residence is permitted as long as they qualify for certain provisions of each category.⁵³

4.37 Japan, like Australia, considered it important that temporary workers received the same pay as locals for the same work. However, Japan's approach to skill shortages and recruiting to fill them was a more *laissez faire*, employer-driven approach than Australia had found appropriate.

New Zealand

4.38 New Zealand's "General Work Policy"

facilitates the entry of people required on a temporary basis to fill shortages where New Zealand citizens or residents are either not available or cannot be readily trained.⁵⁴

51 The remaining categories were Researcher (5,977); Legal/accounting (7,110); Medical services (129); Ministry of Foreign Affairs, *A Guide to Japanese Visas*, www.mofa.go.jp/j_info/visit/visa. Data from *Foreigners Who Entered Japan By Status Of Residence (2002)*, Japanese Statistical Yearbook 2004, <http://www.stat.go.jp/english/data/nenkan/>

52 Ministry of Foreign Affairs, *A Guide to Japanese Visas*, www.mofa.go.jp/j_info/visit/visa.

53 Embassy of Japan, Evidence, p. 119.

54 NZIS *Temporary Entry in New Zealand- The Right Choice*, 15/12/03; www.immigration.govt.nz/NR/rdonlyres/C187768F-A6A6-44FF-A0CB-BB1753E96866/0/TemporaryEntry.pdf

- 4.39 The regime of *Work Permits* and *Work Visas* was intended to protect employment opportunities for New Zealanders while enabling employers to recruit temporary workers from overseas.⁵⁵
- 4.40 The Work Visas and Permits were available to applicants who have an offer of employment, for which they were qualified by training and experience, and:
- were included on the current Occupational Shortages List (OSL) issued by the NZIS; **or**
 - were from a New Zealand employer who has a current approval in principle from the NZIS for the recruitment of the applicant(s); **or**
 - for which there were no New Zealand citizens or residents suitably qualified by training and experience who were available.⁵⁶
- 4.41 For those wishing to come to New Zealand and work with the intention of settling, there was a *Work to Residence Policy*. This offered pathways to gaining residence after three years by virtue of talent, priority occupation, or business activity.⁵⁷
- 4.42 The 30 month duration “Talent” and “Priority Occupation List” policies applied to people aged 55 years or under and was limited to applicants with an offer of at least 24 months full-time employment in New Zealand at a minimum base salary of NZ\$45,000 per annum.⁵⁸ The two “Talent... Policy” variants were:
- *Accredited Employers* - allowed employers to recruit without having to demonstrate that there was no-one suitable in the New Zealand workforce.⁵⁹ This was a similar arrangement to the Australian Labour Agreement arrangements.
 - *Arts, Culture and Sports* - required that NZIS be satisfied that the applicants had exceptional talent in art, culture, or sport and were sponsored by a New Zealand organisation of national repute in their relevant field.

55 NZIS, Immigration Research Program, Trends in Residence Approvals 2002/2003; p. 74. www.immigration.govt.nz/NR/rdonlyres/E0972AE3-EF13-4C33-A101-5F0E3AB5A0EE/0/Trendsinresidenceapproval0203.pdf

56 NZIS *Temporary Entry in New Zealand- The Right Choice*, 15/12/03; www.immigration.govt.nz/NR/rdonlyres/C187768F-A6A6-44FF-A0CB-BB1753E96866/0/TemporaryEntry.pdf

57 NZIS, *Immigration Fact Pack*, p. 3; www.immigration.govt.nz/NR/rdonlyres/7798DA62-F94F-4F90-A324-815341ECCFB9/0/July2002FactPack17.pdf

58 NZIS, *Temporary Entry in New Zealand- The Right Choice*, 15/12/03; www.immigration.govt.nz/NR/rdonlyres/C187768F-A6A6-44FF-A0CB-BB1753E96866/0/TemporaryEntry.pdf

59 NZIS, *Application For Employer Accreditation*, www.immigration.govt.nz/NR/rdonlyres/AABCD465-D845-411E-98EA-2E8A407C2C35/0/nzis1090.pdf

- 4.43 The “Priority Occupation List Policy” required migrants to have worked in an occupation on the *Priority Occupations List*:
- in which the NZIS, in consultation with Industry New Zealand, relevant industry groups and unions, has identified an absolute (sustained and ongoing) shortage of skilled workers.⁶⁰
- 4.44 The 36 month “Business Policy – Entrepreneur” arrangement was available to those who had established a business in New Zealand which was benefiting New Zealand in some way.⁶¹
- 4.45 The New Zealand approach had many parallels with Australia. However, New Zealand, as a unitary state, had more opportunities to maintain centralised control of labour market testing than were available to Australia. Unlike Australia it offered temporary skilled migrants a specific, direct path to permanent residence through its “Work to Residence” arrangements. The Committee considered that this philosophy, if adopted in Australia, could improve its recruiting position in the international labour market, and observed that the three-year temporary residents visa introduced in 2004 which led to permanency for migrants living and working in regional Australia was a similar arrangement.⁶²

United Kingdom

- 4.46 The **United Kingdom** operated a *Work Permit* system which allowed employers based in the UK to employ people who were not EEA nationals and who were not entitled to work in the UK.⁶³ Each permit related to a specific individual and to a particular job, and the application was made on that individual’s behalf by the prospective employer. Intending workers might therefore only receive the necessary Work Permit if they had arranged employment. The Work Permit system did not define a skilled migrant, rather it was expected that they would have either post-secondary qualifications or three years experience in a skilled area.⁶⁴

60 The Priority Occupations List is reviewed bi-annually. NZIS, *WR3.10 Inclusion of occupations on the Priority Occupations List*, Operations Manual, www.immigration.govt.nz/nzis/operations_manual/6605.htm

61 NZIS, *Work to Residence Policy*, www.immigration.govt.nz/Work+to+Residence/Work+to+Residence+Policy

62 Minister for Immigration..., *Plan to Attract more Migrants to Regional Australia*, VPS 004/2004, 12/1/04, www.minister.immi.gov.au/media_releases/media04/v04004.htm

63 UK Home Office, *Working in the UK – Work Permits*, www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits.html[working_in_the_uk/en/homepage.html?](http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage.html)

64 UK Home Office, *Work Permits UK, Guidance notes for employers...*; workingintheuk.gov.uk/working_in_the_uk/en/documents/all_forms.Maincontent.0008.file.tmp/buisness_and_commercial_notes.doc

- 4.47 The Work Permit could only be issued if the UK Home Office, through Work Permits UK, was satisfied that the vacancy was genuine (i.e. has not been created for the recruit); the person had the skills to do the job; and no resident workers were available to do the work.⁶⁵ If the workers ceased employment with their original employer they were no longer eligible for that Work Permit and were expected to leave the country.⁶⁶
- 4.48 A lower-skilled variant of the Work Permit, introduced in May 2003, was the *Sectors Based Scheme* which covered employees aged 18-30 years in segments of the food manufacturing and hospitality sectors. Employers had to demonstrate that they were unable to recruit UK resident workers at specified skill levels. The 12 month permit was subject to separate quotas for recruits from the EU accession and non-EU accession countries.⁶⁷
- 4.49 To attract more specialised skills, the UK created the *Highly Skilled Migrant Program* in 2002, its first experiment with a points test akin to the Australian one. The program enabled people with exceptional personal skills and experience to come to seek and to take up work without any need to have an employer sponsor them for a Work Permit.⁶⁸
- 4.50 Applicants had to make a written undertaking that they were willing to make the UK their home, provide evidence of being able to support themselves and their dependants and of being able to work in their chosen field in the UK, and also achieve a points test pass mark (39 per cent of the possible total as at December 2003).
- 4.51 There were no mandatory components of the points test which covered education (maximum 18%); work experience (30%);

65 UK Home Office, Work Permits UK, *Guidance notes for employers...*; www.workingintheuk.gov.uk/working_in_the_uk/en/documents/all_forms.Maincontent.0008.file.tmp/buisness_and_commercial_notes.doc

66 UK Visas, *Guidance - Work Permit Holders (INF 13)*, www.ukvisas.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1018721068127#Q1; UK Home Office, Work Permits UK, *General Information*, www.workingintheuk.gov.uk/working_in_the_uk/en/documents/all_forms.Maincontent.0003.file.tmp/general_information_notes.doc

67 Food sector = fish processing, meat processing and mushroom processing; hospitality sector = hotel and catering, UK Home Office, Work Permits UK, *Sectors Based Scheme*, www.ind.homeoffice.gov.uk/default.asp?PageId=3892 2003/04 overall quota is 20,000. UK Home Office, Work Permits UK, *General Information*, www.workingintheuk.gov.uk/working_in_the_uk/en/documents/all_forms.Maincontent.0003.file.tmp/general_information_notes.doc Accession countries due to join the EU 1/5/04 are: Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia; *The Treaty of Accession 2003*, European Commission, <http://europa.eu.int/comm/enlargement/enlargement.htm>

68 National Statistics Online, *Work permits and foreign labour in the UK: a statistical review* www.statistics.gov.uk/articles/labour_market_trends/Workpermits_nov03.pdf Home Office, Immigration and Nationality Directorate, *Guidance to applicants*, www.ind.homeoffice.gov.uk/default.asp?pageID=2757

income (30%); achievement (15%); and partner's education/employment (6%).⁶⁹

- 4.52 Applicants under the age of 28 required less work experience and annual income to achieve the same proportion of points. Medical practitioners meeting the points requirement had priority processing.
- 4.53 Those who qualified were initially permitted to stay for 12 months with a possibility of renewal and after four years they could apply for permanent residence.⁷⁰
- 4.54 The absence of mandatory requirements and the lack of an age ceiling were the main ways in which this program differed from Australia's (permanent) migration points test. However, the greatest difference from Australia was the explicit requirement that the recipients of this short-term visa commit themselves in writing to making their home in the UK. Here the connection between temporary migration and eventual settlement was, in contrast to Australia, unmistakable and more explicit even than New Zealand's Work to Residence policies.

United States of America

- 4.55 In the United States the main skilled temporary migration program was known as *Specialty Workers (H-1B)* which covered:
- aliens coming temporarily to perform services in a specialty occupation, or as a fashion model of distinguished merit and ability.⁷¹
- 4.56 A "specialty occupation" required a bachelor degree and:
- the theoretical and practical application of a body of specialized knowledge.⁷²

69 Points allocations: **Education** PhD = 30, Masters 25; Grad degree 15; **Work experience** 5 years at grad level (3 with PhD) 25; 5 years at grad level with 2+ senior/specialist role 35; 10 years with 5+ years senior/specialist = 50; **Income** (varies for country of origin) for Australia £40,000 pa = 25; £100,000 pa = 35; £250,000 = 50- (respectively AU\$95,000/240,000/ 600,000); **Achievement** Exceptional 25, Significant = 15; **Partner achievement** 10. UK Home Office, Immigration and Nationality Directorate, *Highly Skilled migrant program...Revised... 31 October 2003*, www.ind.homeoffice.gov.uk/filestore/revise_hsmpl_leaflet.pdf

70 UK Home Office, Immigration and Nationality Directorate, *Highly Skilled migrant program...Revised... 31 October 2003*, www.ind.homeoffice.gov.uk/filestore/revise_hsmpl_leaflet.pdf

71 USCIS, Employment Categories and Required Documentation, <http://uscis.gov/graphics/services/tempbenefits/ecrd.htm#anchorH1B>

72 E.g., engineering, mathematics, physical sciences, computer sciences, medicine and health care, education, biotechnology, and business specialties, *H-1B Specialty (Professional) Workers*, U.S. Department of Labor Employment & Training Administration, <http://atlas.doleta.gov/foreign/h-1b.asp>

- 4.57 The H-1B visa was specific to an employer and seeking a H-1B visa involved:⁷³
- having a sponsoring U.S. employer;
 - the employer filing a “labor condition application” with Department of Labor (DOL) and agreeing to maintain labour conditions for the worker;⁷⁴
 - virtually automatic DOL approval of the application;⁷⁵
 - US Citizenship and Immigration Services (CIS) further approval of the employer’s application; and
 - CIS advising the applicant’s local US consulate of the approval of the employer’s application.⁷⁶
- 4.58 Under H-1B, US employers could lay off US workers to open up H-1B jobs.⁷⁷ The H-1B “nonimmigrants” were initially able to stay for up to three years with any extensions limited to a maximum period of residence of six years.⁷⁸ If they changed employers, a new H-1B petition was needed.⁷⁹
- 4.59 The US approach emphasised the importance of the employers’ needs, with lesser priority allocated to limiting any migrants’ effects on the local workforce. An exception to this was the “H-1B dependent employers” who, because of the proportion of H-1B workers they employed were subject to additional requirements to demonstrate that qualified U.S. workers could not be found and that there would be no displacement of a US employee.⁸⁰
- 4.60 The Committee considers that the concept of “dependence” could be useful in Australia for monitoring continuing reliance on overseas

73 DOLETA, *DFLC Frequently Asked Questions and Answers*

<http://atlas.doleta.gov/foreign/faqsanswers.asp#h1b1>; Temporary Workers

74 Covers: wage levels, employment conditions, preservation of conditions for existing workers, assurances no strike/lockout in progress. DOLETA, FORM ETA 9035, *Foreign Labor Certification Pre H-1B form* U.S. <http://atlas.doleta.gov/foreign/preh1bform.asp>

75 Under US law, the US Department of Labor **must approve** the employer’s request for H-1B workers unless the request contains obvious errors, such as asserting that the prevailing wage is \$5 an hour. As the US General Accounting Office noted in 2000: “Labor (DOL) can certify that an employer’s application form for H-1B workers is error free, but it has no authority to verify the information on the form. Labor cannot take enforcement action even if it believes that employers are violating the law” unless it receives a complaint of violations. P. Martin, *Highly Skilled Labor Migration: Sharing the Benefits*, International Institute for Labour Studies, Geneva, 2003, www.ilo.org/public/english/bureau/inst/download/migration2.pdf

76 USCIS, *Temporary Workers*, <http://uscis.gov/graphics/services/tempbenefits/tempworker.htm#anchorvisa>

77 P. Martin, *Managing Labor Migration: Temporary Worker Programs for the 21st Century*, International Labour Organisation, 2003, www.ilo.org/public/english/bureau/inst/download/migration3.pdf

78 USCIS, *Temporary Workers*, <http://uscis.gov/graphics/services/tempbenefits/tempworker.htm>

79 USCIS, *Employment Categories and Documentation*, <http://uscis.gov/graphics/services/tempbenefits/ecrd.htm>

80 American Competitiveness and Workforce Improvement Act of 1998, www.oalj.dol.gov/public/ina/refrnc/acwia.htm. *What type of h-1b employer are you?* www.hirson.com/news/News112801_1.htm

skills provided by both temporary and permanent migrants. DIMIA already required sponsors of temporary employees to report the numbers of foreign employees⁸¹ and required evidence of commitment to training.⁸² Monitoring of the permanent migration stream took place through the Labour Agreements to ensure that the recruitment of skilled persons from overseas occurred in the context of improving employment and training opportunities for Australians.⁸³

Recommendation 4

- 4.61 **The Committee recommends that DIMIA, as part of its monitoring program, identify establishments with a disproportionate dependence on migrant labour and focus its assessment on how well they demonstrate the commitment of their business to training Australian residents or introducing new technology.**

Comparisons

Dependants' work rights

- 4.62 In its submission to the Committee, DIMIA identified the unrestricted automatic work rights available to temporary skilled workers' spouses and dependents⁸⁴ as one of Australia's competitive advantages.⁸⁵
- 4.63 Dependents were permitted to accompany skilled temporary migrants to all the countries reviewed by the Committee, with the exception of **Ireland** (which allowed reunion after three months), and participants in the **United Kingdom's Sectors Based Scheme** who may not bring dependants.⁸⁶

81 DIMIA, Form 1196, *Sponsoring Temporary Overseas Employees to Australia*, www.immi.gov.au/allforms/pdf/1196.pdf

82 DIMIA, Booklet No. 11 *Sponsoring Temporary Overseas Employees to Australia*, pp. 2, 10.

83 DIMIA, Submission No. 25, p. 45.

84 DIMIA, *Sponsoring a temporary overseas employee to Australia .Booklet* , p. 8; www.immi.gov.au/allforms/booklets/1154.pdf

85 DIMIA, Submission No. 25, p. 88; Appendix 4.

86 *Information about the Sectors Based Scheme* www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits/sector_based_schemes.html

4.64 The **United Kingdom** had similar arrangements to Australia for spouses of those employed under Work Permits or the Highly Skilled Workers program. They had:

the right to work in the UK so long as they remain married
and the work permit is still valid.⁸⁷

4.65 In **Canada, Germany, Ireland, New Zealand** and **USA** spouses could work if they qualified for the relevant work permit in their own right.⁸⁸

4.66 The spouses of skilled temporary workers in **Japan** would have a visa status of "dependent" which did not allow work,⁸⁹ but it might be possible to work or work for limited hours without applying for a work visa.⁹⁰

Conclusion

4.67 The Committee agreed that the ability of spouses of temporary skilled migrants to work in Australia without further migration formalities was a positive feature of the skilled temporary migration program.

Pathways to permanence

4.68 Both the **UK** and **New Zealand** had made explicit links between the temporary migration scheme and permanent settlement. This innovation the Committee took as evidence of the way in which migration policies are evolving to attract the more highly skilled migrants in the international labour market.

4.69 The Committee noted that, under a visa announced in January 2004, skilled migrants will be able to obtain a three-year temporary residence visa if they commit to living and working in regional

87 *HSMP Highly Skilled Migrant Programme (HSMP) Revised Programme effective from 31 October 2003*; www.ind.homeoffice.gov.uk/filestore/revised_hsmp_leaflet.pdf; *Working in the UK FAQ* www.workingintheuk.gov.uk/working_in_the_uk/en/miscellaneous/faqs.html

88 **Canada:** spouses may acquire a work permit without HRDC clearance, provided the primary applicant is employed in skilled work for six months or more. *Working Temporarily in Canada - The Worker's Role Spousal Program*, www.cic.gc.ca/english/work/worker-1.html. **Germany:** "Green Card" spouses eligible for a work permit after one year and have a right to work after two. "Green Card" Brochure www.bma.bund.de/download/broschueren/a987engl.pdf. **Ireland:** dependants of those with Working Visas or Work Authorisations may be joined by their dependants after three months; *Information Leaflet Concerning Working Visas/Work Authorisations for Employment in Ireland*, www.entemp.ie/lfd/infoip5.doc. **New Zealand:** may apply for a work visa or work permit if their partner has a current visa to work for six months; NZIS, *Application to Work in New Zealand under the Work Visa and Permit Policy - The Workers Guide*; www.immigration.govt.nz/NR/rdonlyres/0366C6EB-EF28-4BD2-BF91-513AF8590CBA/0/nzis1015.pdf. **USA:** dependants of H-1B visa holders qualify for H-4 visas, which do not permit them to work; US Consulate Guangzhou, *Visas Categories*, www.usembassy-china.org.cn/guangzhou/niv/visacategories.html#F2J2L2H4

89 *Can my spouse work?*, Tokyo Orientations - FAQs: www.tokyoorientations.com/faqs.html

90 C. Kennedy-Takahashi, *Companies find international relocation of executives with a working spouse complex*. "Japan, Inc.", Nov, 2002, www.findarticles.com/cf_dls/m0NTN/37/108882015/p1/article.jhtml; Ministry of Foreign Affairs, *A Guide to Japanese Visas*, www.mofa.go.jp/j_info/visit/visa

Australia. After two years they will be able to apply for permanent residency.⁹¹

Conclusion

4.70 The Committee concluded that, by identifying a direct, but not automatic, route to permanent migration, Australia was intending to remain competitive.

4.71 The new temporary regional visa was in accord with the conclusion, which the Committee supported, reached by the DIMIA External Reference Group in its review of the temporary residence program that it was:

important that the pathways to permanent residence for these skilled workers are clear (eg in client information) and accessible.⁹²

Building the skills base

4.72 The Committee's terms of reference did not include examination of domestic responses to skill shortages. The Committee was aware that this aspect of the skilled migration equation was under consideration elsewhere. In November 2003 the report *Bridging the Skills Divide* assessed skills shortfalls and existing modelling designed to identify potential future needs. It also mentioned the existence of long-term shortages, such as those which have existed since at least 1994, for pastry cooks, chefs and motor vehicle mechanics.⁹³

4.73 The Australian Centre for Population Research was, with the assistance of DIMIA, addressing the role of temporary skilled workers as a substitute for the training of Australian residents. This concern had been raised with the Committee during discussion of the 457 visa.⁹⁴

4.74 The Committee recalled that other countries made a direct link between temporary skilled migration and the need to foster local skills. The **German** "Green Card" program was accompanied by a

91 Visa begins 1/7/04. Minister for Immigration...., *New Initiatives to Draw More Migrants to Regional Areas*, VPS 019/2004, 12/1/04, www.minister.immi.gov.au/media_releases/media04/v04019.htm

92 DIMIA, *Temporary Residence Program Review: Report of the 2000-02 review*, para 2.97. www.immi.gov.au/general/review.htm

93 Senate, Employment, Workplace Relations and Education References Committee, *Bridging the Skills Divide*, November 2003.

94 S-E Khoo, C. Voight-Graf, G. Hugo, P. Mc Donald, "Temporary Skilled Migration to Australia: The 457 visa sub-class", *People and Place*, Vol 11, No. 4, 2003, p. 39.

boost to ICT-related education.⁹⁵ Until October 2003, all **United States** employers sponsoring H-1B migrants were required to pay a \$1,000 fee to support low-income scholarships and job training programs for workers.⁹⁶ This was expected to generate US\$55 million to provide 15,500 scholarships of up to four years in 2003 alone.⁹⁷

4.75 The Committee had been presented with a similar idea by the Institution of Engineers Australia, which proposed that the sponsoring employer (not the applicant):

pay a significant fee (for example \$A8000 — 10000) to sponsor an immigrant to fill a vacant job... to support the following 3 programs:

(a) To train Australian citizens for the jobs for which migrants are being sponsored.

(b) To provide English language training to migrants entering Australia under all permanent migration streams.

(c) To provide scholarships to encourage Australians to study in fields with known long-term labour shortages.

4.76 The Institution proposed a reduced fee of A\$1,000 for temporary entry skilled migrant applications, and for small and medium enterprises.⁹⁸ The Committee observed that a fee set at that level was the equivalent of less than two weeks of the annual \$37,720 minimum salary required for 457 temporary visa entrants and comparable with the visa fee of \$1,210 paid by off-shore applicants for permanent employer sponsored migration.⁹⁹

4.77 The Committee considered that if such fee was imposed it should only be charged in relation to the principal applicant. It was this person that the employer was recruiting, and charging for each member of their family could quickly lead to discrimination against applicants with dependants by prospective employers.

95 *Green Card*, German Embassy, Washington, (€50,000 = AU\$78,000) www.germany-info.org/relaunch/welcome/work/greencard.html

96 DOLETA, *Foreign Labor Certification Pre H-1B form*, <http://atlas.doleta.gov/foreign/preh1bform.asp> Including 56.3% to Secretary of Labor for job training demonstration programs and projects; 28.2% low-income scholarship program (National Science Foundation); 4% enrolment in science enrichment courses. *American Competitiveness and Workforce Improvement Act of 1998*, www.oalj.dol.gov/public/ina/refrnc/acwia.htm

97 National Science Foundation, *Summary of FY 2003 Budget Request to Congress*, http://www.nsf.gov/bfa/bud/fy2003/msp_npf.htm

98 Institution of Engineers Australia, Submission No. 10, pp 11-12.

99 Value at February 2004. Minister for Immigration...*New Salary Level for Skilled Migrants*, VPS 031/2004; www.minister.immi.gov.au/media_releases/media04/v04031.htm, Onshore = \$1,795. *Temporary Business Entry Visa application charge* (November 2003) = \$165, DIMIA, Charges – November 2003, www.immi.gov.au/allforms/pdf/990i.pdf

- 4.78 The Institute's proposal to devote that revenue to training of Australians appealed to the Committee because the migrants were being recruited to fill local skill shortage demands. The Committee did not favour charging similar fees to the employers of permanent migrants because there was already a labour market testing designed to confirm that they had been unable to locate a local worker.
- 4.79 DIMIA data indicated that more than 48,000 temporary skilled visas were issued in 2002/3,¹⁰⁰ so fees applied to the primary applicants could generate substantial revenue.¹⁰¹
- 4.80 The Committee considers that it would be appropriate to devote the revenue raised to expanding Australia's local skill pool through scholarships. The areas of study should include those experiencing existing and prolonged skill shortages.

Recommendation 5

- 4.81 **The Committee recommends that an indexed fee of \$1,000 be charged to each sponsor of a skilled temporary worker to fund scholarships for Australians in areas of existing long term shortages which are predicted to continue.**
- 4.82 The Committee recalled that, in its *Job Outlook*, DEWR identified trade and professional occupations assessed as being in shortage:
- based on consultation with employers (especially those who had recently advertised), professional/industry organisations, training bodies and analysis of labour market and education and training data.¹⁰²
- 4.83 However, in view of the extensive examination of forecasting of skill trends in *Bridging the Skills Divide*, the Committee supports that report's recommendations concerning "Skill Shortfalls and Future Skill Needs", including that:
- the Commonwealth, in conjunction with state and territory governments, develops a new, integrated, nationally

100 DIMIA, *Annual Report 2002-03*, p. 38.

101 Since the 457 visa was introduced, approximately half have been issued to primary applicants, the remainder to their dependants. S-E Khoo, C. Voight-Graf, G. Hugo, P. Mc Donald, "Temporary Skilled Migration to Australia: The 457 visa sub-class", *People and Place*, Vol 11, No. 4, 2003, pp 29-30.

102 *DEWR Job Outlook*, www.workplace.gov.au/WP/Content/Files/WP/EmploymentPublications/JobOutlook2003UL2.pdf

consistent approach to the collection and reporting of the complete range of statistical information on the labour market and current and future skill needs.¹⁰³

Conclusion

- 4.84 The Committee's brief survey of temporary skilled migration arrangements revealed national approaches ranging from the precise and very limited German ICT-only program to the essentially employer-driven Japanese arrangements.
- 4.85 The Committee observed that, despite the range of approaches, there were some common themes, including:
- priority for a limited range of specialists through targeted programs or priority processing;
 - prohibition on entry to search for employment by requiring that each temporary migrant have a job;
 - a consequent emphasis on employer interests; and
 - associated balancing mechanisms to protect local workers via minimum or equivalent wages and/or labour market testing.
- 4.86 As the Committee outlined, the mechanisms to achieve these ends often differed from those implemented in Australia, and were not necessarily relevant to Australia's requirements for temporary skilled migrants.

¹⁰³ Senate, Employment, Workplace Relations and Education References Committee, *Bridging the Skills Divide*, November 2003, *Recommendations 1 - 4*.

