

**Australian immigration law today - shifting the
balance from permanent to temporary and from
family to skill**

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Introduction

When I opened yesterday's IT supplement in the SMH I came across an article by Philippa Yelland talking about the related issues of skilled migration and local training in the IT&T industry.

The first person quoted in the article was Neville Roach. Roach is the chairperson of the Business Advisory Panel set up by the Minister for Immigration in 1996. In 1998 the BAP produced a review of Australia's Business Entry Programs, usually referred to as the Roach Report. The shape of the current temporary and permanent migration programs is greatly influenced by the recommendations contained in the Roach Report.

I was interested to see that Roach was quoted as saying that Australia has "one of the most liberal and straightforward immigration regimes in the world". Even assuming that his remarks were limited to the skilled and business migration programs, I would take issue with both adjectives.

Further comments by Roach were easier to go along with. Certainly anecdotal evidence supports his claim that "we're losing IT business owners and investors to Canada and the US", and I have no reason to challenge his assertion that "it's easier to poach IT&T workers from other companies than to bring them from other countries", though that seems to contradict his view of the liberality and straightforwardness of the system.

The article then moved on to take quotes from Danny White, co-ordinator of the NSW New Apprenticeships Centre. White's view is that the IT&T industry in Australia is too keen to take fully-trained overseas specialists in preference to spending money and time on local trainees and recent graduates. This is in my view a valid criticism of skilled migration, whether temporary or permanent, yet it is not often raised in the debate about immigration in Australia, which more often seems to concentrate on issues of race and perceived environmental threats.

The fact that I've begun talking tonight about the IT&T industry almost certainly comes as no surprise to anyone here. Even if I hadn't come across yesterday's article in the Herald, it was inevitable that computers and technology would be a recurrent theme in any discussion of skilled migration today. The Roach Report itself concentrates heavily on IT&T, which is hardly surprising given that Neville Roach was formerly head of Fujitsu Australia, a major IT company.

In a number of ways, the IT&T industry can be seen as the pacesetter for skilled and business migration. The particular features of the program that I want to talk about tonight are clearly evident in that industry. Those features are the trend towards temporary migration over permanent settlement, the favouring of short-term outcomes over long-term ones, and the trend towards using immediate employability as the primary measure of settlement potential. The note of warning sounded by Danny White will also get a mention.

More broadly, I would like to try to squeeze into tonight's discussion some mention of the shift in permanent migration away from relationship-based selection criteria to skills-based selection criteria.

Statistics and terminology

It has always been interesting to ask people with strong opinions on immigration just how many migrants they think come to Australia every year. Since some of the strongest opinions are held by the most ignorant, answers vary widely. But answers vary also amongst people who can quote official figures to back them up, because the simple question "How many migrants?" is not sufficiently defined in its terms to have only one correct answer.

The situation is not helped by a recent practice of the government to use the term "net overseas migration" in official statistics, as in Appendix 1. It is only apparent from a close reading of the small print on this particular table that the numbers in the final column include people intending to stay in Australia for as little as 12 months, including as it does not only the "net permanent gain" figure but also a combination of "long-term" arrivals and departures. The figure thus equates permanent settlers with overseas students, working holiday makers and temporary residents. The column which actually represents migrant (ie permanent settler) intake numbers is to be found in the first column headed "permanent arrivals", while the actual impact of migration on immediate population growth is to be found in the middle of the table under the "net permanent gain" heading.

This use of the words "migrant" and "migration" is, I would submit, contrary to normal Australian English usage. As far as it applies to people, the Macquarie Dictionary defines "migrate" as "to go from one country, region, or place of abode to settle in another". Certainly I think that most Australians hearing the term "net overseas migration" would not think of backpackers or foreign students.

In an article in the SMH on 1 March 2000, the day after these figures were published, Andrew Clennell referred to "Australia's biggest influx of migrants for almost a decade". This description is only true if, as in the table, the words "migrants" and "migration" are used in this expanded way. Clennell goes on to refer to "271,000 new arrivals last financial year" -- a figure he must have reached by adding the "permanent arrivals" figure of 84,143 to the "long-term arrivals" figure of 187,802. He described this as "the highest number since 1989-90 and a rise of 41,000 on the previous year". In fact, with only two exceptions the permanent arrivals figure was the lowest since 1984-85 and was less than 60% of the figure of 145,316 recorded a decade ago.

Clennell's article also contained a revealing quote from a "spokesman for Mr Ruddock" (the Minister for Immigration) to the effect that "People are brought in on a two-year contract to do a job; in two year's time they're working in, say, New York".

One might ask, does it really make all that much difference? So long as the meaning of the terms is agreed, we are all talking about the same thing. Of course, we are not all talking about the same thing because the meaning of the terms is by no means agreed, and since March I personally have come across several instances of the figure of 117,000 being used as a measure of the size of the migration intake, understood in the traditional sense of permanent settlers.

Personally I think there are very important reasons for keeping these categories statistically separate. Permanent settlers have very different demographic, economic and social impacts on society to temporary visitors who will be in New York in two years' time.

Demographically, temporary residents do not contribute to population growth in the same way as permanent migrants, because even if they do have children here those children are almost certain to leave Australia when their parents do. Permanent migrants create new family trees which contribute exponentially to population growth with each successive generation.

Economically, temporary residents are likely to have entirely different impacts on revenue, government expenditure and consumer spending than permanent migrants. If for no other reason one would have thought the number crunchers would want to distinguish between the two on this basis.

Socially, temporary residents cannot be seen as really taking part in the nation-building role that immigration has played in Australian history over the last two centuries. If indeed they will be in New York in two years' time, then by definition they will not be part of the fabric of modern Australian society in anything like the same way as permanent settlers, whose contribution by contrast will still be felt in two generations' time.

Leaving the permanent vs. temporary question to one side for the moment, the other aspect of current immigration policy that I wanted to highlight tonight is the shift in selection criteria away from relationships and towards what is loosely referred to by the government as "skills".

At this point it would be appropriate to have a look at just how the major permanent and temporary migration programs work.

Visa classes

All non-citizens entering Australia need visas. Even New Zealand citizens actually apply for and are granted a visa on entry, although in practice they only need show a passport and get a date stamp in it. Visas are divided into classes and subclasses. There are currently over 75 classes and around 130 subclasses of permanent, temporary and bridging visas.

Permanent visas are administered under two programs: the "humanitarian" program and the "non-humanitarian" program. The non-humanitarian program is broken up into three streams: "family", "skill" and "special eligibility". Tonight I will only be concerned with the family and skill streams within the non-humanitarian program. Together these account for 74,400 out of a projected migrant intake of 88,000 for 2000-2001, with the family stream totalling 34,400 and the skill stream 40,000. By contrast, in 1995-96 the family stream accounted for 56,700 entrants compared to 24,100 in the skill stream.

Temporary visa holders are divided into four categories: students, visitors, temporary residents and New Zealand citizens¹. During 1998-99 around 135,000 visas were issued to temporary residents, a category which includes both "working holiday makers" and "long-term business entrants".

Working holiday makers are young people permitted to enter Australia for 12 months to combine a holiday with casual employment. They accounted for about 65,000 of the temporary resident visas issued in 1998-99.

¹ Despite being temporary visa holders, New Zealanders can stay in Australia indefinitely. In 1997-98, 26,921 New Zealanders came to Australia for permanent or long-term settlement, and 11,607 departed.

The remaining temporary resident visas were issued in three streams:

- "economic" (37,000)
- "social/cultural" (20,000)
- "international relations"² (14,000)

Skilled permanent migration

The skill stream of the non-humanitarian program has the following major categories:

- Independent
- Family sponsored
- Business
- Employer sponsored

The business category is outside the scope of tonight's discussion. Of the first two, both use a points test as the major selection criterion. For the independent category, the major components of the points test are the applicant's occupation, age and English language skills. In the sponsored category, the existence of a family member willing to sponsor the applicant adds extra points.

In 1999-2000 the independent and family-sponsored categories accounted for 14,300 and 8,400 visas respectively out of a program total of 35,000. The planned figures for 2000-2001 are for 21,350 and 5,950 respectively out of a total of 40,000 visas. In other words, as the skill stream in toto expands in relation to the family stream, so within the skill stream independent visas increase at the expense of family-sponsored visas.

Before July 1999, points for occupational skills were awarded solely on the basis of the level of formal qualifications or equivalent experience required in Australia for entry to that occupation. What those requirements were was a matter of fact, although the Department relied heavily on a publication of the Australian Bureau of Statistics called the Australian Standard Classification of Occupations (ASCO) Dictionary. From July 1999 onwards, occupations only receive points if they are listed on a gazetted "Skilled Occupations List" based directly on ASCO, with a fixed number of points assigned by the gazettal notice. Although there is a correlation between the skill levels specified by ASCO for the occupation and the points awarded for any given occupation on the SOL. An occupation that is not on the SOL receives no points at all.

Another major change introduced in July last year is what is known as Pre-Application Skills Assessment (PASA). Visa applicants must first have their occupational skills assessed by the gazetted "relevant assessing authority" for that occupation before they can lodge a visa application.

Whatever the criteria for inclusion or exclusion of an occupation may be, the SOL is clearly not drawn up on the basis of any analysis of market demand. While almost all occupations in the environmental sciences are excluded completely from the list, almost all trades known to history are included with maximum points. Thus a highly

² The Department also counts the 65,000 working holiday visas in this stream

qualified soil scientist is denied even the opportunity to apply for migration to Australia, while a picture framer, piano tuner, blacksmith or farrier with the appropriate apprenticeship papers is given maximum points.

To bring demand back into the equation, however, extra points are awarded for applicants who have an occupation on another list called the Migration Occupations in Demand List (MODL). It is encouraging to see that the Department estimates that more than half of skilled migration visa applicants have an occupation on the MODL.

Demand also figures in the criteria for the employer sponsored category of permanent migration. Usually referred to as the Employer Nomination Scheme (with the addition now of a Regional Sponsored Migration Scheme), the figures for 1999-2000 show 6,000 visas being issued in this category, with a slight reduction to 5,800 projected for next year. Applicants must have a "highly skilled occupation", which means one that requires 3 years of formal training or equivalent experience, and must also have 3 years experience on top of that. The employer is required to show that an Australian citizen or permanent resident cannot be found to fill the position.

Skilled temporary migration

By far the most significant temporary resident visa is the subclass 457, or Business (Long-stay) visa. Despite its name, it is the main visa subclass for the importation of skilled employees to work for up to four years (renewable) for an Australian employer. While some 457 visa holders enter Australia as "independent executives" who are setting up or taking over a business, most are sponsored to work for an Australian employer who has been approved as a "Special Business Sponsor" or a "Pre-qualified Business Sponsor".

A condition of the visas held by these temporary entrants is that they may not change employer in Australia without permission in writing from the Department. Permission will only be given where a new employer satisfies the same sponsorship requirements as the original sponsor, which greatly limits the mobility of the employee.

Sponsors are required to show that either a suitably qualified Australian citizen or permanent resident is not readily available to fill the position, or else the position constitutes a "key activity" for the business, meaning that it is essential for the business operations of the employer and requires specialist or professional skills or specialised knowledge of the business operations of the employer. Other criteria which the sponsor must satisfy include a requirement to have "a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents".

Issues and concerns

The above is a very sketchy description of that part of the Australian immigration program that claims to focus on skills. The term "skills-based migration" is certainly in wide circulation with both the government and opposition to refer to what they wish to highlight in their immigration policies, and there seems to be little questioning of the assumption that skills-based migration is preferable to any other form of migration.

As with most political arguments these days, the main justification is economic. Migrants selected for their skills, it is presumed, are more immediately employable and therefore, it is deduced, contribute more to the economy and the general welfare

of society. The least favoured migrants are those least likely to get jobs and most likely to access social welfare programs. For the current government, the least favoured of all are parents.

The weakness of the economic justification is that it tends to be short-term and narrowly focussed. The politics of immigration in Australian history, however, only reveals its enduring effects in the long term and over a broad range of areas, including the economic but also the social, cultural, political and environmental. It is also historically true that the migration experience in Australia is the experience of migrant families. The role of migration in building the Australian nation simply cannot be understood without seeing the centrality of the migrant family.

Temporary migration is largely irrelevant to nation building, except to the extent that it may have long-term negative effects of the type I referred to earlier, where the ready availability of trained and experience personnel from overseas can discourage private and public investment in local training. In my view, the current safeguards in the sponsorship criteria are inadequate in this regard.

Permanent migration, however, can also be temporary. Just because an immigrant is permitted to stay permanently does not mean that he or she won't be in New York in two years' time anyway. In this regard, the figures for permanent departures are interesting, showing a fairly sharp increase in 1998-99 over the previous year. It would seem obvious that migrants who are selected primarily for their employability, youth and English language skills, and who are discouraged from bringing extended family to settle around them, will be more likely to move on again.

The effect of the shift from family to skill criteria, and from permanent towards temporary entry, are both part of a shortening and narrowing of the focus of immigration policy. As such, they amount in my view to the most significant alteration in the course of Australian immigration policy since the abolition of the White Australia Policy.

Permanent and Long-term Arrivals in and Departures from Australia, 1978-79 to 1998-99

	Perm. Arrivals	Perm. Depart. AusBorn	Perm. Depart. O/Sborn	Total Perm. Depart.	Perm. Depart/ Perm.Arr.	Net Perm. Gain	Long Term Arrivals	Long Term Departs	Category Jumping	Net O/S Migrat'n
1978-79	67,192	7,785	17,644	25,429	37.8%	41,763	95,011	78,472	-3,165	55,137
1979-80	80,748	6,986	15,031	22,017	27.3%	58,731	89,549	71,342	-997	75,941
1980-81	110,689	5,942	13,554	19,496	17.6%	91,193	94,091	66,626	517	119,175
1981-82	118,031	5,809	15,076	20,885	17.7%	97,146	92,620	66,808	5,159	128,117
1982-83	93,011	5,984	18,846	24,830	26.7%	68,181	79,728	72,458	-2,156	73,295
1983-84	68,813	6,492	17,812	24,304	35.3%	44,509	76,470	74,441	2,560	49,098
1984-85	77,508	6,051	14,327	20,378	26.3%	57,130	85,748	74,869	5,699	73,708
1985-86	92,590	5,600	12,500	18,100	19.5%	74,490	93,806	74,363	6,426	100,359
1986-87	113,541	6,099	13,829	19,928	17.6%	93,613	90,922	75,394	16,588	125,729
1987-88	143,466	6,762	13,709	20,471	14.3%	122,995	98,782	78,553	6,117	149,341
1988-89	145,316	6,560	15,087	21,647	14.9%	123,669	104,564	90,991	20,194	157,436
1989-90	121,227	8,399	19,458	27,857	23.0%	93,370	110,695	100,199	20,781	124,647
1990-91	121,688	9,490	21,640	31,130	25.6%	90,558	114,711	110,512	-8,325	86,432
1991-92	107,391	9,178	19,944	29,122	27.1%	78,269	126,781	115,162	-21,308	68,580
1992-93	76,330	9,803	18,102	27,905	36.6%	48,425	127,436	113,190	-32,629	30,042
1993-94	69,768	9,927	17,353	27,280	39.1%	42,488	137,600	112,707	-20,832	46,549
1994-95	87,428	10,092	16,856	26,948	30.8%	60,480	151,095	118,533	-12,917	80,125
1995-96	99,139	11,005	17,665	28,670	28.9%	70,469	163,578	124,386	-5,524	104,137
1996-97	85,752	11,698	18,159	29,857	34.8%	55,895	175,249	136,748	-7,317	87,079
1997-98	77,327	12,771	19,214	31,985	41.4%	45,342	188,114	154,294	7,192	86,354
1998-99	84,143	17,250	17,931	35,181	41.8%	48,962	187,802	140,281	20,852(p)	117,335(p)

(p) = preliminary

Terms

Permanent arrivals - travellers who hold migrant visas (regardless of the stated intended period of stay), New Zealand citizens who indicate an intention to settle and those who are otherwise eligible to settle (for example, overseas-born children of Australian citizens).

Permanent departures - Australian residents (including former settlers) who on departure state that they intend to settle permanently in another country.

Long-term arrivals - overseas visitors who intend to stay in Australia for 12 months or more (but not permanently) and Australian residents returning after an absence of 12 months or more overseas.

Long-term departures - Australian residents who intend to stay abroad for 12 months or more (but not permanently) and overseas visitors departing who stayed 12 months or more in Australia.

Category jumping - the term used to describe changes in travel intentions from short-term to permanent/long-term or vice versa. There are two components: an Australian resident component and an overseas visitor component. Estimates of category jumping are derived by subtracting the Australian resident component from the overseas visitor component.

Net overseas migration - net permanent migration plus net long term movement plus net effect of category jumping.

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