THE UNIVERSITY OF WESTERN AUSTRALIA

Assoc Professor Loretta Baldassar
Dr Donella Caspersz
Assoc Professor Farida Fozdah

M261, 35 Stirling Highway,
Nedlands, WA, 6000

Considering the Status of Visa 457 in the Australia Workplace Relations System
A Submission to the Review of the Workplace Relations System by the Australian Productivity Commission

We welcome the opportunity to respond to the Productivity Commission's Review into Australia's Workplace Relations system. Our submission addresses Issues Paper No 5, 5.6 *Alternative Forms of Employment, Sponsored Foreign Workers*. There are two questions posed in this section (see p14). We principally address the first:

How does the WR system affect the use of sponsored foreign workers?

While cognisant of other categories of sponsored foreign workers, we are in particular concerned about the temporary labour migration scheme, namely Visa 457.

We have drawn on our academic expertise to suggest that there currently exists a *milieu* that frames the operation of Visa 457 that we believe undermines the *intent* behind Visa 457. This milieu produces contradictory outcomes in how the WR system affects the use of foreign sponsored workers.

Though clearly focussed on the promotion of activity to realise the 'greatest economic gains' from this aspect of the migration programme (DIAC, Migrant Economic Outcomes & Contributions, 2011), the *first* contradictory outcome is that there remains a serious gap in WR system outcomes regarding the potential and continuing abuse of foreign workers.

While this is a challenge to what we perceive as a rights-based approach in the WR system towards protecting the status of Visa 457 workers, we suggest that the thrust of this approach is undermined by the continued portrayal of the status of Visa 457 workers as being separate to the status of the mainstream labour market. Thus, a *second* contradictory outcome is that Visa 457 workers are unable to contribute as productively as either they want to, or policy makers intended, to the Australian workforce and economy.

In summary, we argue that the aforementioned milieu militates against the Visa 457 scheme *positively* enhancing labour productivity because it creates **barriers** to Visa 457 workers experiencing social inclusion.

By social inclusion we refer to the degree to which a worker feels that s/he is an accepted member of our society through experiences that satisfy both a need for belonging, and appreciation of their uniqueness.

As the ILO suggests[1] "inclusion" has many dimensions including economic, social, cultural, legal, and political. We especially refer to three aspects: **Barrier One** (Legal & Political), **Barrier Two** (social), and **Barrier Three** (a lack of policy integration).

We discuss these in turn and conclude with noting our recommendations for consideration.

Finally, in using the term labour productivity, we are not referring to measurable output per hour worked (Peetz, D (2012) Does Industrial Relations Policy Affect Labour Productivity? *ABL*, 38:4, 268-292), but the discussion in Green et al (2012)[2], that recognises productivity as a multi-faceted construct, in particular the contribution that *labour quality* makes to overall labour productivity. When viewed this way, it is clear that there is an advantage in safe-guarding and fostering social inclusion for foreign workers so that they are able to contribute as productively as they desire, and the Australian nation wants during their stay.

Barrier One: Legal & Political Implications

The introduction of Visa 457 into Australia's immigration programme in August 1996, was in response to challenges of ageing, low fertility rates and low rates of investment in skill development of domestic workers (Caspersz 2012). Yet immigration regulation continues to be used for a 'protective purpose' for domestic labour (Caspersz, 2012). Thus, Visa 457 workers are portrayed as being 'other' in comparison to the mainstream labour market. In fact, the Productivity Commission (PC) in its own *Issues Paper No 5* depicts sponsored foreign workers as 'an alternative form of employment', devoting half a page to discussion about their status, and in particular, noting that '457 visas are a contentious issue'.

It seems to us that there is a relationship between these depictions: that is, as long as Visa 457 workers are considered 'an alternative form of employment', their participation in the Australian workforce will remain contentious. As a result, not only will regulation continue to exhibit a 'protective purpose' for non Visa 457 labour; regulation will remain unable to *prevent* the potential for abuse of these workers' rights and status.

---

[1] see *International Labour Migration: a rights based approach*, 2010

[2] Green, R., Toner, P., & Argawal, R., (2012) Understanding productivity. Australia's Choice. The McKell Institute/UTS, Sydney

Notwithstanding the extensive documentation that is already available that illustrates this potential, the evidence of cases such as *"$20, 000 back-pay for Indian restaurant employees, January 2015"* and *"Restaurant promised Korean cook $52, 000 a year pay-packet but only dished up $15,000, January 2015"* that came before the Fair Work Ombudsman (FWO) in January this year confirm that this potential still exists.

We suggest that the disheartening fact that these cases are still appearing before FWO, despite the extensive rights-based framework now in existence - that is, the *Migration Amendment (Worker Protection) Act 2008*, Migration Amendment Regulations 2009 (no 5), the Migration Amendment Regulations (No 9)[3] and the *Migration Amendment (Reform of Employer Sanctions) Act 2013*[4] - highlights two critical matters for consideration:

Firstly, our attention to understanding ***HOW*** *the WR system affects the use of foreign sponsored workers (in our case Visa 457 workers)* ***MUST*** extend beyond considering procedural matters only and seriously engage with how influences in the wider society affect the status of these workers. That it is necessary to engage in broadening our thinking in this way is accentuated when considering how this issue is used as a political football[5], *destabilizing* the procedural basis of the scheme[6].

Secondly, there is an urgent need for greater scrutiny of current provisions to understand why these legal and political loopholes continue to emerge. Research is needed to examine the experiences of temporary migrants to identify what needs to be done at a policy level to ensure compliance of employers especially (Fozdar et al 2012). Additionally, we are aware of the argument by unions that the DIBP should categorically rule out ANZSCO skill level 4 occupations under employer sponsored programs while peak industry bodies want an expansion of ANZSCO to skill level 4 occupations for genuine skills shortages. This may be an area that should be identified as high risk for exploitation and necessary safeguards implemented. We are concerned at the vulnerability facing prospective new arrivals that could be associated with the low level of language capability required at this level.

In summary, we argue that **Barrier One** is the general treatment of Visa 457 workers that confirms their labour market status as being 'separate from' mainstream policy considerations. We suggest

[3] See Howe, J (2010) The Migration Amendment (Worker Protection) Act 2008: Long overdue reform, but have migrant workers been sold short. Aust Journal of Labour Law, 24: 1-23

[4] This amended the Migration Act 1958

[5] see Caspersz, D (2012) The effect of politics, ideas and discourse in policy swings regulating the employment of temporary labour migration in Australia *26th Association of Industrial Relations Academics of Australia and New Zealand (AIRAANZ) Conferenc*e, 8-10 February, Brisbane

[6] see Phillips, J & Spinks, H (2012) Skilled Migration: temporary and permanent flows to Australia, 2012. Parliament of Australia; Larsen ,G (2013) Temporary Skilled Migration, Parliament of Australia for accounts of the many reviews of the foreign worker schemes

these generate legal and political implications that are of concern when considering how the WR system can enhance the ability of Visa 457 workers to contribute to labour productivity. This has implications when considering how the WR system can enhance their contribution to issues of productivity during their stay.

Barrier Two: Social Dis-Incentivizing

While they pay taxes at the same rates as domestic workers, Visa 457 workers or their dependants do not have access to Centrelink and Medicare. In the states of NSW, the ACT and WA they are charged school fees at international student rates when sending their children to government funded schools; their access to settlement services such as the Adult Migrant Education English Programme can also be limited. While having freedom of movement between employers once they have entered the Australian workforce, Visa 457 workers nevertheless can only secure employment with businesses that have been approved by the government.

Research conducted with workers suggests that they feel socially excluded as a result (Caspersz, fieldwork, 2013).

ILO specialist Guy Standing suggests that the effect is to 'de-citizenise' such migrant workers: that is while 'rarely stateless in a de jure sense… they lack security and opportunity for membership of countries to where they move. …they become (part of) the precariat" (Standing, G (2011), p 113). Standing describes the precariat as 'those who feel their lives and identities are made up of disjointed bits', and who lack 'voice' or the ability and/or opportunity to express their concern about matters that are important to them due to their structural disadvantage as 'the alternative' to the mainstream workforce.

The significance of noting these matters is their relationship to research that links employee voice to higher job satisfaction, greater psychological well-being (via higher levels of autonomy, locus of control, and self-determination) and process improvement (innovation, creativity of thought), all of which can enhance labour productivity[7].

Importantly, there is additional research that points to a relationship between social inclusion, positive psychological adaptation (Shore et al, 2011) and innovative and productive employees able to contribute to successful organizations (Cameron et al, 2011).

Thus, we suggest that **Barrier Two** is the effect that current provisions have on dis-incentivizing Visa 457 workers from being able to contribute productively.

Barrier Three: Lack of Policy Integration in responding to Visa 457 Worker Status

[7] see Batt, R., Colvin, A., & Keefe, J (2002) Employee Voice, Human Resource Practices & Quit Rates: evidence from the telecommunications industry *Industrial and Labor Relations Review*, 55(4), 573-594 for an overview

It is important to note that there are operational facets of the migration programme that influence the ability of Visa 457 workers to be productive contributors in Australian society. These include the right of family members to migrate with Visa 457 workers, notably those in the lower skilled categories. The significant literature on temporary migrants around the world shows unequivocally that restricting access to family members (via for instance limiting multiple entries both to Australia and back in their place of origin); places enormous pressure and hardship on both the migrant and on their families left behind (Baldassar & Merla 2014; Huang et al 2012; Koehler et al 2010).

This is simply one example of **Barrier Three,** that is, the lack of integration between government agencies and their respective regulatory frameworks, which inhibits the opportunity to develop a holistic approach to better management of this scheme. Thus, 'slippages' occur which ultimately impact on the ability of the Visa 457 worker to contribute productively at work.

Conclusion

Evidence from a range of reports suggests that most migrants are keen to become productive members of the Australian community (Hugo, 2011; Fleay et al, 2013; Colic-Peisker & Fozdar 2006; Tilbury 2007). However, there are key barriers that either inhibit or prevent them outright from being able to do so. Key to alleviating these is to hear from workers themselves – their experiences, their narratives – if we are to effectively respond to managing and hopefully eliminating these barriers. Without understanding their own voice, it is the case that we will be unable to fully appreciate how the WR system affects the use of sponsored foreign workers so that we may in turn, develop strategic responses that addresses these and subsequently enables these workers to make the contribution they want, and the contribution that the Australian nation desires.

Recommendations

1. Broaden enquiry about how the WR system affects the use of sponsored foreign workers beyond purely legislative and regulatory considerations to include detailed consideration of how societal influences affect the use of foreign sponsored workers and their experiences.

2. Develop an evidence-based understanding of how and why legal and political loopholes continue to emerge that highlight the disadvantage that Visa 457 workers face in negotiating the WR system.

3. Identify and examine provisions which currently exist that socially dis-incentivize Visa 457 workers from being able to be productive.

4. Engage with key government agencies to develop a holistic approach to the development and management of the Visa 457 Scheme.

Additional References

Baldassar, L and L. Merla (eds) (2014) *Transnational Families, Migration and the Circulation of Care: understanding mobility and absence in family life,* Routledge Transnationalism Series.

Baldassar, L. & Pyke, J. (2014) 'Intra-diaspora Knowledge Transfer and 'New' Italian Migration' *International Migration*, Vol 52 No.4, pp128-143. doi: 10.1111/imig.12135

Cameron, K., Mora, C., Leutscher, T., Calarco, M (2011) "Effects of positive practices on organisational effectiveness" *Journal of Applied Behavioural Science* 47: 266 – 308

Caspersz, D (2013) Organising International Migrant Labour: international comparisons. *Journal of Industrial Relations* 55(2)169-173.

Colic-Peisker, Val, and Farida Tilbury. 2006. "Employment Niches for Recent Refugees: Segmented Labour Market in Twenty-fi rst Century Australia."*Journal of Refugee Studies* 19 (2): 203–229.

Fozdar, F, Trevelyan, J and Yasmeen, S, (2012) *Migrant Settlement Services*, Report for The Department of Training and Workforce Development

Huang, S, Thang, L. & Toyota, M (2012) "Transnational Mobilities for Care: Rethinking the Dynamics of Care in Asia." *Global Networks* 12 (2): 129–134.

Hugo, 2011, 'Economic, social and civic contributions of first and second generation humanitarian entrants National Centre for Social Applications of Geographical Information Systems, University of Adelaide' at http://www.immi.gov.au/media/publications/research/_pdf/economic-social-civic-contributions-about-the-research2011.pdf

Hugo, Graeme. 2012. "Australia's Changing Population and the Future." *Migration Australia* 1: 32–41

Tilbury, F (2007) "'I feel I am a bird without wings': discourses of sadness and loss among east Africans in Western Australia", *Identities: Global Studies in Culture and Power,* 14 (4): 433 – 458Yeates, Nicola. 2012. "Global Care Chains: A State-of-the-Art Review and Future Directions in Care Transnationalization Research." *Global Networks* 12 (2):135–154.