

Australia as a modern migration state: Past and present

Background paper to the *World Development Report 2023: Migrants, Refugees, and Societies*

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Abstract

Australia is one of relatively few nations able to regulate closely who enters and leaves. It has done so by the confluence of accidents of geography, population, and history. In the modern era, this has played out in policies and laws that vest government with extraordinary control over economic migration, with granular precision over which migrants should be admitted to fill vacancies in specific occupations. This paper presents an overview of immigration to Australia. The paper begins by describing current trends, highlighting the crisis engendered by the loss of skilled labor during and after the COVID-19 pandemic. It then reviews Australia's regulatory history, highlighting strengths and weaknesses of the policy landscape and the state apparatus that has guided matters relating to immigration control. In so doing, it emphasizes key triumphs and shortcomings in the policy regime. It sketches the main channels of entry to Australia and documents key trends, presenting recent and relevant research, including that of government-appointed inquiries. The paper concludes with some policy recommendations.

Keywords: Migration, migration policy, refugees, Australia

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Introduction

Australia is often championed for her successful migration programs and flourishing multiculturalism. As a classical migration state (Gamlen and Sherrell 2022), Australia has experienced consistently high population and economic growth because of its targeted intake programs. Australia's federal apparatus has proved to be resilient, dynamic, and responsive. The unique powers vested in Australia's Immigration Minister allow national migration policies to be changed swiftly in response to changing economic circumstances.

This paper tells the story of a country undergoing seismic economic shocks brought about by external events. Of particular note is the country's increasing reliance on temporary migration, whether to fill immediate vacancies or as a step in a staggered process toward achieving permanent residence or Australian citizenship. Temporary migrants now make up approximately 7 percent of the workforce (Mackay, Coates, and Sherrell 2022). As this paper will show, this trend stands in sharp contrast to historical preferences to grant migrants immediate permanent residence.

The COVID-19 pandemic had a huge impact on migration. At the height of the pandemic, Australia emerged as one of the most restrictive countries on the planet, preventing virtually all movements into and across the country. Much of the responsibility for controlling the spread of the virus and movement within the country was passed to the state and territory governments. Western Australia lifted its travel restrictions only on March 3, 2022, after more than 700 days of isolation. Policies related to the support (or lack of support) of migrants affected by stay-at-home orders figured for many migrants in their decisions to leave the country. As a direct result of the pandemic, more than half a million temporary visa holders chose to exit.¹ The pandemic left Australia in something of a crisis, with chronic skills shortages despite low unemployment rates. The election of a new government in May 2022 ushered in a period of change and with it a growing understanding of the residual effects of pandemic-era migration policies.

Net overseas migration (NOM) to Australia in the 2020–21 financial year fell by 88,800, the country's largest net outflow since World War I.² There were 281,000 fewer migrants in June 2021 than in the preceding financial year.³ During this period, immigration decreased by 71 percent, but was partially offset by a 25 percent decrease in emigration. The shrinkage was experienced in every state and territory but felt most keenly in the powerhouse states of New South Wales and Victoria.⁴ Border closures cast Australia's reliance on temporary migrants into sharp relief. Migration in every temporary visa category declined: students, temporary skilled, working holiday makers,⁵ and other temporary workers, particularly from China and India. Despite their economic importance, most temporary migrants were excluded from federal support payments. Unlike other Western democracies, Australia made no attempt to assist stranded students.⁶ Declines in migrant arrivals were exacerbated by an uptick in departures of permanent residents and citizens. Counterintuitively, the lockdown period was not used to process visa applications. In May 2022, incoming Minister for Immigration Andrew Giles revealed a processing backlog of nearly one million visa applications.⁷

Australia's population growth has been remarkably resilient, growing at an average of 1.4 percent annually over the last four decades.⁸ During 2020–21, however, population growth was a meagre 0.2 percent, the lowest in over a century, and accounted for by natural increase alone.⁹ Domestic fertility rates also fell to a record low in 2020,¹⁰ and previous "fertility assumptions" pertaining to migrants had to be revised. Australia's reliance on migration to grow its population is reflected in census data from 2021 that show that nearly 50 percent of Australians in that year were either born overseas or had a parent born overseas.¹¹

For the first time in recorded history, in the 12 months to June 2021, combined populations in all capital cities and territories fell with the outflow of migrants and internal migration to regional areas.¹² The regions have attempted to attract talent by offering higher wages and swifter paths to permanency for migrants. Pandemic fears, cost of living pressures, and the increased ability to work from home seem to have driven the exodus from big cities. Regional population growth overtook capital city growth in every part of the country except Western Australia, whose economy boomed (leading the world, according to S&P) throughout the pandemic, in part fuelled by record iron ore prices.¹³

The 2022–23 budget, released on March 29, 2022, forecast net overseas migration to grow by 41,000 during the 2021–22 financial year (which in Australia spans July 1 to June 30), increasing to 180,000 during 2022–23, before rising to some

235,000 per year in 2024–25 and after.¹⁴ In recognition that it will take years before Australia returns to “business as usual,” a raft of policies were introduced to plug resulting skill shortages, guided by a desire to drive the increase in predicted migrant numbers predominantly through the “skilled” channel, and including an expanded apprenticeship program. The country’s international borders reopened on November 1, 2021, resulting in Australia welcoming 130,000 international students, 190,000 tourists, 70,000 skilled migrants, and 10,000 working holiday makers.¹⁵ The surge was spurred by visa fee refunds to international students and working holiday makers entering the country between 19 January 2022 and March 19, 2022 (students) and April 19, 2022 (working holiday makers).¹⁶ Nonreciprocal 30 percent increases in country caps for working holiday makers were also introduced in tandem with 12,500 additional visas for workers under the Pacific Australia Labour Mobility (PALM) scheme and a new Australian Agriculture Visa.

Immigration remains a matter for concern, although the latest figures provide cause for some optimism. In the 12 months to April 2022, net overseas migration fell, because total departures (606,710) outstripped total arrivals (573,930) by more than 30,000.¹⁷ In the financial year to June 30, 2022 however, it had risen to a net gain of 171,000 individuals.¹⁸ While skilled migration is expected to plug some of the skills shortfall, the Organisation for Economic Co-operation and Development (OECD) in their latest *Economic Outlook* (2022, Vol. 2, Issue 2) argues that any uptick in skilled migration will not “be sufficient to materially alleviate the tightness in the [Australian] labour market.”

The drop in migrants has been accompanied by the federal government’s policy response of notably omitting public universities from receiving pandemic-related economic relief packages.¹⁹ An embrace of “remote” learning deprived students of “on-campus” education and their education suffered. Myriad universities, given their ever-increasing overreliance upon international student fees, introduced stringent austerity measures, which resulted in a significant decrease in university employment.²⁰

Given changes in global labor demand and supply, it remains far from clear whether forecast job vacancies will be filled by Australian university graduates, not least due to the proliferation of jobs in non-tradeable services (Pritchett 2006). Indeed, it seems more likely that such service positions will be filled by students working part-time while studying, as opposed to once they have graduated; having invested significantly in their tertiary education, they are likely to seek higher-status jobs. It has therefore been argued that the majority of future job vacancies will need to be filled by migrants, by increased labor force participation rates, or by drawing white-collar workers into “lower skilled” jobs, which would like prove problematic from employers’ perspectives.²¹ In 2023, the number of temporary migrants in Australia was estimated at nearly 2 million.²² With most of these in employment of some kind, the statistics suggest an extraordinary level of reliance on temporary workers within the country’s overall workforce.

A chronic shortage of skills pervaded Australia’s local labor markets in mid-2022. Only Canada was in a worse situation.²³ The quarterly job vacancies survey showed that job vacancies increased by 13.8 percent between the February and May quarters 2022.²⁴ By May 2022, the total number of job vacancies in Australia reached 480,100, compared to a total of 548,100 unemployed people nationwide. In other words, for each vacancy across the country, there are only 1.14 unemployed persons, which is the lowest such ratio since the series began in May 1980. Some 25.2 percent of all businesses in Australia in June 2022 reported at least one unfilled vacancy, with the situation felt most acutely in administrative and support services (38.3 percent); public administration and safety (37.9 percent); electricity, gas, water, and waste services (34.5 percent); accommodation and food services (34 percent); and construction (30.3 percent).²⁵ In concert with rising input costs and global inflation pressures, these labor shortages have also brought about the demise of businesses. For example, the Australian Securities and Investments Commission reported 1,284 construction companies going under during the 2021–22 financial year, and 605 comparable companies folding within the first quarter of 2023.²⁶

To put into context the huge shifts in migration Australia is experiencing, the section that follows presents a brief account of Australia’s immigration history and system of government. The third section examines Australia’s complex and at times, contradictory administrative architecture. The discussion then addresses in turn the main categories of migration—family, humanitarian, and economic—and examines immigration enforcement in light of Australia’s visa cancellation and detention regimes. In each instance, the paper highlights policy successes and failures. It concludes by making some recommendations for future policy making. Appendix A provides a list of major Australian legislation and court cases concerning migration.

History

Australia is a country that has been, and continues to be, shaped by its experience of, and approach to, immigration. Although home to more than 500 unique Aboriginal and Torres Strait Islander nations before colonization, British colonialists refused to acknowledge or engage with the justice claims of the indigenous inhabitants. The fiction that Australia was “*terra nullius*,” a land belonging to no one,²⁷ provided the basis for a full-blown enterprise in socially engineered nation-building that failed to acknowledge or accommodate the rights of the country’s indigenous peoples. The many and egregious historical injustices to Australia’s First Nations peoples (Reynolds 2018) underlie the initiative taken by the Labor government in 2022–23 to conduct a referendum in 2023 to amend the Australian Constitution to provide for an indigenous Voice to the Federal Parliament.

Concerns about race meant that close attention was paid to who was admitted and counted as societal members, notwithstanding the irony in the first settlements being established as penal establishments.²⁸ As the colonies multiplied across the continent, concern about creating societies in the image of the white Anglo-Saxon motherland became a unifying feature. While travel between the colonies was unremarkable for some, the ability to move became a privilege for unwanted minorities—whether or not they had been born in Australia or were British Imperial subjects. Each colony answered directly and independently to England, creating its own immigration laws.

Exclusion of non-indigenous persons of color began with the Chinese. The discovery of gold in the 1850s, in Victoria, witnessed so many Chinese miners and businessmen arrive that by 1858, they made up 20 percent of Victoria’s population (Galligan and Roberts (2004, 50–51). The Victorian government responded by passing the world’s first legislation to restrict immigration on the basis of race,²⁹ limiting the number of Chinese passengers who could be brought in any one vessel to one for every 10 tonnes of registered tonnage.³⁰ New South Wales passed similar laws subjecting Chinese migrants to poll taxes and quotas in 1861.³¹ In the decades that followed, the various colonies introduced and then repealed similar legislative measures in response to the ebb and flow of Chinese prospectors as gold reserves were discovered and depleted [see Choi (1975, 21–27) and Douman and Lee (2008, 36ff)].

The British Imperial government was aware of the offence caused by overtly racist enactments within sections of white rule of the empire: when its commercial interests were affected, it refused the Royal Assent to such legislation.³² This was the fate when the local parliament in the colony of South Australia attempted to pass the Coloured Immigrants Restriction Act 1896 (Imperial) No. 672 in 1896, expanding anti-Chinese legislation to expressly prevent the admission of all non-white people.³³ The various colonies responded by passing legislation that allowed for the exclusion of persons of color, yet made no express mention of race or color. The exclusionary ruse was to impose a language/literacy test as a precondition for entry. This device, referred to as the “Natal test,” probably originated in Massachusetts as a device for excluding Irish settlers from the franchise (see Lake and Reynolds 2008).

Australia’s system of government

The Commonwealth of Australia was created in 1901 through legislation passed by the British Parliament. It became a founding member of the Commonwealth group of nations. The six most populous colonies became states while the Northern Territory and the Australian Capital Territory (created to house the nation’s capital) were declared territories. The British monarch remains Australia’s titular head of state, represented locally by the Governor-General. In 1901, the Australian Constitution was proclaimed by Governor-General Lord Hopetoun, appointed by Queen Victoria. Australia’s Federal Parliament consists of two chambers modelled on the United Kingdom and “New World” (US and Canadian) systems of representative government. Members of the House of Representatives are elected to represent electorates across each state and territory. Members of the (upper chamber) Senate are elected on the basis of proportional representation across states and territories. Voting is compulsory and is now close to universal.

Section 51 of the Constitution sets out the matters in respect of which the Federal Parliament can make legislation: anything not mentioned remains the province of the states and territories. Critically, section 51 includes powers to make laws with respect to immigration and emigration, and naturalization and aliens. Of equal significance, the Constitution makes no mention of Australian citizenship as a constitutional right. Indeed, no attempt was made to articulate rights in individual Australians beyond references to free trade and commerce between states and freedom of religion.

Post Federation immigration

The colonies' desire to speak with one voice on immigration is thought to have been a driving force for federation in 1901. By then the white population had grown to four million. With the American Civil War a recent memory, Australia's founders were keen to create their "new" country in a particular image. Anxious to avoid the socially divisive effects of slavery, the new country was to be White and Free. After establishing the machinery of government, the first order of business for the new Federal Parliament was to legislate for the removal of Pacific Island laborers who had been brought in to work the cane fields in Queensland (Act No 16). The second step was to ensure that only white Anglo-Saxon people would be allowed to immigrate. The Natal dictation test was a central feature of the Immigration Restriction Act 1901 (Act No 17) that followed. Although racially neutral on its face, the dictation test empowered immigration officials to subject undesirable "immigrants" to one or more 50-word tests, first in English and later in any European language. As Alfred Deakin, Australia's second Prime Minister stated in 1905: "*The object of applying the language test is not to allow persons to enter the Commonwealth but to keep them out*" (Jupp 2001, 47) [see also Armit (1988) and Rivett (1975)]. The dictation test was also used to deport migrants who remained subject to the test until deemed to have been absorbed into the community. British immigration was favored throughout this period, to populate lands "cleared of natives" (Jupp 2001, 47). Whereas 78 percent of the population heralded from the British Isles in 1901, by the outbreak of World War II, more than 99 percent of Australia was "white."

The push to create a free society was reflected in a sometimes controversial policy to insist that migrant workers be strictly brought in as permanent residents (Crock and Berg 2011, chapters 2 and 9). After passage of the Contract Immigrants Act in 1905 it became almost as difficult to bring in temporary workers as it was to import migrants of color (Layman 1996).

World War II highlighted Australia's defence vulnerabilities. First Minister for Immigration, Arthur Caldwell, implemented mass migration policies using the rallying cry of "Populate or Perish." No longer could the country rely solely upon the United Kingdom to provide sufficient numbers of whites, so following World War II, a large number of European migrants were "assisted" to come to Australia.³⁴ Asian nationals who had sheltered in Australia during the war years were unceremoniously removed—a measure supported by the High Court under the Constitution's Defence power (*O'Keefe v Caldwell*, 594–5). Non-British migrants were accommodated by altering the meaning of "white." Following lobbying by prominent members of the Jewish community, Caldwell admitted some 2,000 Jewish refugees, instituting what later developed into a humanitarian intake program. Through the International Refugee Organisation, Australia eventually welcomed some 170,000 persons displaced by European conflict. While Asians continued to be deported, Australia welcomed Germans and Italians—once sworn enemies—because of their skin color (Neuman 2004).

The White Australia Policy remained in force until 1972, although it began to weaken in the 1960s. Permanent migration was the norm throughout the mass migration era following World War II. It remained the favored approach for economic migration until the 1990s, when Australia responded to the call for liberalization of temporary labor in the Uruguay Round of trade liberalization talks and the entry into force, in 1995, of the General Agreement in Trade of Services (GATS). This multilateral legal platform for the international trade in services included a Decision on Negotiations on Movement of Natural Persons (GATS Mode IV) and led to the establishment of a Negotiating Group on the Movement of Natural Persons within the World Trade Organization. Australia was one of six countries to submit a schedule of commitments that included amending its laws and policies to facilitate the admission of temporary workers.³⁵

Historical echoes in modern migration law and politics

The significance of Australia's backstory is two-fold. First, the failure to provide for an Australian citizenship in the Constitution has made migrants' transition to permanent status in the country uniquely uncertain. It was only in 1948 that Federal Parliament passed laws to formally create Australian citizenship. Over the years, Parliament has expanded and contracted the criteria for citizenship by birth, descent, adoption, and conferral (Rubenstein 2017). Because the Constitution set nothing in stone, tenure rights remained unclear for persons who were not citizens but could not be described as "aliens" in the country. Certain long-term British nationals were held to be nonremovable in 2001 (*Re Patterson; Ex parte Taylor* 2001). As recently as 2020, Australia's High Court ruled unconstitutional attempts to deport non-citizens who could show that they were members of Australia's indigenous communities (*Love v Commonwealth and Thoms v Commonwealth*).

The second legacy of this history lies in the embedded acceptance that controlling immigration to Australia is part of the natural order of things; that it is the job of government and an integral marker of Australian sovereignty. As one of the first

High Court Justices, Isaacs J, noted in 1923: “*The history of this country and its development has been, and must inevitably be, largely the story of its policy with respect to population from abroad. That naturally involves the perfect control of the subject of immigration, both as to encouragement and restriction with all their incidents*” (R v Macfarlane; Ex parte O’Flanagan and O’Kelly at 557).

In fact, Australia is one of relatively few nations able to regulate closely who enters and leaves. It has done so by the confluence of accidents of geography, population, and history. In the modern era, this has played out in policies and laws that vest government with extraordinary control over economic migration, with granular precision over which migrants should be admitted to fill vacancies in specific occupations (see discussion in the sixth section on economic migration).

Politicians’ belief in the primacy of their power has also manifest in extraordinary battles between the Executive and the Judiciary over who should have the final say in popularist and contested areas such as the deportation of criminal permanent residents and the treatment of refugees and asylum-seekers. The contest between these two arms of government may explain some of the more extreme measures adopted by Australia to deter irregular migration of any kind, including mandatory detention and the removal of refugees to foreign countries for processing and resettlement (Crock and Berg 2011, chapter 19).

The success enjoyed by the politicians in asserting their control over law and policy may help to explain, at least in part, the politicization of migration law in Australia in recent years. On the one hand, criticisms of policies and practices were used in opposition to frame charges of political incompetence in government (Crock and Ghezelbash 2010). On the other hand, muscular prosecutions of hard-line policies—often in disregard of human rights and international law, and in manifest harm to migrants—were used to deliver political and electoral gains. Nowhere is this more apparent than in the use of the migration portfolio as a proving ground for promotion to the highest political office. No fewer than three recent Prime Ministers or aspirants to that position (Tony Abbott, Scott Morrison, and Peter Dutton) used periods as Ministers for Immigration to build their leadership credentials.³⁶

The evolution of migration policy and administrative processes

Australia offers an interesting case study of how immigration has been used to build a modern nation. The story is one of staggered advances. The early focus on race left little room for economic policy analysis. The migration program was based on bilateral agreements with source countries that sometimes saw whole villages (of acceptable ethnicity) targeted as potential migrants.

Even after the dictation test was abandoned in 1958 with the passage of the Migration Act, the system was characterized by policy opacity and sweeping powers vested in officials well-described as “angels and arrogant gods” (Martin 1988). The country began to take a more reflective approach in the 1960s, a decade when greater thought was given to the relationship between family, economic, and humanitarian migration. The 1972 election forced the issue: the abolition of color and race as selection criteria with the abolition of the White Australia Policy exponentially increased the range of persons eligible for consideration. Of equal importance were changes to accountability mechanisms in the form of a new Federal Court, “merits review” bodies such as the Administrative Appeals Tribunal (AAT), and laws that made it easier and cheaper to challenge migration decisions. “Rightless” migrants acquired a voice (Crock and Berg 2011, chapter 18). By the end of the 1980s, modernization and democratization processes would affect every aspect of the program. Although there was a long period when active attempts were made to ground policy in social science and economic research, in recent decades, politicians have turned away from evidence-based policies. The discussion that follows examines key aspects of the modern processes for managing migration, highlighting both successful aspects of the system and those of more questionable value.

Box 1. The need to strengthen the evidence base for migration analyses

Until 1996, the internal research capacity for conducting migration analyses within the Australian government was world class. Despite the adoption of a policy to destroy individual census records immediately after processing—in great contrast to other Anglo-Saxon countries (Hull 2007)—the data available to researchers have consistently been of high quality. The body of data has comprised weighted samples and full 100 percent census data, administrative flow data, and various administrative datasets at both the state and federal levels.

This research capacity was reduced in and after 1996 (Jupp 2002), as progressively less data were released for researchers to analyze. While the Household, Income and Labour Dynamics in Australia (HILDA) Survey—the first nationally representative longitudinal household survey of the country—has been conducted almost every year since 2001 under the auspices of the Melbourne Institute—with wave 20 having just been released—this is of limited use to migration researchers given the paucity of migrants in the sample. The Australian Census Longitudinal Data (ACL) links a representative 5 percent sample of the Australian population over time, from 2006 to 2016. Recognizing the ever-growing importance of the delineation between temporary and permanent migrants, the Australian Census and Temporary Entrants Integrated Dataset (ACTEID) links the Australian census with Australian government temporary visa holder data, while the Australian Census and Migrants Integrated Dataset (ACMID) links the census with Australian government permanent migrant data. The Business Longitudinal Analysis Data Environment (BLADE) provides data on all active businesses in Australia between the 2001–02 and 2018–19 financial years, by linking tax, trade, and intellectual property data from various surveys conducted by the Australian Bureau of Statistics (ABS). LEED (the Linked Employer-Employee Dataset) in turn links BLADE with employee information deriving from Personal Income Tax data.

Above all, MADIP, the ambitious Multi-Agency Data Integration Project, established in 2015 and further developed between 2017 and 2020 through the Data Integration Partnership for Australia (DIPA), aims to provide sponsored users with access to a broad range of linked administrative datasets, including data on individuals' health, education, government payments, income and taxation, and employment, as well as their census data. Notably, MADIP comprises a full count of the population of Australia. MADIP therefore promises to provide researchers data of a quality perhaps unseen outside Nordic countries, although teething problems remain, and it will likely be some time before these data can be used in rigorous research with which to guide policy.

While administrative data have been made available to researchers and while state-of-the-art data are available, the evidence base on which policy should be based remains deficient as of 2023. The prospects going forward however, are promising, as researchers are given ever better access to high-quality data. The Queensland Centre for Population Research currently stands out in this regard. On the governmental side, the establishment of the Centre of Population under the Treasury Department in 2020 represents a significant step toward bolstering suitable capacity within government.

Codification of decision making

Perhaps the most striking change to Australian immigration processes occurred in 1989, one year after a major inquiry into migration policy and law saw the tabling of the report of the Committee to Advise on Australia's Immigration Policies (CAAIP) (Crock and Berg 2011, chapter 5 [5.21]). The CAAIP Report (1998) contained many recommendations similar to those made by earlier bodies, which had also criticized the breadth of discretion given to officials and the lack of a clear appeals system. These earlier reports had observed the potential for corrupt and arbitrary decisions making and influence peddling by the Minister (Administrative Review Council 1985, Report No 25, [81]–[82]; Australian Human Rights Commission 2001, Report No 13, [197], [316]). In 1989, the sweeping powers vested in immigration officials were replaced with regulations. These codified into law myriad criteria that had been developed to select various classes of migrants. The year 1989 therefore marked the beginning of the transformation of migration laws, from a tiny act spanning barely a dozen pages [(Migration Act 1958 (Austl))], to a legislative leviathan that today constitutes one of the most complex and voluminous pieces of Australian legislation [see Migration Act 1958 (Austl)][Migration Regulations 2004 (Austl)]. While migration law suddenly became more certain in 1989, such that migrants meeting entry criteria nominally acquired rights, regulations could nonetheless be rapidly changed without immediate involvement of Parliament.

At this time, considerable debate occurred around the question of residual discretion in the administrative process. Pressure from politicians led to the retention of special powers for the Minister for Immigration to intervene so as to make more

favorable application decisions. Over time, these “non-reviewable, non-compellable” powers have proliferated (Liberty Victoria’s Right Advocacy Project 2017). They have been expanded to provide Ministers with over-ride powers to cancel as well as to confer status. The era of “angels and arrogant gods” reemerged in January 2022 when the visa of tennis great, Novak Djokovic, was cancelled when he sought to enter the country—in the absence of a COVID-19 vaccination—to defend his Australian Open title (Higgins 2022).

The modern laws in Australia also reflect significant changes made in September 1994, in response to the growing power struggle between the executive and the judiciary. If one objective in codifying immigration law in 1989 was to articulate policy and stop judicial activism, the measure failed. Judicial review applications increased (exponentially). In 1994, the law was changed to create a binary (supposedly automated) system of lawful versus unlawful status. The central idea was to focus all attention on eligibility for a visa, the so-called universal visa requirement. A visa carries with it rights to be in Australia (with or without conditions on matters such as work rights). The absence of a visa means that a person must be detained and removed as quickly as possible. As discussed in the section on economic migration, this apparently simple idea has resulted in prolonged uncertainty and even endemic cruelty at times.

The 1994 amendments led to the first full-scale attempt to openly restrict the ability of the courts to review migration decisions. The automation of enforcement processes altogether removed the courts from arrest and detention processes. This marked the point at which migration law was segregated from mainstream administrative law. The attempt was largely unsuccessful in discouraging judicial review applications. Overt hostilities between Parliament and the Judiciary over time, however, meant that migration cases came to shape (and deform) notions of administrative justice in Australia. Mandatory immigration detention, couched in terms of the country’s human rights record, represents a major point of criticism and inflection point of societal division (Crock and Berg 2011, chapters 19, 20). In recent decades, Australia has profited greatly from advances in computing technology. It pioneered systems for tracing the movement and legal status of people in Australia and overseas. For those engaged in practice or management of migration, “Legend.com” provides extraordinary point-in-time access to every law and policy dating back to 1994.

Privatization of selection processes

The codification of migration policy reflected a systemic change in thinking about immigration within government and the community more generally. The portfolio has been the subject of a great many reviews over the years, the outcomes of which have been reflected in policies and practices in each program area. A pivotal structural reform in the 1990s was to overhaul the operating model of the immigration bureaucracy to export or privatize many of the functions that traditionally had been performed “in-house.” Processes for determining the health of prospective migrants were delegated for example, to private doctors appointed as medical officers of the Commonwealth. The changes restricted scope for compassionate decision making because migration officials were denied the ability to “go behind” assessments made by private bodies. Although some bodies instituted internal appeal mechanisms, this could not compensate for the tight rules set by government.

If one objective was to reduce the opportunity for administrative and judicial appeals, the changes also meant that the government was no longer required to employ staff with diverse specializations within the Department. of Immigration Privatization also saw more thought being given to which Australian bodies exhibit natural expertise in particular fields in matters such as the assessment of migrants’ skills and qualifications to work in specific occupations (see section on economic migration). One aspect of this trend was the rise of private companies to run immigration detention centres. Privatization has worked well in areas such as health and economic migration. In the context of law enforcement (immigration detention) and offshore processing, it has increased the potential for corruption, systemic incompetence and neglect, and abuse of human rights (see Australian County Report for Global Detention Project 2022).

The securitization of immigration

One final trend is worthy of mention. However remote from the 2001 9/11 terrorist attacks in the United States, Australia was deeply affected by the perceived global threat of terrorism. Successive changes made to the law since that time reflected a conflation of issues around border control, irregular maritime migration, and terrorism. Many of these developments are discussed in the section on planned humanitarian migration. The electoral power of equating boat people, border control, and security threats was seen most forcefully in the 2013 federal election. The restoration of a conservative Coalition government saw the creation of a new super portfolio of Home Affairs. This consolidated those areas of government dealing with immigration, customs, and national and international security. The then-new Minister for Home Affairs (Peter Dutton MP) was vested with more individual power than any Minister other than the Prime Minister in any time in Australian history. This concentration of power was heightened during the COVID-19 pandemic when aligned with bio-security legislation. Quick to close its borders to international travellers and migrants alike, Australia became one of the most restrictive countries on the planet. As noted, the policies adopted have had an ongoing impact on the country's population and economy.

Family migration

Declining birth rates in Australia motivated the relaxation of the family reunification program in June 1978. Concurrently, the government implemented the predecessor of today's Points Based System (PBS), the Numerical Multifactor Assessment System (NUMAS), based on a Canadian model. Introduced on January 1, 1979, the NUMAS distinguished along social, educational, and economic lines to determine "general eligibility," increasingly discriminating in favor of "human capital." Importantly, NUMAS did not apply to family reunion or refugee admission.

Family migration is probably the most universal and immutable aspect of migration around the world, reflected in the foundational right in international law to marry and found a family (Art 23 ICCPR) (Guendelsberger 1988). Australian policy has always been generous in allowing for the sponsorship by citizens and permanent residents of certain close family members on the basis of relationship. Between 1983 and 1997, therefore, family reunification was employed as a "hook" for aspects of economic migration through a "concessional" category within the program. This allowed nondependent children, working-age parents, and brothers and sisters of Australian citizens and permanent residents to gain extra points in the points-based visa categories (see Crock 1998, 94–97). Today, the family program comprises four main subgroupings: partner, child, parent, and a miscellaneous category for aged dependent relatives, remaining relatives, orphaned family, and "carers."

Australia classifies migrants in the family category as only those individuals who have been issued family-related visas. Family members of persons issued with economic or humanitarian visas are instead counted against those categories under the label of "secondary visa applicants." In many European countries, this cohort is counted separately as family migrants. The result is that family migration in Australia features even more prominently in practice than the reported statistics suggest.

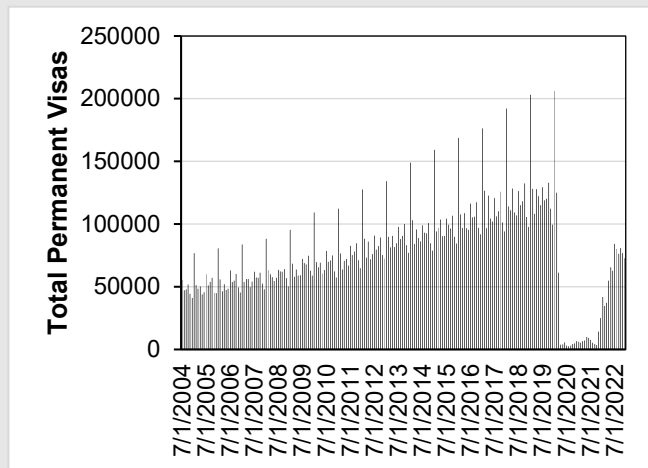
The single biggest policy change in Australian migration in recent years has been the shift from permanent to temporary migration. With this has come a growing preference for "try-before-you-buy" visas that facilitate movement from temporary to permanent status. Interestingly, it was in the partner stream of the family category that this trend began (in 1989) and took root. As concern about the economics of migration developed, the family category within the overall program shrank (see Crock and Berg 2011, chapters 7 and 8).

Box 2. The changing composition of additional flows of permanent migrants to Australia

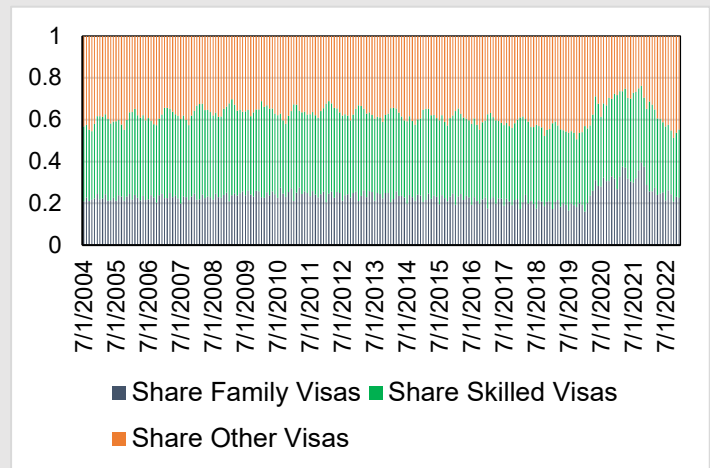
Figure B2.1 plots changes in the entry channel and skill composition of migration over time. Panels a and b, constructed using the most recently released figures from the Australian Bureau of Statistics (ABS), show the overall volumes of monthly permanent additions to Australia since July 2004, together with the disaggregation of these aggregate numbers by entry channel.

Figure B2.1. Changes in the entry channel and skill composition of migration over time

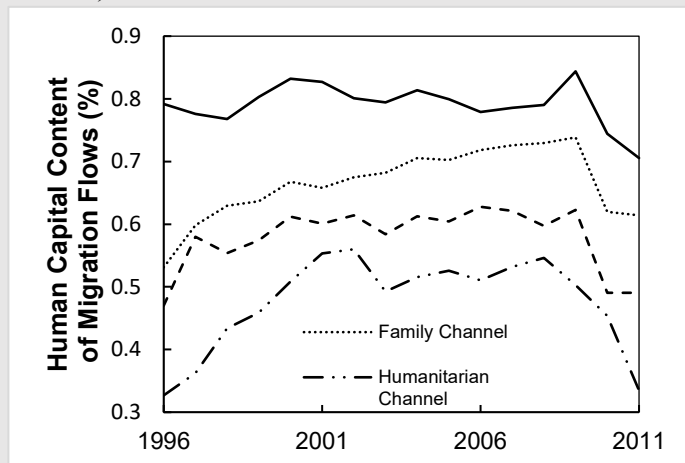
a. Number of permanent visas, 2004–22



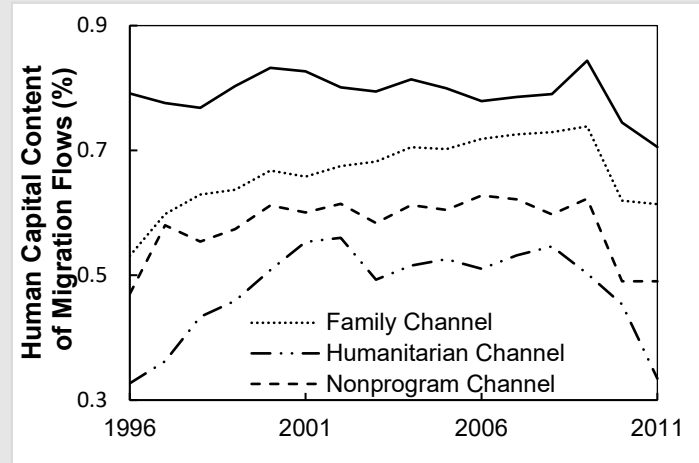
b. Composition of permanent visas, 2004–22



c. Human capital content of migration flows by entry channel, 1995–2010



d. High-skilled migration by entry channel, 1995–2010



Sources: Australia Bureau of Statistics (ABS) for panels a and b; Kerr et al. 2017 for panels c and d.

Note: Panels a and b exclude “Special eligibility” permanent visas, while the data for December 2022 are provisional. Panels c and d are taken from Kerr et al. (2017), based on 100 percent administrative data from 1996 when the series began to be collected.

The granularity of these data allow one to construct a consistent measure of skill over the period, in effect based on the top three tiers of the 2008 International Standard Classification of Occupations (ISCO), including in the period before the introduction of the Australian and New Zealand Standard Classification of Occupations (ANZSCO) in 2006: namely, (1) managers, senior officials, and legislators; (2) professionals; and (3) technicians and associate professionals (see Czaika and Parsons 2017 for further details). Unsurprisingly, panel c shows that a higher proportion of high-skilled workers enter the country through the skill channel. Even though family members of economic and humanitarian visa holders count against those categories, at the beginning of the time series, more highly skilled migrants entered Australia through the family channel than through any other channel (panel d).

Planned humanitarian migration

Although the humanitarian program is a small and separate part of Australia's migration intake, it has played a significant role over time by literally changing the face of the country. Australia has made room in its planning for migrants displaced by war, conflict, and disasters for almost as long as it has had organized programs. Following World War II, the admission of persons displaced by conflict became a cornerstone of its population policy. After the abolition of the White Australia Policy in 1972, the intake became more diverse (Neumann 2015). It was the aftermath of another war that ushered in the most dramatic change, however.

After the fall of Saigon in 1975, hundreds of thousands of Vietnamese fled the country (Parsons and Vézina 2018). Australians had fought alongside these fugitives, so when boats began arriving in the country carrying Vietnamese refugees they were treated with compassion. In July 1979, Prime Minister Malcolm Fraser made the valiant decision, consulting neither the cabinet nor the public, to welcome large volumes of Vietnamese refugees. In 1979, 14,000 were admitted, with 70,000 welcomed during his prime ministership. Between 1980 and 1983, Asian migration was made Australia's top migration priority. The White Australia Policy was consigned to history and the foundations of multicultural Australia laid. Nevertheless, unauthorized maritime arrivals continue to engender fear that persists in influencing migration policy.

Australia responded to the revolution in Hungary by opening its doors to 14,000 Hungarians in 1957. After the Soviets invaded Czechoslovakia in 1968, 6,000 Czechs received visas. The 1970s witnessed the country respond to persons in need outside of Europe, first from Chile in 1973 following the overthrow of the Allende government and later from Lebanon. Some 16,000 displaced Lebanese had been accepted by 1980. An enquiry by the Senate Standing Committee on Foreign Affairs and Defence in 1977 led to the creation of the Humanitarian Settlement scheme to oversee social integration programs.

The scheme is characterized by a coordinated approach to providing language, education, health, and other services to humanitarian arrivals. The program was tested and matured in the pressure of ensuring the integration over Indochinese refugees from the conflict in Vietnam and later Cambodia. It has changed through time as the government has commissioned private actors to deliver programs under contract.

A confusing aspect of Australia's humanitarian program is that frequent reference is made to the country's admission of "refugees." Australia is party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, which lifted the geographic and temporal limitations on the Convention. The word "refugee" has a specific meaning under the Refugee Convention and thus under international law (see Hathaway and Foster 2014). In short, it is only persons physically in Australia or under Australia's care and control who attract legal obligations under this instrument. Critically, the Convention does not require any country to run refugee resettlement programs. It does oblige state parties to refrain from sending those meeting the definition of a refugee to places where they may face persecution for one of the five reasons stipulated in the Convention (race, religion, nationality, membership of a particular social group, or political opinion). Persons claiming to be refugees are referred to as "asylum-seekers." This category is discussed in the seventh section of this paper on Australia and asylum-seekers.

Over the years, Australia has looked increasingly to the United Nations High Commission for Refugees (UNHCR), the global agency responsible for refugees, for assistance in identifying worthy candidates for admission. In 2022, the UNHCR identified more than 100 million "persons of concern" (POC) displaced by human conflict. Of these huge numbers, the agency identifies through its field operations a modest number of POC (generally fewer than 100,000), which the agency proposes for resettlement in third countries. It is from this cohort that Australia often draws candidates for its planned program. Australia is one of very few countries to cooperate in this manner with the UNHCR.

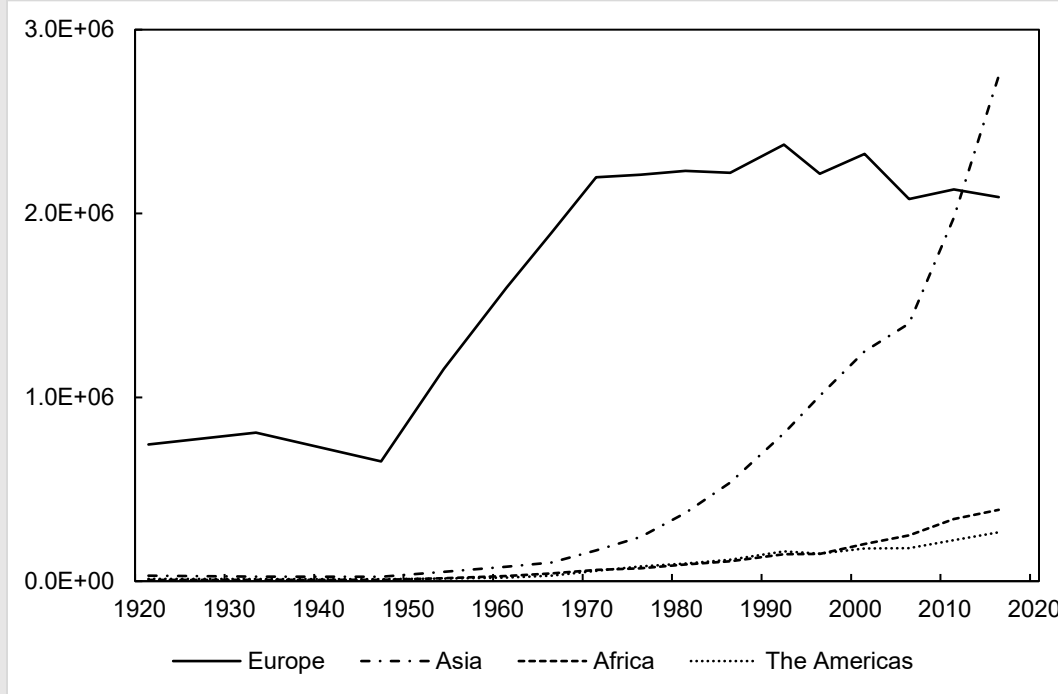
As explored in the seventh section, Australia's treatment of Convention refugees and asylum-seekers has become increasingly dissonant with its approach to migrants in its humanitarian program. Its treatment of asylum-seekers and Convention refugees has become a consistent point of criticism when Australia is reviewed for its adherence to human rights principles.

Although Australia’s humanitarian intake is advertised as non-discriminatory, there has been selective generosity in the cohorts chosen for admission. After 2014, for example, an emphasis was placed on the selection of Christians at risk of persecution. The ascendance of the Taliban in Afghanistan in 2021 saw the introduction of special visas for persons evacuated by Australia and its allies. Afghans holding visas in Australia were given automatic 12-month extensions and granted permission to lodge Refugee and Humanitarian visas (Class XB) onshore. These visas usually require individuals to be offshore. Persons fleeing the conflict in Ukraine were also granted special visas allowing them to enter and remain in Australia—with the possibility of conversion to permanent stay.

Box 3. Australian (birthplace) diversity and economic prosperity

The demise of the White Australia Policy was cemented by Prime Minister Fraser’s response to the unfolding humanitarian catastrophe in Vietnam. Because refugees often represent new additions to host populations,^a Australia’s Humanitarian Settlement scheme has contributed significantly to the birthplace diversity of Australian migrants and the country’s push toward multiculturalism. Despite the publication of the 1988 Fitzgerald Report, which placed greater emphasis on pivoting away from humanitarian migration in general, the formation of migrant networks compounded earlier humanitarian numbers from previously banned origins. The Keating government (1991–96) further placed emphasis on Australia’s role in the Asia-Pacific region. Australia therefore continued to welcome large numbers of migrants from countries previously excluded. The “Asianisation” of migration to Australia since that time has been remarkable; between 1971 and 2006 the numbers of Asians in Australia grew almost tenfold, as shown in figure B3.1.

Figure B3.1. Growth of Asian migrants to Australia, 1920–2020



Source: Various censuses.

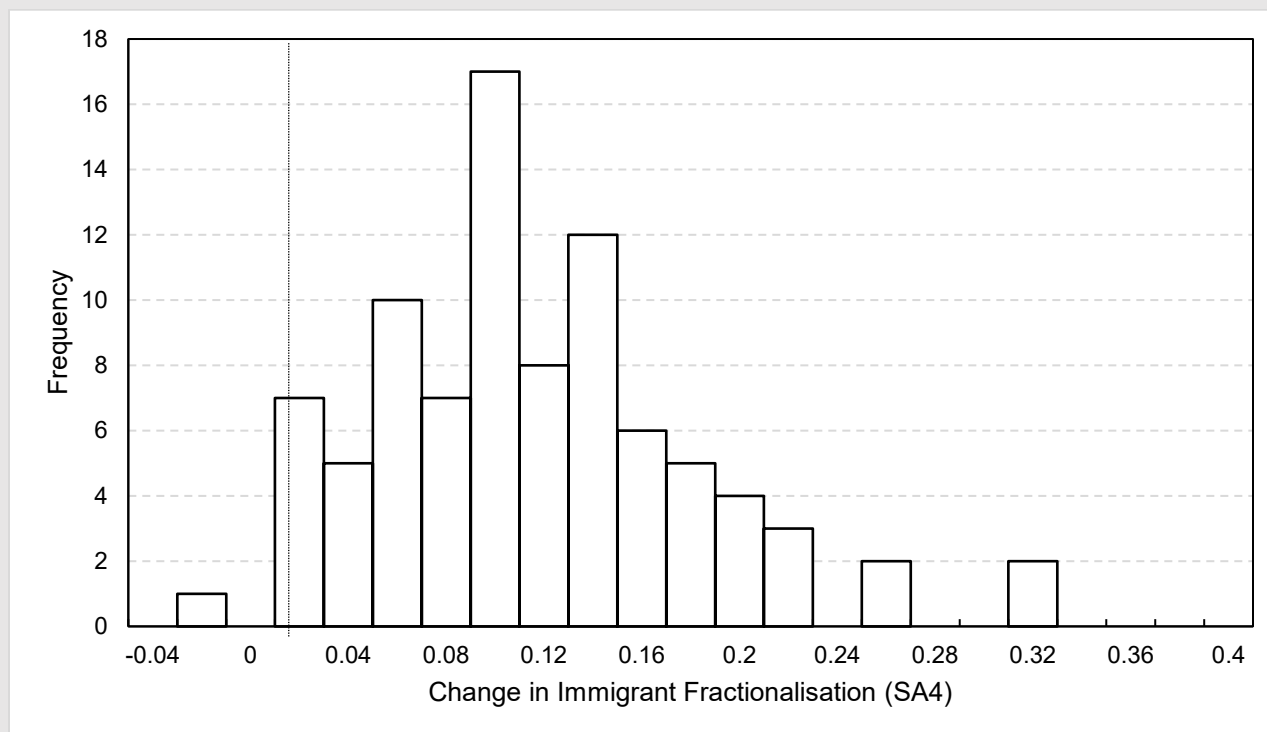
Watershed moments in Australia’s economic fortune are often associated with reforms introduced by Labor Prime Minister Bob Hawke and then Treasurer, Paul Keating. The pair is credited with implementing key economic reforms, including the introduction of a floating exchange rate mechanism; Medicare (universal health care); a Prices and Incomes Accord; the Asia-Pacific Economic Cooperation (APEC) forum; financial deregulation; the Family Assistance Scheme; the Sex Discrimination Act; and a superannuation pension scheme for all. The passage of the Australia Act 1986 (Austl) removed the remaining vestiges of British jurisdiction from Australia’s legal system. A key trend that sometimes omitted from this narrative is the dramatic and sustained rise in migrant diversity over the period, as measured by migrant birthplace fractionalization (splintering) or polarization (clustering).

In the workplace, diversity within teams can be viewed as a “double-edged sword” (Horwitz and Horwitz 2007, 111). Cultural differences between workers may yield productivity gains within teams, especially in the context of collaboratively

solving complex problems. Lazear (1999), for example, in the context of birthplace diversity, argues that firms’ decision to hire workers from myriad origins is a function of how correlated knowledge is across countries. On the flipside, migrant diversity can result in inferior economic outcomes should, for example, cultural differences foster distrust (Guiso et al. 2004 Nunn and Wantchekon 2011) or erode social capital (Alesina and La Ferrara 2000).

In the only study of its kind, Vernon (2018) examines the economic consequences of migrant birthplace fractionalization (splintering) and polarization (clustering) on the economic fortunes of Australian industries between 1981 and 2016, as measured by income per worker. Figure B3.2 shows the change in migrant birthplace fractionalization between 1981 and 2016, based on harmonized data pertaining to 89 origin countries. Harmonization is required because Australian censuses capture migrants from a varying number of origin countries over time. Notably, fractionalization increased in every SA4 local government area with the exceptions of the Yorke Peninsula and the Barossa Valley.^b Across a broad range of econometric specifications Vernon finds consistently that migrant birthplace fractionalization is positively associated with increases in income per worker, while migrant birthplace polarization is negatively associated.

Figure B3.2 Change in migrant birthplace fractionalization in Australia, 1981–2016



Source: Vernon 2018.

Note: Fractionalisation is defined as $dFRAC = \sum_{b=1}^B \pi_b(1 - \pi_b)$, the probability that two immigrants come from different birthplaces. For example, a value of 0.7 represents a 70 percent probability of selecting two immigrants born in different places. SA4 = Statistical Area Level 4.

Exploring the heterogeneity of the results across industries, Vernon finds that the negative effects of migrant birthplace polarization (which is often associated with tension and miscommunication between groups) manifest in all three industrial sectors: primary (raw materials extraction and production); secondary (manufacturing); and tertiary (services). By contrast, the positive effects of migrant birthplace fractionalization (typically associated with knowledge diversification and complex problem solving) are driven exclusively by work performed in tertiary service industries. Indeed, it is also in the tertiary sector that the negative influence of migrant birthplace polarization is felt most acutely.

Further disaggregating the results by migrants’ skill levels as captured by their levels of education, Vernon finds that it is only high-skilled diversity in the tertiary sector that results in significant “spillovers.” The analysis suggests that a one standard deviation increase in tertiary sector fractionalization increases income per worker by almost 5 percent. Taking the two heterogeneity results in tandem, Vernon argues that because only skilled diversity in the tertiary sector has a positive income effect across the entire industry, “the industry and skill distinctions are complementary and...immigrant

fractionalisation may be relatively more of a productive attribute among high-skilled workers within services.” Finally, exploring the mechanisms at play that undergird his analysis, Vernon, in a supplementary analysis, argues that the effects of birthplace diversity are at least in part transmitted through improvements in labor productivity and that cultural differences between groups wane over time through subsequent generations, presumably because of integration.

- a. These additions are along the extensive margin (Bahar, Parsons, and Vézina 2022).
- b. SA4 areas as defined by the Australian Bureau of Statistics refers to an area defined on the basis of commuting data whereby individuals work and live in the same areas. They are comparable to US commuting zones.
- c. The benchmark regressions of these specifications are corroborated by causal results based on a shift-share identification strategy.

Economic migration

The program for the admission of migrants on economic grounds is the area where policy and practice have changed most markedly over the years. This section bundles discussion of employment-based categories, business migration, foreign students, tourists, and other visitors. Modern laws and policies stand in sharp contrast to the radical simplicity of the White Australia era, when little or no attention was given to migrant attributes beyond skin color and ethnicity. Discrimination today is based upon an individual’s net worth in terms of wealth (as a business migrant); occupation; and wage-earning position for a sponsoring employer. High-value migrants are more likely to be offered immediate permanent residence. For others, the norm has been temporary visas with varying capacities to transition to permanence over time.

A paradigm shift in Australia’s migration policy occurred following the publication of the 1988 CAAIP report discussed earlier. The report demarcated Australia’s change in focus toward “economic rationalism”:³⁷ away from manufacturing and toward attracting human capital and raising “immigrant quality.” The report advocated professionalizing the Immigration Department and switching to a rules-based system of selection—one freer from lobbying and less prone to bureaucratic and ministerial discretion, while remaining focused on skills (as opposed to family reunion and humanitarian intakes). The report further recommended reducing refugee numbers, and abandoning reliance on periodic amnesties to regularize the status of unlawful non-citizens. The modern era in economic migration policy in Australia can be dated back to this report. The move to codify policy was matched by a more economically literate approach to policy formulation—and more thoughtful consideration of which authority is best placed to assess the suitability of potential migrants. By 1998, the skill stream accounted for most of the visas granted under the Migration Programme.

The other major policy change occurred in 1995 with the introduction of a simplified temporary immigration system in the form of the two- to four-year 457 (Business Long-Term) visa. Temporary (though long-stay) migration emerged as a new tool through which migration could be tailored to suit the requirements of the Australian economy dynamically. Until this time, migration to Australia was largely favored to be permanent by both the government and incoming migrants. From this time onward, there would exist a segment of society, those “Not Quite Australian” (Mares 2016), who paid taxes but could not vote, draw benefits, or access Medicare, amounting to many who would never be offered permanent residency (see Crock and Berg 2011, chapter 9). In-need skills defined by shortage lists are regularly revised.³⁸ Over time, employers and regional governments have become increasingly involved in the process to ensure that the incoming skills match the current demands of the nation as well as local economies.

Box 4. An economic assessment of two-step migration

Without question, the shift from admitting permanent settlers only to an ever-increasing reliance upon temporary, try-before-you-buy migration represents the greatest seismic shift in recent Australian immigration policy. Approximately 7 percent of the workforce comprises temporary workers, while over the past two decades, approximately 50,000 additional temporary workers have been added to the stock (Mackey, Coates, and Sherrell 2022). Gregory (2015) estimates that the ratio of temporary to permanent visas each year to be approximately three to one.

Until the mid-90s, migration to Australia was premised on permanency and predicated on planned arrivals being funnelled through skill, family, and humanitarian channels, or applications for skilled independents through the Points Based System (PBS), the modern-day representation of what began life as the Numerical Multifactor Assessment System. Increasingly over time, the PBS has sought to select skilled individuals on the basis of their human capital and individuals’ economic and employment viability. Notably, the supply-side mechanism of the PBS did not match incoming skilled migrants to

specific job vacancies, whereas today, all temporary working visas are employer sponsored. This in turn however, has resulted in a two-step or staggered process of migration to the country where an individual first enters on a temporary basis before subsequently applying for “PR” (permanent residency) status and in turn citizenship, should indeed the visa subclass they entered the country on permit that possibility. Whereas temporary or non-permanent migration was actively discouraged to Australia when it was considered a “settler country,” today, temporary visas are not subject to quotas, while permanent numbers are strictly capped.

Cobb-Clark (2003) has suggested that the shift away from *direct* migration to two-step *indirect* migration has resulted in remarkable employment gains for the country. Given that most pathways to permanency are through employer sponsorship, or else studying—often with the specific intent to remain in Australia as a permanent resident afterward—it indeed seems intuitive that superior employment outcomes should have resulted. In a recent assessment of Australia’s two-step immigration policy, however, Gregory (2015) provides a nuanced perspective—one that recognizes the changing nature of new arrivals to the country relative to the existing migrant stock. Turning away from unlinked quinquennial census data that suitably capture permanent additions, Gregory (2015) rather analyses (male) pseudo-cohort monthly employment data from Australia’s Labour Force Survey, which are superior in also including temporary migrants experience during their early (temporary) years. In doing so, Gregory moves beyond relying only upon descriptive statistics to essentially comparing monthly cohorts over time, before and after the shift in policy system.

Under the traditional regime, between 1981 and 1985, 40 percent of those who had arrived by January 1981 were employed, with more than 60 percent being employed within 9 months of arrival. Employment levelled off at about 70 percent after 4 years, finally plateauing at about 80 percent after 8 years of arrival. These numbers are indicative of a relatively smooth and swift integration process. In comparison with the 2001 to 2005 period under the new regime however, Gregory highlights three distinct periods: the first four years after arrival, which is characterized by significantly *lower* employment rates; a period of comparable employability from four to six years; and a final period after six years, which is characterized by notably *higher* employment rates.

Gregory further highlights that all significant employment changes take place within the group of migrants heralding from so-called non-English-speaking countries, the group with the lowest employment rates, as opposed to changes occurring *within* groups. This suggests that the changing composition of incoming migrant flows between English and non-English-speaking groups underpins Gregory’s findings. For students from non-English-speaking countries—70 percent of whom originate from China and India, the group most affected by student visa growth—there are definitive and large full-time employment differences between the old and new policy systems. Finally, in making the distinction between full- and part-time employment, Gregory highlights that under the current indirect system, full-time employment is 30 percent to 60 percent less likely than when compared to under the old regime and that only one-third of non-English-speaking male migrants hold down a full-time job. As such, Gregory concludes that labor market integration today takes place via part-time employment as opposed to from the unemployment pool as it once did.

Employment-based migration

The migration program in Australia has long been divided into supply-based (independent) permanent economic migration and demand-based (employer-sponsored) temporary migration. Australia was one of the first countries to adopt the Canadian device of awarding points against various attributes as an assessment device. Over time, it has refined the points test device to give the government detailed control over who is deemed worthy of a temporary or permanent visa.

A feature that unifies most supply and demand categories in the program is the mechanism for selecting migrants based on occupation, skills, and experience. A single reference point is used for classifying all occupations: The Australian and New Zealand Standard Classification of Occupations (ANZSCO), compiled by the Australian Bureau of Statistics. ANZSCO provides common groupings of every occupation from laborer to specialist medical practitioner. It also catalogues the qualifications, skills, and/or experience that are required to work in each position. ANZSCO is used by migration officials and by domestic agencies tasked with accrediting persons in designated jobs (see Parsons et al. 2020 for additional details). Critically, labor market vacancies are also catalogued using this classification of occupations. It is a system that vests the Australian government with extraordinary control over the selection of “skilled” migrants, meaning it is difficult to describe the system as anything approximating a “free market.” If an occupation is not listed, an employer will generally be powerless

to sponsor an individual—no matter how important they are for their business. The system is one that delivers high labor market participation rates for migrants.

Since 2001, the federal government has used labor market data to create various lists that act as both preconditions for visa applications and mechanisms to give preference to certain applicants (whose occupations are in short supply). In the early days, attempts were made to link educational programs to the skills shortages list. This created problems because sham educational institutions were created in fields such as cooking and hairdressing. This led to abuse of the program and abuse of potential migrants—and no clear economic gain to Australia. The lists have subsequently been refined and extended to cover all aspects of economic migration, temporary as well as permanent. Over time, the term “skilled” has become a proxy term for “needed migrant.” The system is one that can appear to place equal value on the skills of a welder and those of a specialist brain surgeon. Concessions are made to accommodate regional needs.

Independent (permanent) migration

The points test first introduced in 1979 bears little resemblance to the system in place in 2023, except that age (capped at 45), educational qualifications, work experience, and English-language proficiency still feature prominently. Two significant changes have been made. First, and perhaps most significant, is the requirement that applicants have their qualifications and experience assessed by relevant accreditation bodies before making any form of application. Relevant assessment bodies are identified against every occupation listed on the Skilled Occupations Lists, published in the Government Gazette. Applicants must also test for language proficiency before applying. The Pre-Application Skills Assessment system slows the application process for migrants. However, it has reduced problems that used to arise around the recognition of overseas qualifications—at least with respect to primary applicants for skilled visas.

The second change to the points-based visas (made in 2010) is that the system has been moved to an Expression of Interest (EoI) process that occurs online. There are still “pass marks” that indicate who has a chance of succeeding. Formal applications can only be made, however, if the Minister issues an invitation to apply. The system allows the government to pool applications and then issue invitations to the top applicants each quarter according to job vacancies in particular occupations. Hence the entry point for an EoI can be 65 for everyone, but then engineers may require 80 points and medical practitioners 90 points. Concessions (lower scores) apply where applicants want to live in a regional area (defined by postcode). The system is opaque for applicants, but highly responsive for government policy makers. To deal with problems of applicants inflating their claims, a Public Interest Criterion (PIC 4020) operates to block any applications for three years should a person be unable to substantiate their claims, or if they submit a bogus document.

Employer-sponsored migration

The new normal in economic migration in Australia is that most applicants begin their migration journey on temporary visas, all of which are necessarily employee sponsored. Permanent status is available to high-net-worth migrants attracting salaries above \$A180,000.

Since 1999, there has been a steady move toward unified regulations that preference young (under 45), highly skilled individuals who are “job ready” to work in Australia. As noted, the explosion in temporary workers has been one of the most remarkable transformations to occur in the labor market in the modern era. Although generally yielding good outcomes for employers—for example, keeping labor costs lower—issues surrounding the abuse of workers have proliferated. The degree of concern showed about abuse of migrant workers, however, represents a key point of political difference. The issue spawned a series of inquiries and myriad policy changes over two decades.

The most used vehicle for temporary skills shortage visas (referred to as TSS visa) is now the subclass 482 visa—previously the 457 visa. The regime involves three steps: government approval of the business sponsoring an applicant; nomination of a position listed as an approved occupation, meeting salary and other requirements; and determination that an applicant has the skills and experience to perform the job specified. Workers can be vulnerable at each stage. Where an employer goes bankrupt or otherwise loses approval to sponsor, migrant workers will lose their visas unless they can find another employer willing to sponsor them. Workers were initially given only 28 days to do this. This period was extended to 90 days in 2008 and reduced to 60 days in 2017.

The position to be filled by a migrant worker raises issues around the protection of local workers and the abuse of those brought in to perform work. A decade of controversy has delivered policies that specify minimum salary levels for specific occupations and require sponsors to undertake labor market testing to demonstrate that local workers cannot be found. Attempts have been made to make salary floors stick, by implementing rules that prevent employers (at risk of losing sponsoring rights) from deducting items from salaries such as visa costs, accommodation, and other items. The requirement that sponsors engage in labor market testing seems to be a political gesture, especially because the list system is supposed to be predicated on known vacancies in the labor market. Interestingly, in 2017, the government dropped previous requirements that sponsors demonstrate a commitment to training local workers to fill needed positions. Instead, employers were required to pay money into a “Skilling Australia Fund” vaunted as a vehicle for funding apprenticeships. It is not clear that this has created the resource promised. Big employers seem to have found ways to avoid making the contributions because of carve-outs in the legislation for repeat players and high-income earners.

Other issues identified as problems include the relationship between temporary and permanent occupation lists, which limit the ability of lower-skilled workers to progress to permanent status. Businesses are only likely to be able to sponsor a visa if they are large sufficiently large. Many small and medium enterprises (SMEs), for example, are reliant upon specific temporary workers: working holiday makers in the case of SMEs in the construction sector, for example. A separate Temporary Activity (subclass 408) visa was used by the Australian government to allow migrants to remain in Australia on a temporary basis during the COVID-19 pandemic.³⁹ Concerns with the proliferation of temporary visas was a significant factor in the decision of the Labor government in 2022 to institute an inquiry into the operation of the visa system that it described as “broken.”⁴⁰

Business migration

One area where competition between countries to attract migrants is keenest is in the field of business. It was Labor Prime Minister Paul Keating who in 1993 introduced a visa class that would allow individuals to migrate on the basis of investing in government securities. At that juncture, the visa required applicants to invest, but also demonstrate a record of achievement in investing as a form of business. Programs have typically targeted individuals as business owners and as senior executives with established records of achievement in business. Over time, the program has involved points testing (now unfavored) and transitioned to align with other economic visa programs with try-before-you-buy visas that facilitate the transition from temporary to permanent status. The business visa categories are arguably the most relaxed of all the streams in terms of occupational qualifications and experience. The emphasis is upon wealth creation. Nowhere is this more apparent than with the Special Investor Visas. Using an EoI system, these have given priority to individuals with the resources to invest large amounts of money (at least \$A5 million and up to \$A15 million) in a designated business or fund. Concessions made for business migrants include relaxed criteria for visa cancellations following the failure of a business venture within three years of visa grant. Applicants are only required to show that they made a genuine attempt to establish and run a business.

Box 5. The labor market impact of (high) skilled migration

Despite the large volumes of both temporary and permanent migration to Australia, there is a startling paucity of evidence analyzing the labor market impacts of this migration. This lack of evidence is all the more stark given the importance of a strong evidence base in informing policy and the ongoing data revolution. As Boucher, Breunig, and Karmel (2022) lament in their recent overview, while a veritable cornucopia of studies continue to be produced in other countries that examine various facets of the economic impact of migration on natives the outcomes for nationals, implementing ever-more stringent econometric methods, it is simply not the case that those findings can be applied to the idiosyncratic case of Australia. This is because of the high percentage of foreign-born individuals in the population (29.7 percent, according to Boucher, Breunig, and Karmel et al. 2022); its complex visa structure; its highly detailed selection of workers in specific industries, occupations, and the high share of migrant populations that agglomerate outside its capital cities. Australia’s situation contrasts sharply with that of the United States, which remains the focus of the associated literature, and whose largest migration corridor by far is with Mexico—a corridor that is notably negative selected (Kerr et al. 2017). Given the ever-increasing selectivity of the Point Based System (PBS) in tandem with the continued issuance of temporary skilled visas, Australia can rather be characterized by high degrees of positive selection (Bruenig, Deutcher, and To 2017). Despite government stating a strong preference for evidence-based policy, the disturbing lack of state-of-the-art analyses continues to reflect the reality of current government capacity and a lukewarm desire to engage with the academy in recent years.

This box discusses two of the most recent additions to the relatively scant domestic literature that seeks to address one of the most enduring questions in labor economics. It should be noted that elsewhere in the world, studies on this specific topic have broadened our understanding on the wider economic impact of migration by further examining the role of migrants on myriad alternative outcomes, such as prices, productivity, and innovation, and so on, as well as subgroups of migrants, notably refugees. Raw descriptive statistics suggest, for example, that refugees are the most entrepreneurial of all migrants in Australia, but no formal rigorous analyses exist as to their impact (see Collins 2015, 14).

Because the labor demand curve is downward sloping, it seems intuitive that a rise in labor supply will depress employment and wages. Such thinking omits myriad mechanisms through which migrants otherwise contribute to society—not least in terms of the capital they bring with them—sometimes with the purpose of establishing businesses that may in turn employ others—skill complementarities, or the fact that most migrants employed on temporary visas fill vacancies that would likely otherwise not be filled by workers who are nationals.

Bruenig, Deutcher, and To (2017) examine two samples of data over the period 2001–13, adopting the national skill-cell approach of Borjas (2003), to examine the impact of migrants on the labor market outcomes (annual earnings, weekly hours worked, hourly wage rate, labor force participation, unemployment rate) of both Australian nationals and newly arrived migrants (so-called incumbents). Their preferred, fully specified approach yields largely null results, with the exception of a marginal positive result of the impact of migrants on the participation rates of Australian-born workers using data from the Survey of Income and Housing. When turning to their second sample, which combines data from the Household, Income and Labour Dynamics in Australia (HILDA) Survey and the census, they find no statistically significant results whatsoever.

In ongoing work, Nguyen and Parsons (2023) turn to the administrative data recently made available to researchers by the Australian Bureau of Statistics (ABS). Recognizing the dramatic shift in the composition of migration to the country in favor of younger, more highly educated, predominantly Asian migrants, the authors analyze two samples of data: repeated cross-sections from the census 1981–2016; in addition to available longitudinal census data for 2006–16, a period during which over half of the Asians in Australia arrived. They adopt the methodology of Borjas (2003) to study these samples, while their shorter panel analysis additionally includes individual fixed effects, bringing their methodology closer to the state of the art. Their results suggest that over the long term, a 10 percent increase in immigration flows into the Australian labor market increases the weekly wages of national male workers by 4.1 percent, while reducing the fraction of those in part-time work by 1.7 percent. These magnitudes are of a similar order to those reported in Bruenig, Deutcher, and To (2017), although they are statistically significant.

Their more contemporaneous and rigorous analysis reveals that a 10 percent increase in migration results in a 10 percent rise in male nationals' wages; a 7 percent rise in female wages; a 2 percent decrease in part-time work for males (and no effect on females); a marginal decrease in the probability of nationals falling out of the labor market and into unemployment (1.5 percent males, 0.8 percent females); a 2.4 percent increase in upward occupational mobility for both genders; and a reduction in the probability of down-skilling by 2 percent for males and 1.3 percent for females. Work continues, further exploiting linked employee-employer data made available through the Multi-Agency Data Integration Project (MADIP) and the Business Longitudinal Analysis Data Environment (BLADE), to drill further down into the mechanisms at play, specifically within firms. Because both studies rely upon census data, however, an unknown proportion of temporary migration is necessarily omitted from the analyses because the census only captures those who intend on staying in Australia for less than a full year. In specifically addressing this aspect of migration to Australia, Crown, Faggian, and Corcoran (2020) similarly find, when combining data from HILDA with data pertaining to Temporary Worker Skilled Visas (457), that nationals' wages rise in response to immigration—the authors argue due to skill complementarities.

International students

Prime Minister Robert Menzies signed the Colombo Treaty in 1950 as a strategy to combat communism. Between 1951 and 1980, some 20,000 Asian students attended Australian universities under the auspices of the Colombo process; after concluding their studies, they were required to go home. Even when employment was permitted in 1966, students who had graduated could only apply “offshore.”

The internationalization of the Australian educational system was catalyzed by the conservative Liberal government's steps to reduce real funding for tertiary education by 26 percent between 1996 and 2000. This resulted in Australian tertiary institutions marketing themselves overseas. By 2007, Australia was training 11 percent of the world's tertiary students studying overseas. Education in Australia was promoted as a pathway to permanent residence—and former requirements that students leave the country at the conclusion of their studies were removed. Around this time, however, linking nominated occupations, education, and rights to permanent residence was increasingly perceived as a mistake. The system was failing to strike the right balance between the expectations of foreign students and Australia's interests and needs. Work rights vested in students were also making this growing cohort of temporary migrants acutely vulnerable to exploitation through wage theft and abuse. Again, Australia's failure to offer support to foreign students during the COVID-19 pandemic stands out as poor practice that may ultimately work against its national interest. It was forecast that universities in Australia stood to lose \$A6 billion between 2020 and 2023 as a direct result of the pandemic. Across the country, tertiary institutions began laying off staff in anticipation of falling student intakes.⁴¹ With education Australia's fourth largest export earner in 2020, the incentive to invest in the financial and emotional well-being of its international students would seem to be compelling.

In 2011, the Knight Review highlighted that a leading barrier to the recruitment of foreign students was 'the absence of a clearly defined post study work rights entitlement' (Knight 2011, vii). In response, the subclass 485 visa was renamed the Temporary Graduate visa and split into two streams. In the Graduate Work stream, graduates must nominate and obtain a skills assessment for an occupation on the Medium and Long-Term Strategic Skills List. The visa allows an 18-month stay.⁴²

For the Post-Study Work Stream, graduates from a degree course do not need to nominate a skilled occupation or obtain a skills assessment. The visa is granted for two to four years depending on the level of Australian qualification obtained. In November 2019, the government announced that from 2021, international students graduating from a regional education institution and who live in regional Australia for at least two years on their first 485 visa would be eligible for a second visa. The Australian government responded to new security laws in Hong Kong SAR, China by expanding visa options for holders of a Hong Kong passport (Smith and McLroy 2020). The 485 visa was extended to five years for Hong Kong nationals and became a pathway to permanent residency after five years.⁴³

Box 6. Economic incentives and perverse outcomes

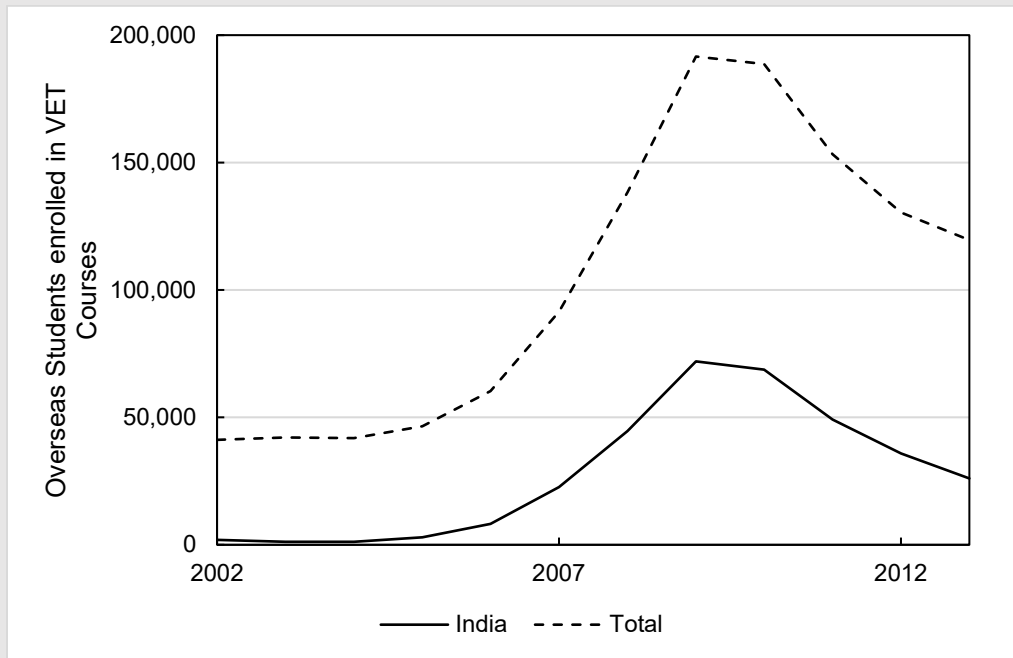
Before 1999, students were unable to apply for permanent residency immediately after completing their studies and were instead mandated to wait for three years. In 1999, however—notably, only two years before the later sample period of Gregory (2015)—this moratorium was lifted, motivated by the need to generate revenue and the Review of Independent and Skilled-Australian Linked Visa Categories in 1997 (Parasnis, Fausten, and Cheo 2008). This Review recommended that the Points Based System (PBS) give an advantage to those awarded a diploma, trade skills, or degrees from Australian educational institutions: 5 points for having an Australian Diploma, 10 points for an Australian Master's or Honour's degree, and 15 points for a PhD (Birrell, Hawthorne, and Richardson 2006). These changes to the PBS gave indirect migrants with a competitive advantage over direct migrants (Spinks 2016). Concurrently, permanent skilled visas—previously made available only through the independent skilled channel—were issued to overseas students in Australian educational institutions, while further adjustments were made to the PBS to favor them. Overseas students became exempt from being tested for their English-language ability up until 2007 (Hawthorne 2010) when applying for permanent residency because it was otherwise assumed that a sufficient level of English would have been obtained through students' study (Hawthorne 2010).

In addition, the Migration Occupations in Demand List (MODL)—in the absence of labor market experience—was added into the PBS, awarding 20 additional points to those filling specific vacancies (Hawthorne 2010). Between 2002 and 2007, the number of occupations featuring on the MODL grew from 3 to more than 100 by the time of its removal in 2010. At that time, the PBS was overhauled for independent skilled migrants, with a focus on English proficiency, work experience, and qualifications (Spinks 2016). The system had become so skewed that having a MODL occupation became almost mandatory from April 2005, at which juncture the pass mark in the PBS increased to 120 (from 115) points (Spinks 2016). While seemingly a marginal change, having a MODL occupation became a key determinant for successful migrants' applications for permanent residency. Within a single year of this change, the proportion of skilled independent migrants applying with MODL occupations rose from 9 percent to 42 percent (Hawthorne 2010). In 2010, Chris Evans, then Former

Minister for Immigration and Citizenship, stated: “The current points test puts an overseas student with a short-term vocational qualification ahead of a Harvard-educated environmental scientist.”^a

In turn, overseas students were incentivized to select into specific fields that awarded them bonus points toward their journey to permanent residency (Spinks 2016). Cashing in on their newfound revenue streams, Australian tertiary institutions increasingly marketed their courses abroad, specifically emphasizing routes to permanent residency, resulting in ever more acute selection into less demanding tertiary institutions and courses with minimum pass requirements (Mares 2016). By 2006, overseas students had a 99 percent probability of meeting the requirements for permanent residency (Birrell, Hawthorne, and Richardson 2006). The result was an unprecedented rise in overseas student enrolments. (Hawthorne 2010), compounded by incremental policy decisions that continued to favor overseas students. In 2012, this policy was reversed. The Overseas Student permanent visa series was abolished as of January 1, 2013. After this time, students would have to apply for temporary bridging visas.

Figure B6.1. The dramatic rise in vocational preferences responding to MODL reforms



Source: Australian Educational International, Department of Education, 2019 (<https://internationaleducation.gov.au/research/international-student-data/Pages/ExplanatoryNotesforAEIStudentEnrolmentData.aspx>).

Note: The period of vocational preferences from MODL reforms is highlighted by the dotted lines. Indian students were the most responsive to the reforms and so are highlighted here. MODL = Migration Occupations in Demand List; VET = vocational educational training.

Unsurprisingly, the altered incentives for potential migrants resulted in perverse outcomes, not least when Vocational Education Training (VET) occupations, such as cooking and hairdressing, that only required two years of study were added to MODL in 2005, which in effect guaranteed permanent residency. As shown in figure B6.1, enrolments in VET courses expanded rapidly, especially from India. Students clustered in two-year courses, notably Master’s of Coursework, which were awarded 30 points on the PBS, many of which had no undergraduate requirements, either (Birrell, Hawthorne, and Richardson 2006).

The regression analysis in Maltman (2019)—notably in the absence of a formal identification strategy—nevertheless represents the most sophisticated analysis to date. Specifically, Maltman identifies a significant wage penalty suffered by former overseas students of \$A6,000 in comparison to direct migrants once their observable characteristics (personal, country of origin, and so on) are controlled for. This earnings gap closes to approximately \$A3,500 once English Proficiency and Occupational choices are controlled for. Maltman interprets this as evidence that former overseas students are characterized by poorer English-language abilities than direct migrants, and therefore selected into work and study in lower-

paying fields, likely incentivized by earlier MODL adjustments.^b Further analysis moving beyond income outcomes are provided in appendix B.

a. <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/NKZV6%22>.

b. Maltman (2019) reports point estimates of the coefficient on English-language ability in all income regressions as significantly larger than the corresponding wage penalty for being a former overseas student. Relative to a former overseas student who is proficient in English, a direct migrant who is not proficient in English on net suffers a wage penalty.

Australia and asylum-seekers

The modern story of Australia's humanitarian intake begins on ANZAC Day in 1976. Five Vietnamese men sailed into Darwin harbour in a small fishing vessel after two months at sea, guided only by a school atlas. They sought asylum as Convention refugees. By 1978, the Fraser government faced a crisis when the boats continued arriving. Australia joined with nations across the region to establish processing centres to intercept and stem the flow of asylum-seekers.

The Darwin boat arrivals led to the establishment of the first Determination of Refugee Status committee to advise the Immigration Minister on whether individual applicants engaged Australia's obligations under the Refugee Convention. As a party to the Convention, Australia went on to establish elaborate status determination processes for granting protection to Convention refugees on its territory (see Crock and Berg 2011, chapter 12). Over time, however, divergences became apparent between the treatment of asylum-seekers entering the country by plane (with or without valid visas) and those arriving by boat (without authorization).

Australia's treatment of "boat people"

Australia has experienced five separate waves of asylum-seekers: each has contributed to shaping the law and in turn policy. Those travelling to Australia by boat are referred to as "Irregular Maritime Arrivals" (IMAs). The first group of arrivals from Vietnam were welcomed and granted immediate permanent residency. The modern era of less generous policies began in 1989, with the coming of the second wave. Some 400 IMAs arrived from Cambodia following disruptions associated with the so-called Paris Peace Plan and Comprehensive Plan of Action (to resolve historical mass displacements throughout Southeast Asia). Prime Minister Bob Hawke announced: "*Bob's not your uncle on this issue. We are not going to allow people just to jump that queue*" (quoted in Brennan 2003, 36). Unlike the Vietnamese IMAs before them, the Cambodians were taken into detention and denied access to lawyers. The government treated the group as persons deemed not to have entered the country. When this strategy was held unlawful, the Cambodians were moved from Melbourne to Sydney, to put physical space between the detainees and their growing band of supporters. In 1991, some were moved to a remote detention facility in Port Hedland on the West Australian coast (see Crock 1993, chapter 4; and Crock and Berg 2011, chapter 12).

The Migration Act 1958 was amended to mandate the detention of the Cambodians for a period of 273 days, although the group remained in custody for nearly four years. The failure of a legal challenge in the High Court paved the way for widespread use of "administrative" detention beyond any judicial oversight (*Chu Kheng Lim v Minister for Immigration and Ethnic Affairs* 1992). The Cambodians lodged a complaint against Australia before the United Nations Human Rights Committee, which issued the first of many opinions that the country was in breach of its international legal obligations (*A v Australia*). Although the government responded to this ruling, in more recent times it has ignored (and expressed disdain for) UN Committee criticisms of its migration policies.

For some years, the treatment of the Cambodian IMAs represented an aberration in policy and practice.⁴⁴ The country responded very differently to the IMA pro-democracy activist asylum-seekers fleeing China in 1989. Nearly 40,000 young Chinese students and temporary visa holders in the country were granted four-year temporary visas. This was the first occasion in which the country used visas. In 1993, almost all of the Chinese refugees were granted permanent status.

Asylum-seekers continued to arrive in Australia by boat throughout the 1990s. A distinguishing feature of this third wave was that refugees hailed from countries outside the Asian-Pacific region. Sophisticated people-smuggling operations developed to transport refugees from the Middle East, Afghanistan, and Sri Lanka. Where earlier boats had arrived with modest numbers on board, by the end of the decade, boats were arriving carrying hundreds of asylum-seekers. Alarm within government grew. A Coalition government reintroduced temporary protection visas in 1999, a measure that initially led to

a spike in IMAs as families added women and children to transports. In late August 2001, the interception of the *MV Tampa*, a Norwegian cargo ship that had come to the aid of a ferry carrying 438 Afghan asylum-seekers, changed everything. Conservative Prime Minister John Howard refused permission to land the “rescuees.” As a lengthy stand-off developed in the waters off Australia’s Christmas Island, the world was rocked by a series of terrorist attacks in the United States. While the Tampa Afghans were fleeing the Taliban in Afghanistan—the same group responsible for the 9/11 attacks—the refugees were quickly labelled as threats to Australia’s national security (see Marr and Wilkinson 2003).

The UNHCR intervened to resolve the Tampa crisis. Arrangements were made with the International Organisation for Migration (IOM) to transfer some rescuees to Nauru or Papua New Guinea’s Manus Island.⁴⁵ Some families and unaccompanied children were resettled in New Zealand and Norway (having been granted immediate permanent status). Australia established a program to intercept and push back boats carrying suspected IMAs to Indonesia. Although controversial, the measures were popular in Australia and effective in stemming the flow of boats. All attempts to mount legal challenges failed (see Crock and Ghezelbash 2010). By 2007, the last of the Tampa refugees had been released from Manus Island and quietly resettled in Australia.⁴⁶

The fourth wave of IMA boats followed the election of a Labor government in 2007, on a much-publicized promise to turn Australia away from the cruelty and waste of conservative asylum policy. The boats resumed, delivering IMAs in unprecedented numbers. The opposition made much of the new arrivals, with a targeted campaign aligning loss of border control with government dysfunction and incompetence (Oakes 2010). Policy responses were poorly focused and executed. Although it nominally kept a promise to abolish temporary protection visas, the Labor government suspended processing refugee claims by IMA asylum-seekers from Sri Lanka and Afghanistan. The measure equated with affording a worse level of temporary protection.⁴⁷ Labor failed in its attempt to reinstitute pushbacks to Indonesia (Hodge 2010). The High Court struck down plans to swap refugees with Malaysia. The small capacities of offshore processing sites at Nauru and Manus Island meant that not all IMAs could be transferred. Who was chosen for exile became highly arbitrary, which in itself provided scope for cruelty in the form of arbitrary separation of family groups. By the time Labor lost power in 2013, it had reinstated virtually all the previous Coalition policies except for push-backs (see Gleeson 2016).

Following the 2013 election, the conservative Coalition resumed boat turn-back policies. Orange inflatable boats were used to project IMAs intercepted at sea back into Indonesian waters.⁴⁸ Most importantly, the new government took control over the information made public on boat arrivals. A militarized border force was banned from disclosing “on-water operations.” The measures were effective in halting the flow of boats.

Amendments to the Migration Act in 2014 removed all direct reference to international human rights and refugee law, yet no attempt was made to withdraw from the international Conventions. Rather, the content of relevant international laws, as interpreted by Australia, was transcribed into the Act such that definitions became a matter of domestic law alone. These legislative changes also established a mechanism for processing the asylum claims of those whose processing had been suspended. This “Legacy” cohort of about 30,000 asylum-seekers were subjected to “Fast Track” processing, which included a truncated appeal process involving mainly reviews on the papers.

The harms of offshore processing were justified by claims that the measures were necessary to save deaths at sea (see Crock and Ghezelbash 2010). A succession of IMAs transferred to Nauru and Manus Island died or suffered injuries of sufficient gravity to require medical evacuation to Australia (Boochani 2018; Gleeson 2016).

The processing centres on Nauru and Manus Island have been hugely expensive. Offshore processing is reputed to cost Australia more than \$A3 billion annually, while its policies have been linked by 2019 to at least 17 deaths (Border Crossing Observatory 2019). While the swap agreement with the United States witnessed some transferees released to a new life, the implementation of the resolution has been partial and slow. The issue did not feature in either the 2019 or 2022 campaigns, a marker of the political sensitivity of the issue. For detainees in Australia, and for those warehoused offshore, uncertainty continued. By 2022, the irony of tennis star Novak Djokovic being detained in the same Melbourne hotel as refugees from Manus and Nauru was in plain view (Doherty 2022). Despite the shortcomings of the policy, former Australian politicians have continued to promote the strategy overseas. Britain’s 2022 decision to transfer asylum-seekers to Rwanda presaged a wholesale adoption of the “Australian model” in 2023.

While the prevailing rhetoric stated that irregular migration to Australia had ceased, asylum-seekers nevertheless continued to arrive to Australia after 2013—and (until the pandemic hit) in numbers almost as large as during the years of Labor governance. This fifth wave, reportedly totalling 100,000, arrived by plane—as opposed to boat—through Indonesia and Malaysia (Rizvi 2022).

In 2022, the incoming Labor administration confirmed that it would be abolishing temporary protection visas (in their various forms). An announcement was made on February 13, 2023 that some 19,000 Legacy caseload refugees would be granted permanent residency.⁴⁹ The announcement did not include nearly 12,000 others caught up in the system who claims had been rejected or were outstanding. The government also made it clear that no change would be made to the policy of offshore processing, with contracts renewed with Nauru and Papua New Guinea on February 7, 2023.⁵⁰

Enforcement of migration law

The arrival of boats carrying IMAs did not just alter asylum law in Australia. From 1992, they helped shape the very structures of how migration law was enforced. Remote detention centres were increasingly relied upon throughout the 1990s. In 1994, detention became mandatory and universal for all migrants in Australia who did not hold a visa or other authority to be in Australia. Where suspected unlawful non-citizens were subject to arrest and detention processes involving an appearance before a magistrate, after 1994 officials were empowered to detain people who they “reasonably suspected” were unlawful. Mandatory detention laws were upheld as constitutional by the High Court in 2004,⁵¹ regardless of a non-citizen’s age,⁵² the length of their detention⁵³ and the (inhumane) conditions in which they were kept.⁵⁴ The judiciary did overrule however, attempts to restrict access to judicial review either directly or indirectly through artificial constructions of territory and decision-making structures (Plaintiff M61/2010E v Commonwealth of Australia). The trend in the courts to support government policy relating to detention has continued (Commonwealth v AJL20; Plaintiff M1/2021 v Minister for Home Affairs).

The decision to remove judicial oversight of arrest and detention processes was significant. While the courts upheld the lawfulness of the policies, stories emerged of lawful permanent residents and even citizens being wrongfully detained and even deported. Two high-profile cases attracted public attention—those of Cornelia Rau and Vivienne Solon-Alvarez, both women with serious disabilities (see Crock and Berg 2011, chapter 16). A public inquiry later uncovered at least 240 similar cases, leading to multimillion-dollar compensation payments.

In 2014, the new government did not just target asylum-seekers. Its law-and-order agenda also played out in dramatic reforms to laws relating to the deportation of non-citizens of bad character. “Crimmigration law” in Australia became as draconian and punitive as any country in the world. The Minister is well described as being vested with “god-like powers” to send individuals into permanent exile, whatever the length of time they have spent in Australia (Liberty Victoria’s Rights Advocacy Project 2017). Where it is not possible to remove individuals who have no other country where they can be sent, the laws have seen people detained for 6, 9, 11 years, and longer (Crock and Bones 2022). In December 2021, the average period of time for people in detention was 689 days.⁵⁵

The use of mandatory detention for asylum-seekers continues to attract international criticism.⁵⁶ Wherever Australia has held asylum-seekers over time and in remote locations, human rights abuses have occurred. Detainees have committed suicide, engaged in self-harm, and inflicted harmful actions toward one another. They have suffered abuse at the hands of their guards. Women and children have been sexually and physically abused (Royal Commission into Institutional Responses to Child Sex Abuse 2017). Children have developed resignation syndrome, some becoming unresponsive and even catatonic (Global Detention Project 2022; Refugee Council of Australia 2021). This has been the case in the detention centres established across Australia, on the Australian territory of Christmas Island, and in the centres run at Australia’s behest under the ostensible authority of Nauru and Papua New Guinea (Gleeson 2016). Between 2000 and 2019, the Border Crossing Observatory recorded 58 deaths in detention (onshore and offshore): 22 in the community; 3 during arrest or deportation; and a further 34 after removal (Border Crossing Observatory 2019).

Australia is a party to most of the international human rights instruments, which means that it is subject to review by UN oversight committees as well as the Universal Periodic Review conducted by the Human Rights Council. In 2021, the Working Group on the Universal Periodic Review (UPR) for Australia reported that 122 country delegations made 344

specific comments relating to Australia’s human rights record. The most popular recommendations included the following suggestions:

- Efforts should be made to improve the human rights of migrants in the processing of asylum-seekers, observing that families should not be separated and that children should not be kept in immigration detention centres.
- the non-refoulement principle (not sending asylum-seekers back to a country where they would be subject to harm) should be guaranteed.
- Additional frameworks should be implemented to prevent human trafficking and modern slavery, including increased cooperation with regional neighbours.
- Laws relating to counterterrorism should be reviewed to ensure they are in compliance with international human rights obligations.

Between 2002 and 2021, the UN Working Group on Arbitrary Detention (WGAD) found Australia to be engaging in the arbitrary detention of asylum-seekers in 17 consecutive cases.⁵⁷ The WGAD’s findings against Australia represent its largest migration-related detention caseload for any single country.

Conclusion and recommendations

With the change of government in May 2022, the incoming Minister for Immigration was faced with major practical and political challenges in three key areas. These related to critical skills and labor shortages; dysfunction in Australia’s asylum and humanitarian migration system; and problems associated with immigration enforcement, particularly in criminal deportations.

Addressing critical skills shortages

Australia’s system for selecting and admitting migrants is one of the most sophisticated in the world. Generally, the regime, including its use of intelligent computing systems, serves the country well. The ability to alter regulations swiftly has resulted in significant administration responsiveness. The crisis induced by the COVID-19 pandemic, in tandem with geopolitical stresses resulting from human conflicts and climate change disasters, however, highlight shortcomings in a system that has become overly prescriptive and complex.

Consideration needs to be given to relaxing requirements that skilled migrants work in occupations listed for short- and long-term stay. The Global Talent visa programs may represent a move in the right direction, targeting needed workers in particular sectors such as agriculture and fintech (financial technology). In July 2022, the government announced changes to its Pacific Island seasonal workers program, extending eligibility beyond farm workers to include those working in health and aged care. Significant emphasis was placed on the potential for workers to access permanent residency over time.

These programs remain niche and tend to favor big business. Small operators typically struggle to identify and retain workers due to the rigidity of occupation lists and the poorly defined pathways between temporary and permanent status. Before 1999, Australian employers were afforded the option of sponsoring foreign workers who could be shown to perform a “key activity.” The return to a more flexible approach might be worth considering.

The asylum program

The current government has inherited some extraordinary challenges in the asylum space. A policy of awarding Convention refugees temporary visas lasting nearly ten years means that the country is hosting more than 31,000 persons who are living with “lethal hopelessness” (Proctor et al. 2017). Shortcomings in the “Fast Track” processing of the “Legacy” caseload have resulted in a further 12,000 persons who have been living in the country for nearly a decade in the absence of any status whatsoever. These include the “Medevac” refugees returned to Australia from Nauru and Papua New Guinea, as well as those who remain in offshore processing countries. Finally, it is estimated that more than 100,000 asylum-seekers are in the country—mostly in the community with no work rights—waiting for their claims to be processed. (Rizvi 2022).

The churn of repeat visa applications for temporary protection visa holders, requiring the complete reassessment of asylum claims, result in considerable administrative costs. In the context of ongoing skills shortages, they also present an

opportunity. Although the Labor government moved in February 2023 to provide a pathway for those holding temporary protection visas, considerable uncertainty surrounds those who do not fall within this immediate cohort.

Immigration enforcement

In the first two months following the May 2022 election, Prime Minister Anthony Albanese met twice with New Zealand's Prime Minister Jacinda Ardern. The resettlement of refugees remaining in Papua New Guinea and Nauru was one issue on the agenda. Another was the high rate of New Zealand citizens who spent most of their lives in Australia being deported to New Zealand after conviction for both serious and less serious crimes. Compromise between the two countries seems to have involved agreement by New Zealand to accept IMA refugees from Nauru and Papua New Guinea. Conversely, Australia agreed to relax its policies (without changing the law) on deportation and to grant resident New Zealanders voting rights and clearer access to citizenship.

In accordance with the findings made by the 2022 Global Detention Project for Australia, Australia needs to make immigration detention purposive. The Migration Act could be amended, for example, so as to make clear that detention should only be used for discreet purposes pertaining to national security or public order, or a flight risk. Australia has agency to align itself more closely with global best practice and in doing so make substantive savings.

Australia might also consider abandoning the practice of detaining people in remote locations such as Christmas Island. As well as increasing enforcement costs, remote detention has been unequivocally shown to increase the risk of abuse to and within detainee populations (Crock and Berg 2011, chapter 16; Ghezelbash 2018). The practice began as a strategy to restrict access to lawyers and judicial oversight, although it was unsuccessful. There are good reasons to restore judicial oversight of arrest and detention processes. It is our recommendation that detained immigrants should be brought before a magistrate within 72 hours of arrest and thereafter every 7 days until a person's status is determined or they are released on a bridging visa.

Suggestions for systemic reforms

One feature of the visa system has been a trend of expansion and contraction of visa classes. One of the first examples occurred in 1996, with introduction of subclass 456 and 457 visas. These replaced 17 previous categories of temporary visas. The proliferation of temporary visas poses considerable problems for a new government facing chronic skills shortages. As an indication of how bloated the system is, between 2000 and 2016, temporary migrants granted permanency entered on one of 118 different visa subclasses. After 2016, an additional 35 temporary visas were introduced (Mackey, Coates, and Sherrell 2022). The conversion of temporary visas to permanent status in the context of a wholesale simplification of the system could provide an opportunity to consolidate the migrant stock without the need to generate a spike in the intake program.

The links between the government and academics/researchers could be strengthened considerably. The lack of rigorous analyses of migration to Australia, the Australian migration system, and their impact and outcomes is conspicuous, meaning that many policies are enacted without a sufficient policy base from which they can be meaningfully gauged. The system relies upon shortage lists, underpinned by countrywide data on current vacancies, with more granular data soon to come online. A much better job could be done in forecasting likely areas and industries where particular vacancies might arise, as opposed to necessarily being somewhat backward looking. Significant investments by both academics/researchers and government in the country's migration research capacity would likely yield significant dividends while also forging valuable alliances.

Australia's immigration appeal system has reached a point where a new approach would deliver dividends. The system is beset with inordinate delays and has drawn criticism for some of its decision making. This led the Attorney General to announce the abolition of the Administrative Appeals Tribunal, not least because it significantly overran its budget. Nevertheless, the backlog in cases is without precedent (AAT 2023).

Inefficiencies in migration appeal and judicial review systems could be addressed by repealing Parts 7–8 of the Migration Act. This would bring immigration back into line with mainstream Administrative Law in Australia. A new federal tribunal, with a division for migration and refugee cases, could hear appeals on the merits of decisions. Judicial review could be

normalized by removing immigration decisions from Schedule 1 of the Administrative Decisions (Judicial Review) Act 1977.

Notes

1

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/SkilledMigrationProgram/Report/section?id=committees%2Freportjnt%2F024650%2F76420#:~:text=As%20a%20result%20of%20COVID,in%20the%20last%2010%20years.

² https://population.gov.au/sites/population.gov.au/files/2021-12/3407_Overseas_migration_2020-2021.pdf.

³ https://population.gov.au/sites/population.gov.au/files/2021-12/3407_Overseas_migration_2020-2021.pdf.

⁴ https://population.gov.au/sites/population.gov.au/files/2021-12/3407_Overseas_migration_2020-2021.pdf.

⁵ The working holiday maker program allows young adults to have a 12-month holiday, during which time they can undertake short-term work and study.

⁶ Berg and Farbenblum (2020, 6). The United Kingdom, New Zealand, Canada, and Ireland all extended wage subsidies to temporary migrants Portugal also extended protections to temporary migrants, including international students (Santa Fe Relocation 2020). By contrast, the Australian government excluded temporary migrants from JobKeeper and JobSeeker support packages introduced in late March 2020. ⁷ "Clearing pending visa applications our top priority": Immigration Minister Andrew Giles." SBS News, June 19, 2022; "Processing visa backlog an 'urgent' need." *The West Australian*, June 20, 2022.

⁸ <https://treasury.gov.au/publication/2021-intergenerational-report>.

⁹ <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/jun-2021>.

¹⁰ <https://www.theguardian.com/australia-news/2021/dec/08/australias-fertility-rate-falls-to-record-low-in-2020>.

¹¹ <https://www.abs.gov.au/media-centre/media-releases/2021-census-nearly-half-australians-have-parent-born-overseas>.

¹² <https://population.gov.au/data-and-forecasts/key-data-releases/regional-population-2020-21>.

¹³ Standard & Poors (S&P), <https://www.lgas.com.au/2021/03/10/wa-economy-rated-as-global-best-by-sp/>.

¹⁴ https://population.gov.au/sites/population.gov.au/files/2022-04/2022-23_budget_overview.pdf.

¹⁵ <https://www.udiasa.com.au/udia-national-budget-2022/>.

¹⁶ <https://www.homeaffairs.gov.au/covid19/visa-information/refunds-and-waivers>.

¹⁷ <https://www.abs.gov.au/statistics/industry/tourism-and-transport/overseas-arrivals-and-departures-australia/apr-2022>.

¹⁸ <https://www.abs.gov.au/statistics/people/population/overseas-migration/2021-22-financial-year>.

¹⁹ Altogether, 36 out of 40 (non-international) Australian universities are public.

²⁰ Between May 2020 and 2021 alone, the Australia Institute's Centre for Future Work found that one in five tertiary education jobs had been lost, which included 35,000 at public universities (Littleton and Stanford 2021). Many of these positions were permanent staff, following significant losses of casual staff earlier in the pandemic.

²¹ <https://www.afr.com/policy/economy/skills-shortages-will-be-long-term-but-more-uni-graduates-won-t-help-20220609-p5asf7>.

²² <https://www.sbs.com.au/language/punjabi/en/article/australia-fast-tracks-skilled-migration-visa-applications-but-many-still-live-in-limbo/qkwxnsse>.

²³ <https://www.afr.com/policy/economy/australia-has-second-worst-skills-crisis-in-developed-world-20220608-p5arzu>.

²⁴ <https://www.nationalskillscommission.gov.au/sites/default/files/2022-08/NSC%20Labour%20Market%20Quarterly%20June%202022.pdf>.

²⁵ <https://www.abs.gov.au/statistics/labour/jobs/job-vacancies-australia/latest-release>.

²⁶ <https://www.theurbandeveloper.com/articles/boom-bust-developers-2022-review-probuild>.

²⁷ It was not until 1967 that Australia's aboriginal peoples gained anything like full recognition as members of the Australian polity (see Attwood and Markus 2007).

²⁸ In all, about 160,000 convicts were "transported" to Australia. Free settlers began arriving from 1790 onward. See generally Willard (1923).

²⁹ For an account of the global context of such control measures, see Lake and Reynolds (2008).

³⁰ The legislation defined the term "immigrant" as any adult male of Chinese descent. See Act No 39, Victoria, 1855. See also Willard (1923, 21) and Cronin (1982).

³¹ See Chinese Immigration Regulation and Restriction Act 1861 (New South Wales). The Act was repealed in 1867 when the gold rushes subsided in New South Wales. See generally Choi (1975, 21–27).

³² See Choi (1975, 21–27) and Douman and Lee (2008, 36ff). A bill passed by the Australian Parliament does not become an Act until the Governor-General formally accepts it. This legislative process is known as Royal Assent.

³³ Willard (1923, 110–13). Note that Royal assent was also denied to the Asiatic Restriction Bill 1861 of New Zealand.

³⁴ By 1982, assisted passages were abolished on cost grounds.

³⁵ GATS/SC/6/Suppl.1 AUSTRALIA–Schedule of Specific Commitments.

³⁶ In contrast, after the 1972 abolition of the White Australia Policy, the position of Minister for Immigration became increasingly unpopular within government. Over 20 years, no fewer than 16 ministers were appointed to this portfolio. See DIBP (2015, 88–89); Hawkins (1988, 108–10).

³⁷ The expression "economic rationalism" was first coined by sociologist Michael Pusey in 1991 (Jupp 2002).

³⁸ Namely, the Short-term Skilled Occupation List, the Medium- and Long-term Strategic Skills List, and the Regional Occupation List.

³⁹ Migration (LIN 20/229: COVID-19 Pandemic Event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020.

⁴⁰ Harcher and Knott (2022). See also, Department of Home Affairs, "A Migration System for Australia's Future," [A Migration System for Australia's Future \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/australias-future)

⁴¹ Universities Australia (2020). Other modelling has suggested that the loss could be even greater and could reach up to \$A19 billion by 2023. See also Hurley and Van Dyke (2020).

⁴² See the criteria for the Graduate Work Stream, Migration Regulations, Sch 2, subclass 485.22.

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- ⁴³ The Hon Scott Morrison MP, “Hong Kong” (9 July 2020) Prime Minister of Australia—Media Statement, pm.gov.au/medi/hong-kong.
- ⁴⁴ The Cambodians would eventually spend some four years in detention before arrangements were made to first return them to Cambodia for a period of 12 months, after which they were all sponsored for re-entry into Australia. Within the context of Southeast Asian politics, it should be acknowledged that the situation in Cambodia was extremely complex. The asylum-seekers arriving in Australia were among many who had fled the country to seek protection in the region. See Crock and Berg (2011, chapter 16).
- ⁴⁵ For a discussion of the role that the IOM has played in the resolution of the *Tampa* Affair, see Human Rights Watch (2002, 51–52, 71–73).
- ⁴⁶ ABC News. 2004. “Last Detainee Leaves Manus Island,” May 30, 2004. <http://www.abc.net.au/news/stories/2004/05/30/1119172.htm>.
- ⁴⁷ Evans, Smith, and O’Connor (2010). The halt in processing was for three months for the Sri Lankans and six months for the Afghans. It was asserted that changing country conditions would reduce the numbers seeking protection as refugees. This did not happen.
- ⁴⁸ See, generally, Kaldor Centre (2019).
- ⁴⁹ [Nearly 20,000 refugees to get same rights as other permanent residents after being kept ‘in limbo’ | Australian immigration and asylum | The Guardian, 2023.](#)
- ⁵⁰ ABC News 7. 2023. [Behrouz Boochani calls for asylum seeker royal commission from inside Parliament House - ABC News](#), February 2, 2023.
- ⁵¹ *Al-Kateb v Godwin*; *Al Khafaji*; *Behrooz v Secretary, DIMIA*; and *Re Woolley*; *Ex parte Applicants M276/2003*.
- ⁵² *Re Woolley*; *Ex parte Applicants M276/2003* (2004).
- ⁵³ See *Al-Kateb v Godwin*; and *Al Khafaji*.
- ⁵⁴ *Behrooz v Secretary, DIMIA*.
- ⁵⁵ Australian Government, Department of Home Affairs, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detentionstatistics-31-december-2021.pdf>.
- ⁵⁶ See, for example, the report by the Global Detention Project (2022).
- ⁵⁷ UNWGAD (United Nations Working Group on Arbitrary Detention). “Opinions Adopted by the Working Group on Arbitrary Detention.” <https://www.ohchr.org/EN/Issues/Detention/Pages/OpinionsadoptedbytheWGAD.aspx>.

Appendix A. Major legislation and court cases concerning migration

Legislation

Chinese Immigration Regulation and Restriction Act 1861 (NSW)
Convention Relating to the Status of Refugees, adopted 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954)
Protocol Relating to the Status of Refugees, adopted 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967)
(referred to collectively as the Refugee Convention).
Marriage Act 1961(Austl)
Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Austl), ss 2A(a), 70(2)
Migration Act 1958 (Austl)
Migration Regulations 2004 (Austl)
Migration (LIN 20/229: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) (Instrument 2020) (Austl)
PAM 3 Procedural Advice Manual Non-recognition 12 Polygamous Marriages

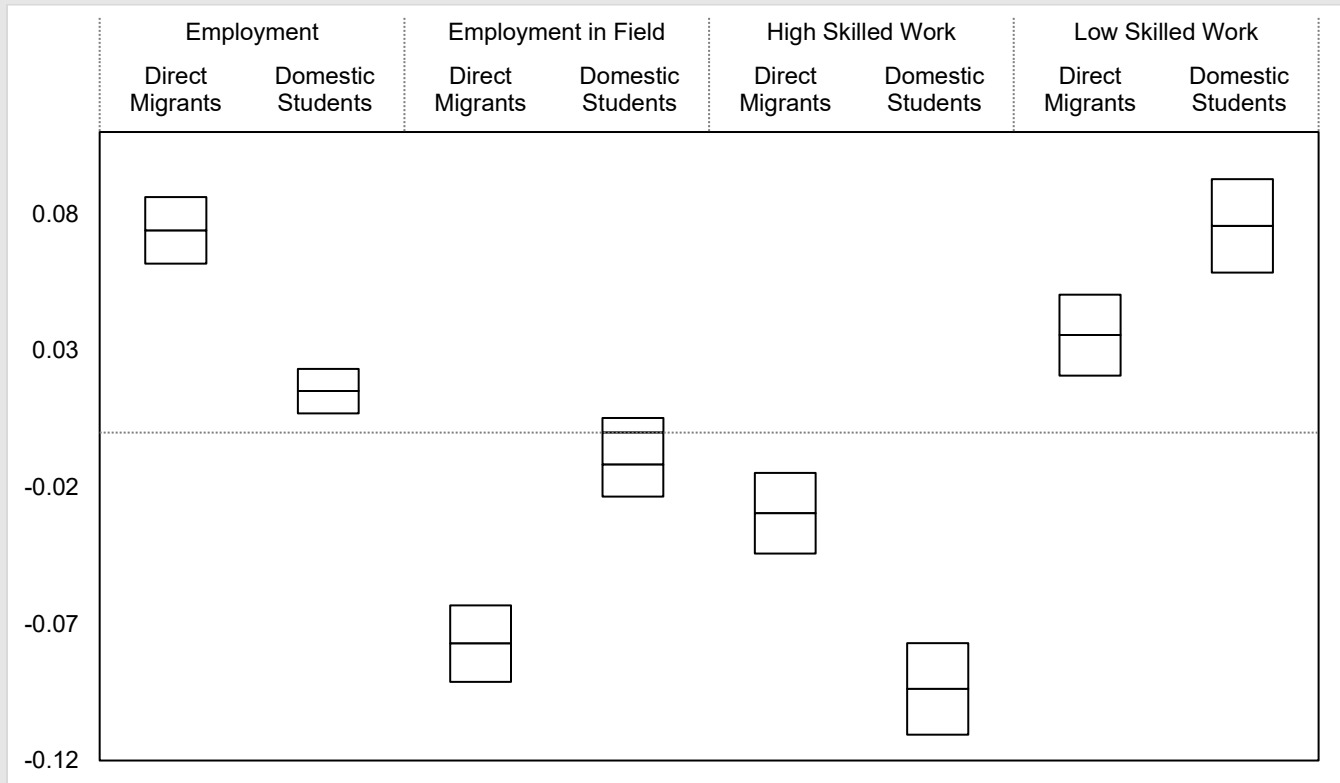
Cases

A v Australia Communication No 560/1993, UN Doc CCPR/C/59/D/560/1993 (30 April 1997)
Al-Kateb v Godwin (2004) 219 CLR 562
Al Khafaji v Minister of Immigration, Multicultural and Indigenous Affairs (2004) 219 CLR 664
Behrooz v Secretary, Department of Immigration, Multicultural and Indigenous Affairs (2004) 219 CLR 486
Chu Kheng Lim v Minister for Immigration and Ethnic Affairs (1992) 172 CLR I
Commonwealth v AJL20 (2021) 95 ALJR 567
Ghalzai and Minister for Home Affairs (Citizenship) [2019] AATA 74
Love v Commonwealth; Thoms v Commonwealth (2020) 270 CLR 152
O’Keefe v Caldwell (1949) 77 CLR 261
Plaintiff M61/2010E v Commonwealth of Australia (2010) 243 CLR 319; [2010] HCA 41
Plaintiff M70/2011 and Plaintiff M106/2011 v Minister for Immigration and Citizenship (2011) 244 CLR 144
Plaintiff M1/2021 v Minister for Home Affairs [2022] HCA 17
Re Patterson: Ex parte Taylor (2001) 207 CLR 391
R v. Macfarlane; Ex parte O’Flanagan and O’Kelly (1923) 32 CLR 518
Re Ismail [1995] IRTA 6272
Re Woolley; Ex parte Applicants M276/2003 (2004) 225 CLR 1

Appendix B. Supplementary analysis for box 6

This box continues and extends the analysis presented in box 6. Moving beyond income, figure B.1 provides the point estimates of alternative outcome measures. Former overseas students, controlling for observable characteristics, are less likely to be employed in high-skilled work and within their field of study and higher and more likely to be employed on aggregate as well as employed in low-skilled work. The large and significant point estimate for low-skilled work relative to domestic students suggests that former overseas students plugged vacancies in the labor market that domestically educated students did not fill, a result both consistent with negative selection and a plausible complimentary finding to Gregory (2015).

Figure B.1 Alternative outcomes of MODL students versus direct migrants and domestic students

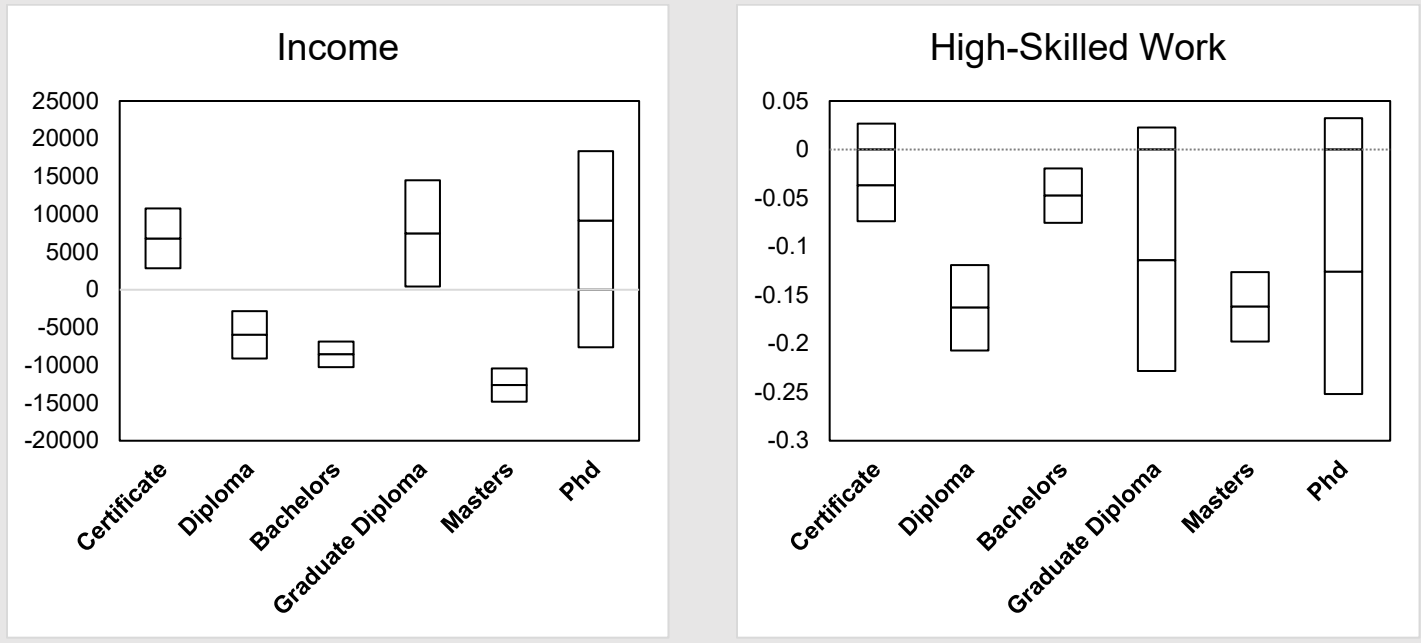


Source: Maltman 2019.

Note: MODL = Migration Occupations in Demand List.

Figure B.2 compares income and high-skilled work outcomes between overseas students and direct migrants disaggregated by education. These results are clearly driven by those formerly enrolled in diplomas and master's courses, precisely those that offered the greatest incentives for permanent residency—thereby again illustrating the undergirding mechanisms at play.

Figure B.2 Labor market outcomes between overseas students and direct migrants disaggregated by education



Source: Maltman 2019.

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