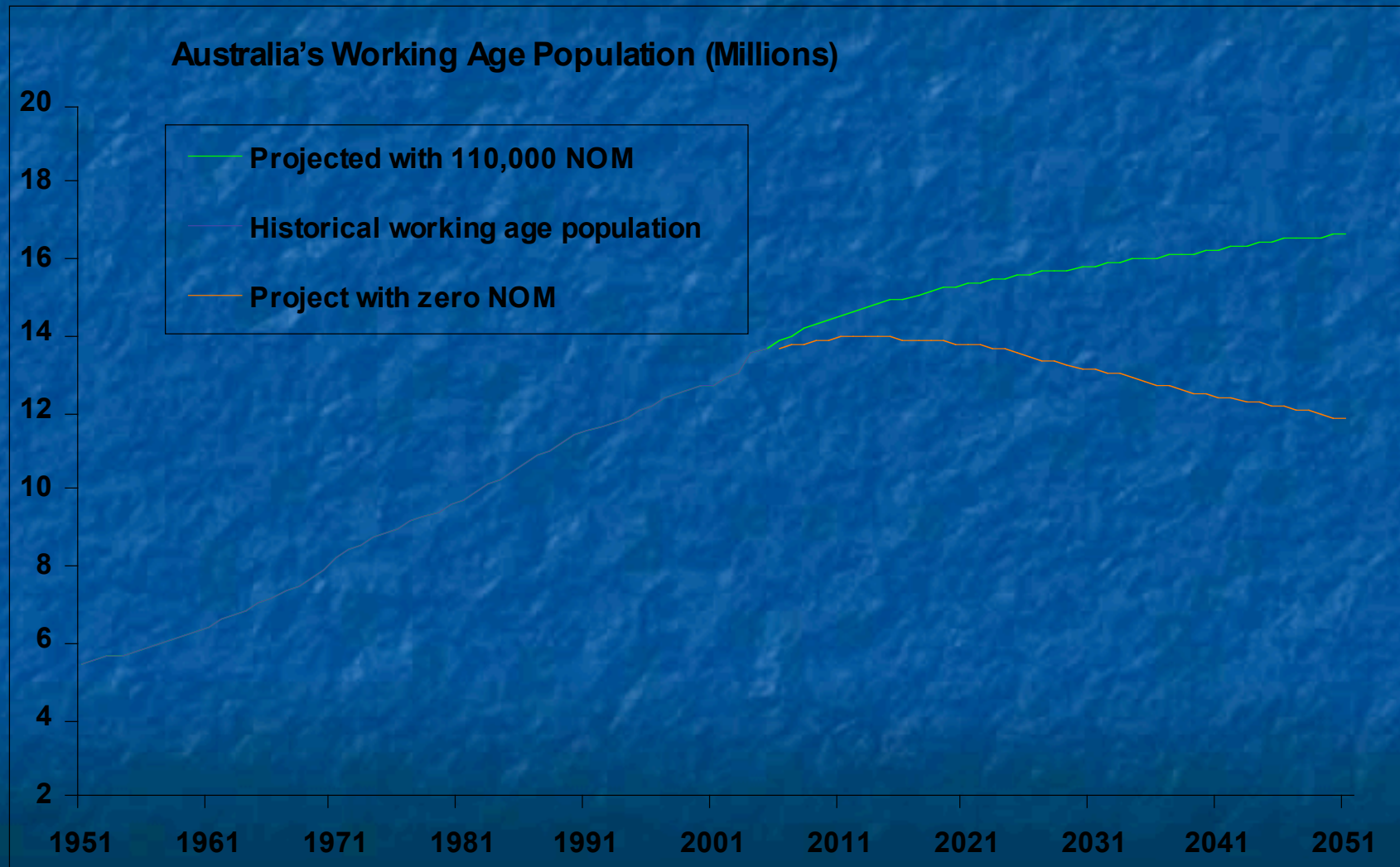




# Potential downsides of Employer Sponsored Migration – Exploitation and Racism

Presented by  
Graham Hornel AFAIM, MMIA

# Aging Australia

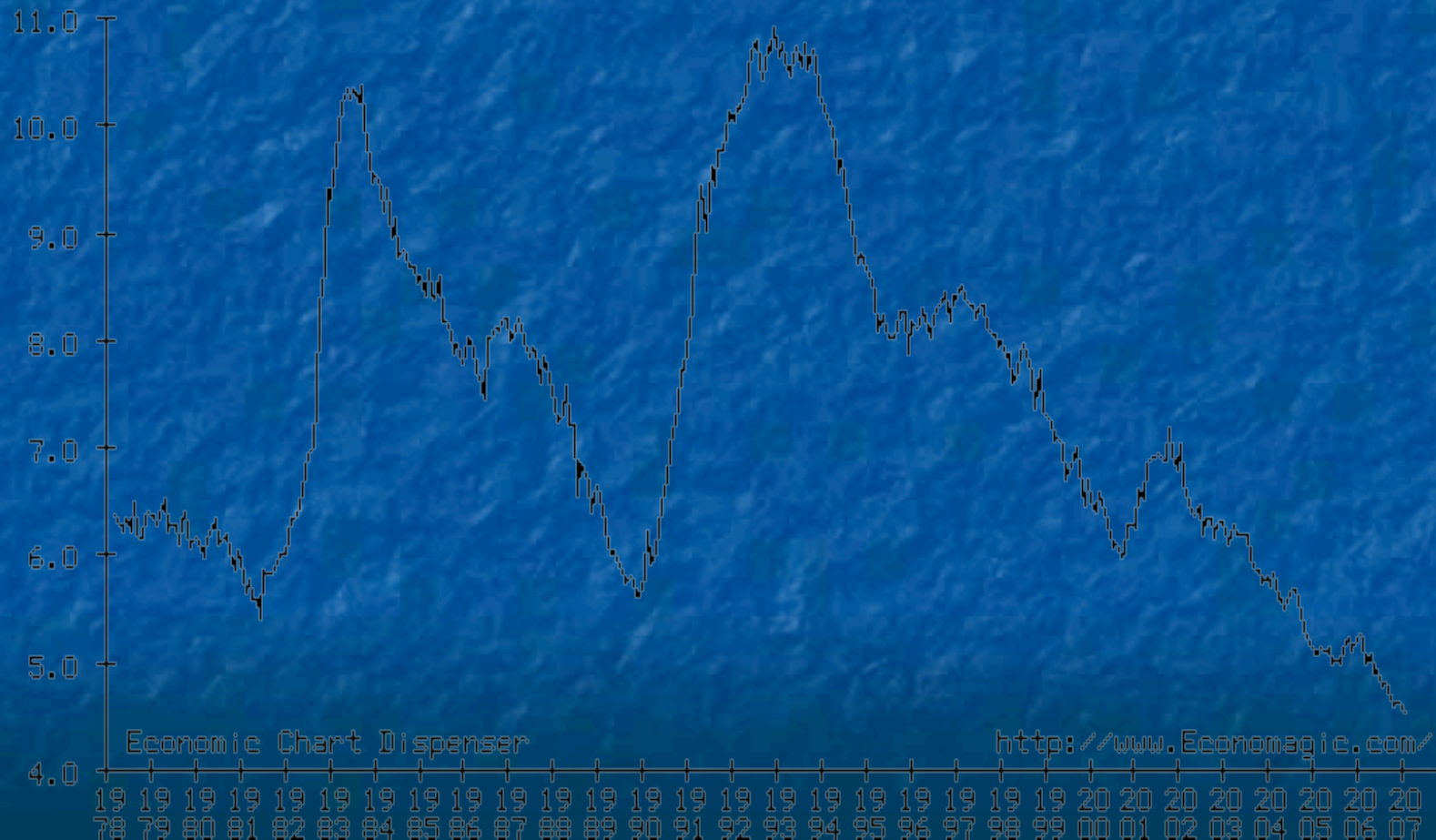


# Emigration from Australia Permanent Departures

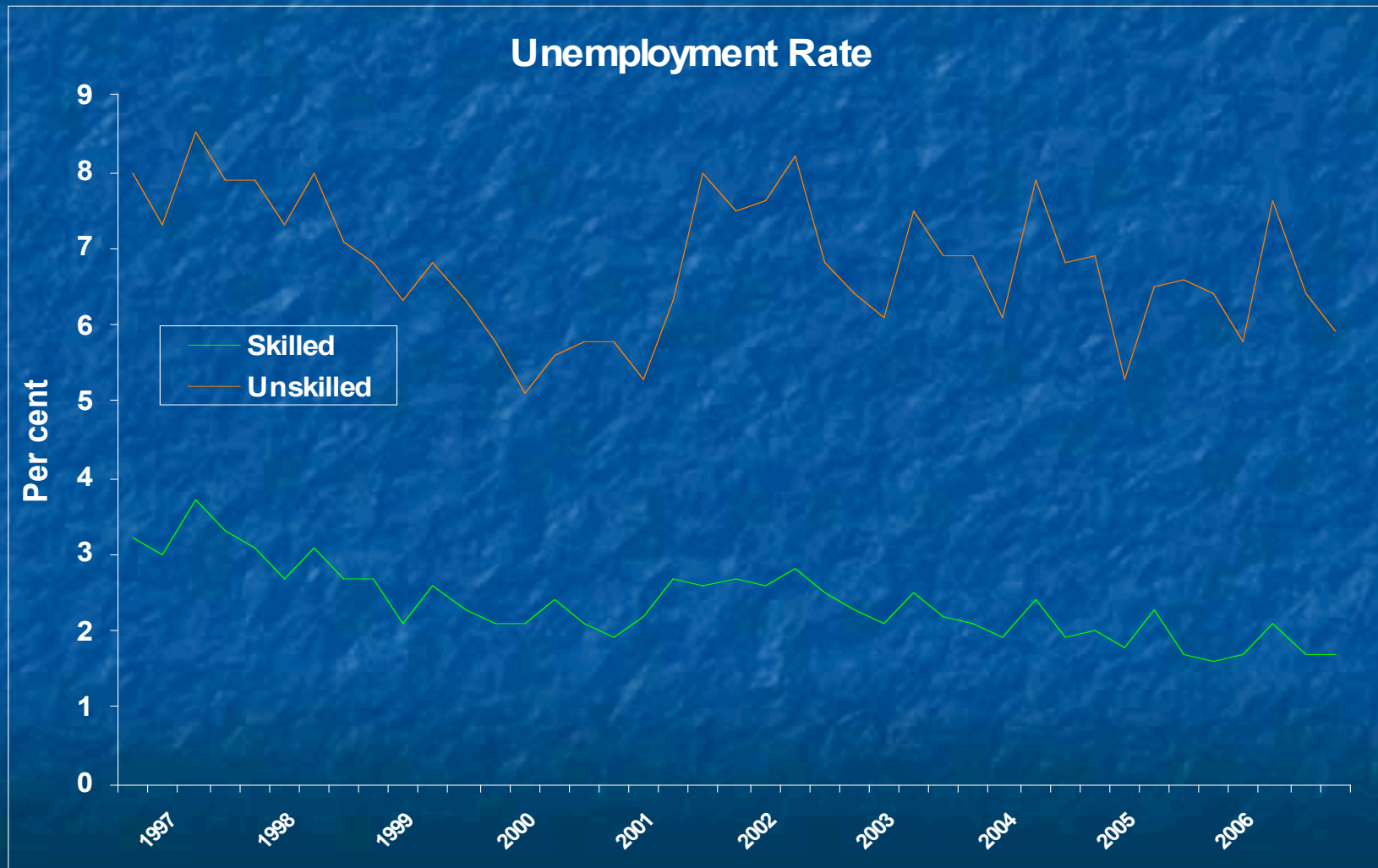


# Unemployment Rates from 1978 -2007

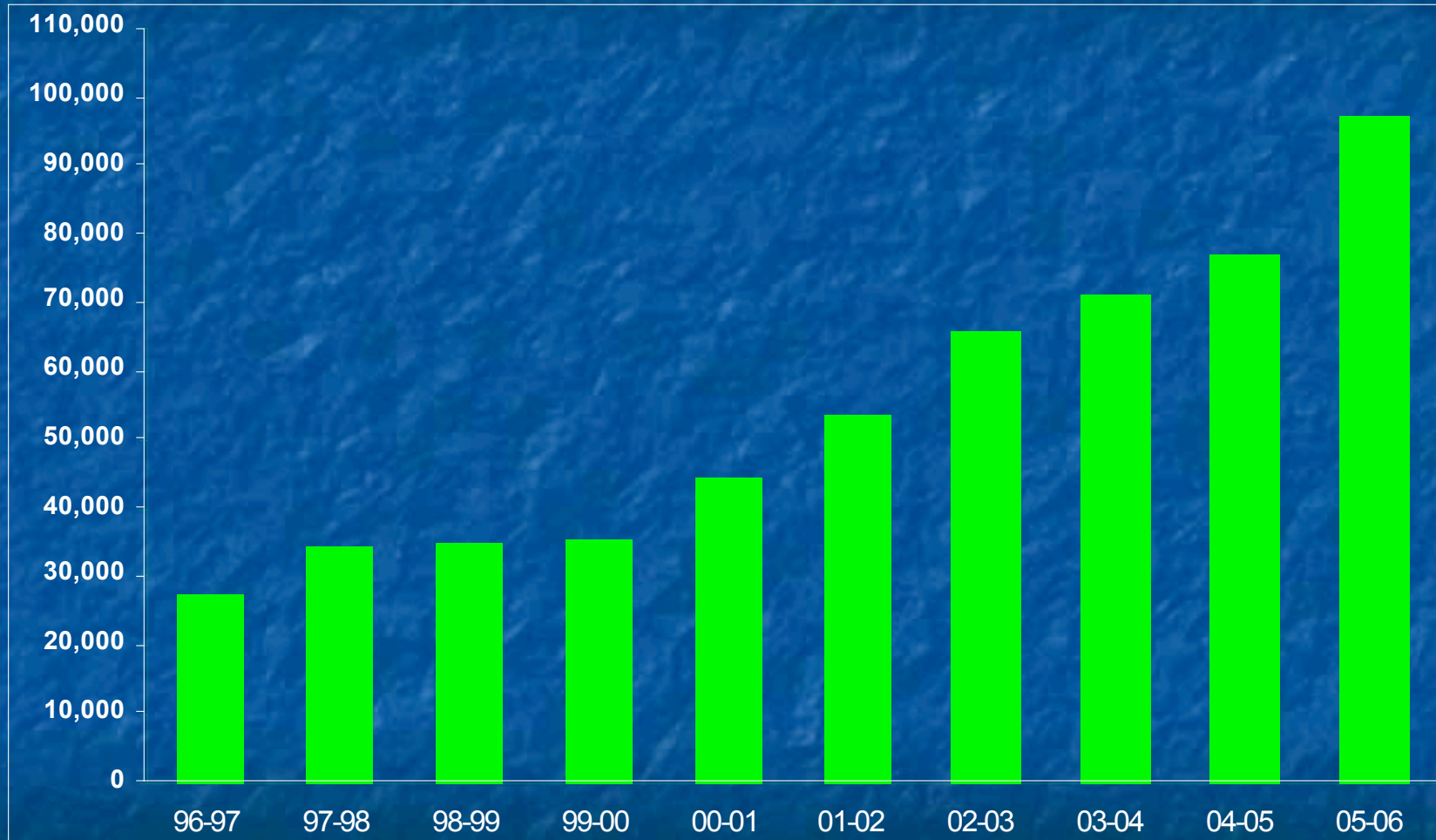
Unemployment Rate (percent): Australia



# Polarised Nature of Australian Unemployment Rates



# Increasing Skilled Migration



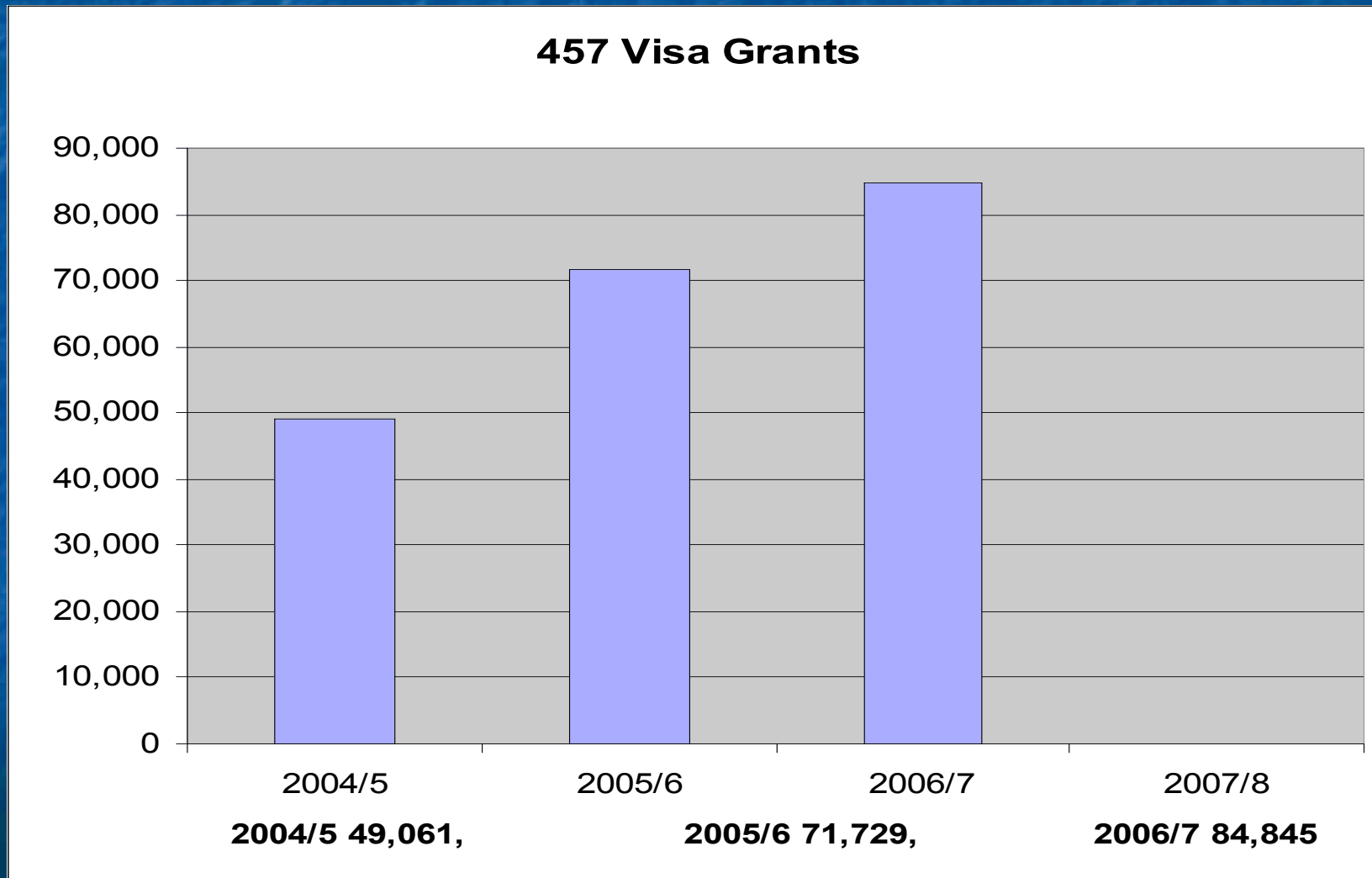
# Permanent Entry – Employer Sponsored

- Employer sponsored visas
  - Employer Nomination Scheme
  - Regional Sponsored Migration Scheme
  - Labour Agreements
- Employers can recruit skilled workers from overseas, or from people temporarily in Australia

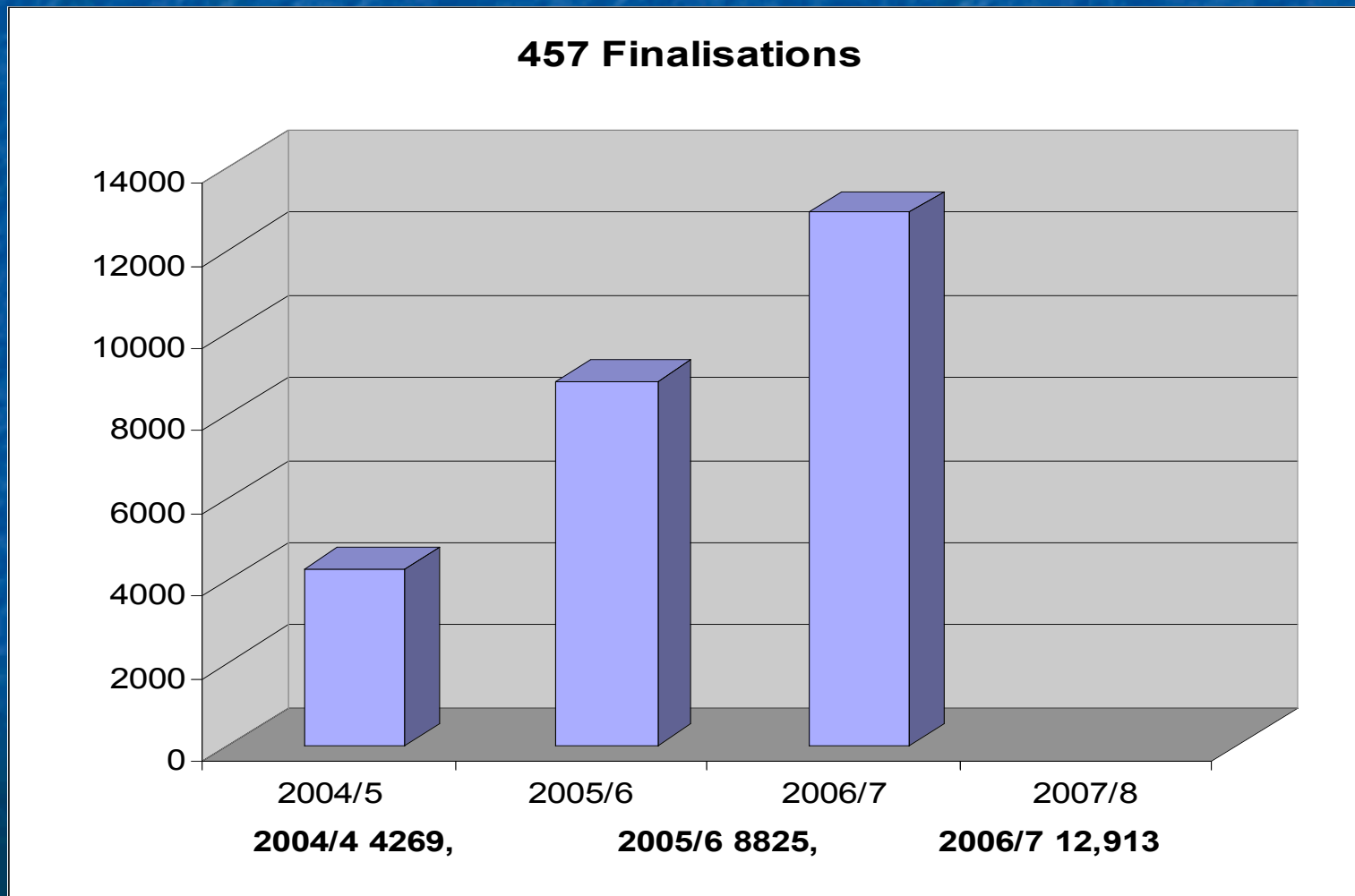
# Temporary Entry - 457

- Temporary Business (Long Stay) visa
  - Subclass 457
- For employers who wish to employ a skilled worker from overseas on a **temporary** basis
- Pathway to permanent migration

# 457 Employer sponsored visa



# 457 Employer sponsored visas approved



# Monitoring

- New Monitoring and Sanction Powers
- Sanctions, bars, cancellations
- Civil Penalties
- Tougher penalties
- Enforced compliance
- Unannounced audits
- Must ensure compliance with obligations

# Exploitation

- Non payment of overtime and entitlements
- OH&S issues
- Increased rents
- Multiple tenancy dwellings
- Transport charges
- Excessive deduction of cost, fees and charges

# Monitoring, Investigations

- 14,780 sponsors in Australia, WA 2081
- 6858 monitored, WA 1005
- 1680 site visited , WA 324
- 95 sanctioned, 93 warned,. WA 22/18
- Over 200 breaches confirmed
- 500 new investigations commenced
- A significant increase in the number of employers sanctioned.

# Increased Undertakings

- Both employer and employees required to meet increased obligations
- Employers required to meet welfare costs of employee family
- Employer to meet cost of location and relocation
- Employees required to meet contractual obligations

# Obligations - Employer

- **Comply with laws relating to workplace relations and any workplace agreement.**
- **Ensure the 457 visa holder is employed in the skilled approved position.**
- **Not make any deductions that reduce salary below the Minimum Salary Level**
- **A direct employer of the visa holder (no subcontracting)**
- **Maintain Full Time employment**

# Notification requirements

- Required to notify DIAC if cannot fulfil any of the sponsor's undertakings
- The visa holder cannot perform their job
- **Immigration may request you to provide evidence of:**
  - Salary - payslips
  - Tax deductions
  - Superannuation
  - Time and wage records
  - Training of Australian Staff
  - Visa holders may also be contacted for information

# DIAC ACTION

- Notified or discovered breaches will be dealt with under the full extent of legislation.
- DIAC issued the visa – Only DIAC has the authority to cancel it.

## **POTENTIAL DOWNSIDES OF EMPLOYER SPONSORED MIGRATION - EXPLOITATION AND RACISM**

**Graham C. Hornel  
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### **A: Introduction:**

**More than 140,000 women and men whose experience and qualifications classify them as Skilled will be granted Migration Visas**

**during the 12 months ending 30 June, 2008 – such is the ongoing shortage of skilled professionals, associate professional and tradespeople across Australia.**

**Skilled migrants have filled about one third of the 460,000 jobs created in Australia over the past two years.**

**Of those granted Skilled Visas, over 85,000 will come to work in Australia on Temporary Visas under a Skilled Migration Programme known as the Employer Sponsored Visa Programme.**

**Without any doubt, Australia's ongoing economic growth – particularly in the Mining and Refining and Primary Industries sectors - could not be sustained if the serious shortage of skilled people available within this country was not countered by the recruitment of Overseas Workers and their migration to Australia.**

**The Temporary Work Visa – officially known as the subclass 457 Employer Sponsored Visa – is one that has attracted considerable community, media and political attention in recent years.**

**Most unfortunately, much of that attention has been for negative reasons as too many instances of exploitation and mistreatment of these temporary visa holders and even some of racism in the workplace have been reported in both the print and broadcast media.**

**Hornel .....2**

**As a Registered Migration Agent whose company specialises in Employer Sponsored Migration I find myself – occasionally uncomfortably – as the Man in The Middle; for my role is very much one of providing the link between both the Employer Sponsor and its Overseas Worker (known as a Sponsored Nominee) on one hand and on their behalf, with the Department of Immigration and Citizenship (known as DIAC) on the other.**

**In context of the theme of this visionary Conference, however, this Man in The Middle role has given me an invaluable insight into a more realistic overview of all sides of this issue – one that I chose to brand as The Dark Side of Australia’s Skills Shortage.**

**Supported by a few Power Point overheads and deliberately without going too deeply into specific Visa and Migration details, I would like to share that overview with you, to share a few Dark Side examples – and mainly to assure and inform you that the times they are indeed a-changing as regards the official attitude and action towards those who would exploit and mistreat Overseas Workers in Australia..**

**B: Explaining The Skills Shortage:**

**As the first four overheads will show, a combination of Australia’s ageing population; the steady increase in people leaving Australia to live and work Overseas; the country’s declining Unemployment rates and the polarised nature of these rates for Skilled and Unskilled Workers all have directly generated the necessity for Australia to greatly increase its Skilled Migration.**

**(Show and remark on Slides 2 through 5)**

**As is very evident from this next overhead, the growth in Australia’s skilled migration over the last 10 years has been remarkable – and many relevant factors do suggest that this growth trend will continue.**

**(Show Slide 6)**

**Hornel .....3**

**Earlier, I mentioned that I would deliberately focus on the now-infamous subclass 457 Temporary Visa as this relates to the themes of both this Conference and my Presentation.**

**However, in order to cover a broader picture, I also want to briefly mention the Employer Sponsored Permanent Visa Options as shown in this overhead**

**(Show Slide 7)**

**The next three slides provide some background to that 457 Temporary Visa and also show how growth in both Applications and in Approvals by DIAC's Perth Branch Office in recent years.**

**(Show Slides 8, 9, 10)**

### **C: Combating Worker Exploitation**

**As certainly has been highlighted in other Presentations during this Conference, the insidious practice of exploitation has many forms – and, as evidence has shown, since Australia introduced its far-sighted Employer Sponsored Visa Programme, this Migration area has not escaped the exploitation curse.**

**I will share some recent examples shortly but, before I do, I believe that it is time to introduce evidence – so to speak – in support of my earlier claim that, for a number of reasons, the Immigration Department is devoting considerable resources to combating exploitation of Employer Sponsored Visa holders.**

**This effort which, unlike previously, is being supported by considerable manpower and budget resources and its early success is to the credit of DIAC.**

**Hornel .....4**

**A short summary of DIAC's main Monitoring activities are shown in this overhead....**

**(Show Slide 11 and expand on certain items)**

**Similarly, specific examples of how Employer Sponsors and others can exploit Overseas Workers are.....**

**(Show Slide 12 and expand on some items)**

**Some recent examples of serious Exploitation that were covered by the media include the shocking case of a 24 year old Cook from Southern India who was made to work seven days a week, 14 hours a day in Western Sydney Curry Houses without proper pay and with his entire first year's salary being held to repay \$14,000 that his Employer Sponsor supposedly had paid in travel expenses to bring him to Australia.**

**Whilst the Employer Sponsor also of Indian origin escaped punishment since a Jury was unable to reach agreement on the reckless exploitation charge, he was sentenced to four months imprisonment – a sentence that was replaced by a \$5,000 Good Behaviour Bond. Very lenient!**

**Either way, the nationwide publicity would have sent a deserved rocket through the ranks of a sector of the hospitality industry that has long had the deserved reputation of condoning worker exploitation. A recent similar case in Mandurah is, I understand, still under DIAC investigation.**

**In March this year, a Stone Mason from Philippines died after being crushed in a workplace accident in Wangara, in Perth's North Eastern suburbs. This incident generated claims that, since his Employer Sponsored Visa was approved for him to work as a Stone Mason and he had apparently been forced to work as a Labourer, which he was doing the day he was killed, that he too was being exploited.**

**Again, DIAC and Worksafe investigated this sad incident – the “different work” aspect of which is not in fact unusual, unfortunately.**

**Hornel .....5**

**Perhaps the following comments I received in confidence from a Senior Officer at DIAC may add a relevant and useful perspective:**

**“ We have often found that if an Employer is exploiting a Temporary Visa Holder, then they have pretty much the same attitude to their Australian workers.**

**In many cases, the Employer Sponsor is of the same ethnic origin as the Nominee they are guilty of exploiting.**

**Too often, a combination of a lack of administrative skill and knowledge, ignorance, disrespect of the law and often, just plain greed are common factors in Employer Sponsor Exploitation.**

**Perhaps the most encouraging aspect in the increased Monitoring effort is that, very often, instances of exploitation and rare cases of racism in the workplace are in fact brought to DIAC’s attention by Australian Citizens who are concerned for the well-being of their workmates and by other Australians from ethnic groups that are different to that of those being exploited.”**

**Interesting and telling remarks.**

- and if anyone continues to have doubts that DIAC is strongly committed to combating exploitation of Sponsored Employees, this slide shows that, in WA, this new and increased Monitoring effort is already effective.**

**(Show Slide 13)**

Hornel.....6

**D: Placing The Onus on The Employer Sponsor – and on Nominees:**

**In tandem with DIAC's greatly increased Monitoring activities, firm decisions have been made that both Employer Sponsors in the main and their Nominees from Overseas do have obligations and responsibilities in complying with the Sponsorship and Working Visas granted.**

**Since September this year, separate Checklists have been created and released by DIAC. All Employer Sponsors that have Nominees now working in Australia have received a letter from DIAC with their new Sponsorship Undertakings checklist and all Nominees receive theirs when their Employer Sponsored Visas are granted.**

**One item in the FAQs that DIAC prepared for 457 Temporary Visa Holders that is most relevant to this Conference and to my Presentation reads as follows:**

**- I Am Being Treated Unfairly At Work. What can I Do?**

**- In some circumstances, you are protected from discrimination or unfair treatment in your job. If you are experiencing unfair treatment because of your race, religion, nationality, disability, age, sex, criminal record, sexual preference or trade union activity, you can phone the Human Rights and Equal Opportunity Commission (HREOC) toll free on 1300 656 419. An HREOC will discuss your treatment with you and tell you whether you can lodge a complaint.**

**I am amongst many in my profession who would be happier if the opening words – in some circumstances - were to change to in ALL circumstances, you are protected.**

**Conferences like this are making a significant contribution to generating awareness that will lead to all of us being protected in all circumstances from such discrimination and in addition, exploitation.**

**Hornel .....7**

**A summary of the Employer Sponsor Undertakings and increased responsibilities I mentioned is shown on the next two slides:**

**(Show Slides 14 and 15 and expand on specific items)**

**In addition, an increased onus on what DIAC calls Notification has been introduced – and Employer Sponsors now may be required to produce a number of employment records and similar items, should DIAC require to scrutinise these.**

**DIAC's ability and willingness to contact a Visa Holder direct adds a significant dimension to the Department's determination to curb Exploitation.**

**( Show Slide 16)**

**Before I summarise and conclude and in context of the last five or six slides, I believe that this final slide presents two particularly relevant aspects of where things now stand on what I have called the Dark Side of Meeting Australia's Skills Shortage:**

**(Show and expand on Slide 17**

**E: Summary and Conclusion:**

**In fairness to the title I chose for this Presentation, I should not conclude without at least some reference to Racism - the other downside of what, by and large, has been a very successful and timely migration programme.**

**Anticipating at least one 457 Visa-related question on a current much-publicised example, let me be the first to raise the generally unspoken aspect of racism in relation to the Minister's cancellation of the Employer Sponsored 457 Visa granted to Doctor Mohammed Haneef.**

**Was racism a factor in this still-disputed decision?**

**Hornel .....8**

**Would, say, Doctor Jock Campbell from Glasgow have been treated the same way by the AFP, DIAC and the Minister?**

**Truthfully, I do not know – and even if a Parliamentary Enquiry or a Royal Commission ever eventuates – this may never properly be known.**

**What I do know is that many, many Australians were disgusted by what transpired – and I also know that, understandably, the number of Foreign Doctors, particularly those who are not Caucasian, seeking**

**Employer Sponsorship to work in Australia has declined sharply in recent months at the very time that this country badly needs trained Doctors.**

**I also know that the entire fiasco did very little for Australia's generally good reputation as a tolerant, multicultural society of equal opportunity.**

**That same statement most certainly applies to the very strange decision to arbitrarily cease grant of Humanitarian Visas to Sudanese and to other refugees in often desperate circumstances from other Sub Saharan African countries.**

**Again, was Racism a key factor in this decision?**

**That also remains to be proven – but misplaced arrogance, incompetence, apparent cover ups and the tag of Racism deservedly dog these two recent Commonwealth Government stuff ups.**

**In conclusion, a few skilled migration facts and forecasts that are, I suggest, worth consideration:**

- Whilst Skilled Migrants have filled one third of those 460,000 jobs created over the past two years, another third has been created for Australians by them – to keep our Skilled migrants fed, shod, housed, entertained and their children educated and trained.**
- On average, the addition of a migrant to the Australian workforce creates one additional Australian job.**

**Hornel .....9**

- **Management and Professional Staff make up 70 percent of the skilled migrant intake**
- **ANU Professor, Glenn Withers, confidently states that migration rivals the resources boom in its contribution to the Australian Economy**

**This week here in WA, the Chamber of Commerce and Industry issued an urgent call to Canberra to both provide for the skilled migration of a further 400,000 Overseas Workers to fill future job vacancies in Western Australia – without who, the WACCI claims, the mining and resources boom in WA can not continue.**

**When I first migrated to WA at the end of 1970, the population of the Perth Metro Area was not much larger than the 400,000 new skilled migrants that this State apparently now needs.**

**Changed days indeed!**

**In Conclusion:**

**Ladies and Gentlemen, Skilled Migration – Australia’s Future – and moreso, since the Downsides are being effectively addressed and the key players appropriately take on more responsibility.**

**Again, thank you for coming out on a warm Saturday Afternoon to listen and watch – and I wish all of you good health and a safe journey home.**