

Dissenting report of Government Committee Members

1.1 Government members of the committee are of the view that Australia has a robust and flexible skilled visa regime that delivers benefits to the Australian economy as well as conferring proper protection on the jobs of Australian workers and of skilled migrant workers. This regime is responsive to changes in labour market shortages, encompasses emerging technologies and the creation of new skilled roles, and maintains a contemporary, consultative and up-to-date approach to skills assessments.

1.2 This inquiry has been another example of the Senate Committee system being used by the Labor Party to conduct political and policy research at the taxpayers' expense in the guise of a parliamentary inquiry. In essence the inquiry appeared intended to give some of the union movement an opportunity to reinforce its demands on the federal opposition.

1.3 The inquiry report is scheduled for tabling in the Senate on Tuesday April 2nd. The Chair's report of over 100 pages was provided to Committee members at 11pm on Saturday March 30th. This meant that the work of compiling a response to the Chair's report could not properly commence until Monday April 1, 24 hours prior to the tabling of the report. The usual practice of the committee is to allow more time than this for members to consider the content of a draft report.

1.4 The Chair's report presents a view that we should be suspicious of workers and professionals who enter Australia on skilled visas. Government members of the Committee are deeply saddened by this insular and parochial position. Government Senators take an alternate view which is that the holders of skilled visas can bring great energy, diversity and opportunity to the Australian labour market. By bringing skilled professionals and workers from overseas to fill gaps in the labour market here, we are ensuring continuity in industry, helping regional areas not to stagnate economically due to skills shortages, and creating opportunities for Australian workers to engage with methodologies that might otherwise remain unfamiliar.

1.5 Committee members also acknowledge the social and cultural value that skilled migrants can bring to regional communities – a fact that is implicit in the current Government's approach to skilled migration, regional migration and decentralisation. Evidence to one of the inquiry's public hearings supported the view that the greatest benefit is conferred on regional communities where migrant workers become embedded in the local community:

The 400 visa—the one that's only for about six months—is good, but I guess we want to see the people here for four years, because they're the ones actually living in our community. They're going to be renting here, spending their wages here, buying cars here and buying furniture here in our local community, and they're

engaged in our local community. And that's what we would prefer, rather than people flying in and out for work.¹

1.6 The Chair's report repeatedly refers to 'stakeholders' who have provided evidence to the inquiry; however, Government Senators are convinced, having reviewed the Chair's report, that these 'stakeholders' are in fact the ACTU, the AWU and the CFMEU. These unions are *not* stakeholders in the skilled visa framework. On the contrary, they are agitators for the deconstruction of the framework and would gladly deny Australian industries – the same industries that employ so many Australians – the benefits of the skilled visa framework. This again would appear to support the alarming conclusion that Labor Senators are using taxpayer-funded Senate committees to conduct research and study into policy areas on behalf of the Labor Party.

1.7 The Chair's report states at paragraph 3.78 that:

The committee is concerned by evidence received during the inquiry that various occupations included in the skilled migration occupation lists do not, in fact, appear to be suffering from a shortage of appropriately skilled Australian citizens and permanent residents.

1.8 Government Senators are greatly concerned that the Chair's report characterises anecdote and opinion as 'evidence'. This practice, and the politically opportunistic nature of the Chair's report, would again point to the politicisation of this issue. A single idea, proffered without authority or support by an official of the ACTU, ought not be cast as empirical evidence that is beyond dispute. This is clearly deceptive and wrong.

1.9 At paragraph 3.79 the Chair's report states:

Given that the stated purpose of the TSS visa is to fill critical skills shortages and ensure that Australian workers are given the first priority for jobs, the primary basis for occupations being included on the occupation lists must be empirical evidence demonstrating a genuine labour market shortage that cannot be resolved through increasing wages or training Australian workers.

1.10 Once again the Chair and the Labor Party appear to have missed the point. The primary basis for occupations being included in the occupation lists is not that a labour shortage in that area *cannot* be resolved by increasing wages or additional training, but that such a shortage *has not* been resolved by increasing wages or additional training. Excluding an occupation from the scheme because a shortage of workers in that occupation *could* be resolved by increased wages or additional training would have a limiting impact on the relevant sector by reducing the available workforce and/or reducing the number of positions available by artificially inflating applicable wages.

¹ ROURKE, Ms Adrienne, General Manager, Resource Industry Network, Committee Hansard, 5 March 2019, p. 2.

1.11 Additionally, while the Chair's report mentions "training" repeatedly, it fails to mention 'incentive to relocate' as a factor that could alleviate skills shortages in certain regional locations. Government members of the committee acknowledge that very often the required skills can be found in Australia, the problem is that the people who possess these skills cannot always be persuaded to re-locate to regional Australia.

1.12 The Chair's report goes on to reveal its bias at paragraph 3.80 which states:

..decisions made on the composition of the lists should reassure all relevant stakeholders that their input and concerns have been taken into account. This includes both the union sector, which is often best placed to provide on-the-ground evidence on whether a reported skills shortage is genuine or not, and industry, which will suffer adversely if it is unable to fill critical vacancies.

1.13 The suggestion that the union movement, rather than the relevant Commonwealth departments and employers, should be called upon to adjudicate whether a shortage is "genuine" is farcical, especially considering the unions only represent a very small percentage of Australian workers and can hardly be considered representative.

1.14 The Chair's suggestion at paragraph 3.81 that the skilled visa occupation lists are compiled '...subject to ministerial or departmental whims' is offensive, petulant and inaccurate.

1.15 Government Senators also note that the Chair's suggestions of implementing additional oversight to the skilled visa system will likely only serve to have a limiting effect on the system's success. Adding layers of bureaucracy to the operation of the skilled visa will not add value to Australian businesses and industry, it will not add expedience, and it will not improve the experience of skilled visa holders.

1.16 Government Senators are reassured by Australian Bureau of Statistics and Department of Home Affairs data that indicates that on average across all industries and occupations, the number of primary TSS/subclass 457 visa holders in Australia represent less than one per cent of employed persons. The Chair's report itself acknowledges this figure at paragraph 2.13.

1.17 The Chair's report complains that the government has not published any reasons for its decisions on occupation lists, for example stating at paragraph 3.38:

The committee heard significant concerns about the lack of transparency surrounding the final ministerial decision-making process for adding and removing occupations on the lists.

1.18 The Department of Jobs website, however, relevantly provides that *‘In May 2018, the Department released a Traffic Light Bulletin on possible changes to the skilled migration occupation lists, and held a period of public consultation.’*²

1.19 The Chair’s report states at paragraph 6.65 that:

The committee notes the evidence from the ACTU and others that ABNs are misused by unscrupulous employers. While acknowledging current efforts the government has recently made to address this concern, the committee agrees that ABNs should not be available to temporary visa workers, including those on student visas and working holiday visas.

1.20 The Chair’s report goes on to recommend that that the Government implement the recommendation of the Migrant Workers Taskforce. The Chair appears to have overlooked the fact that the Migrant Workers Taskforce was established by the Government in 2016 as part of a suite of programs designed to protect vulnerable workers. The Taskforce report was released on March 2, 2019 and the Government has accepted all 22 recommendations.

1.21 Recommendation 1 of the Chair’s report calls for the Australian Government to *‘continue to monitor the trajectory of visa applications and grants under the Temporary Skills Shortage (Subclass 482) visa over the next six months, with a view to making any necessary adjustments to the overall settings for this visa subclass in 2020.’* The relevant Commonwealth Departments have provided to this Inquiry extensive and credible evidence that speaks to their effective ongoing oversight and deployment of the skilled visa regime. Government members of the committee accept this evidence and believe that the Chair should also.

1.22 Recommendation 2 calls for the Australian Government to *‘increase the Temporary Skilled Migration Income Threshold (TSMIT) to a minimum of at least \$62,000, and mandate that the rate of the TSMIT be indexed annually in line with the average full-time wage.’* Government members support any measure that addresses specific and demonstrable need in the Australian skills landscape and recommend that if a Government-led review of the TSMIT is to be conducted that it specifically consider the challenges faced by regional, remote and non-regional employers.

1.23 Recommendation 3 calls on the Department of Home Affairs to *‘review and update its policies regarding health assessments of temporary visa holders, to ensure that visa applications will not be rejected on health grounds in cases where there is no possibility of health and social services costs accruing to the Commonwealth or state and territory governments.’* Government members reject the premise of this recommendation, the basis of which is the assertion, detailed at paragraph 2.103 of the Chair’s Report, that the Department of Home Affairs:

² <https://www.jobs.gov.au/news/skilled-migration-occupation-lists-review-consultation-may-june-2018>, accessed April 2, 2019.

..may be rejecting temporary skilled visas on the basis that an applicant or a family member with a health condition or disability would cause undue health and social services costs to accrue to the Commonwealth and state or territory governments.

1.24 The Government members of the Committee would welcome any evidence of this phenomenon that the Chair may be able to provide and would reserve the right to reply to that evidence if and when it is provided.

1.25 Government members note that the Temporary Skill Shortage (TSS) visa holders (Subclass 482) may ask for a waiver of the health requirement where family members or the visa applicant have a disability / medical condition assessed as costing more than \$40,000 to the Commonwealth for only the length of the temporary visa only (the cost is assessed up to 4 years per visa for a TSS). The Committee's Chair's Recommendation 3 is not made in light of the full facts and have not have fully considered all the evidence that is available.

1.26 Recommendation 4 calls on the Australian Government to '*publish, in future updates to the skilled migration occupation lists, its reasons for including new occupations, moving occupations between the different lists, or removing occupations altogether that were included in previous iterations of the lists.*' Government members of the Committee are not opposed to the level of transparency being suggested by the Chair's report but would caution against any move towards a system of challenging these decisions. It is obvious that the only individuals who are in any way limited by the program is the union movement who may lose a very few potential members, and also the illusion of having control over certain workplaces.

1.27 Recommendation 5 '*recommends that the Australian Bureau of Statistics prioritise its review of the ANZSCO framework*'. Government members of the committee agree that the Australian Bureau of Statistics should conduct a review of the ANZSCO framework but rejects any call for the ABS to do so outside the scope of the agency's routine funding arrangements. Government members are confident that the ABS will embark on its review in the fullness of time.

1.28 Recommendation 6 recommends '*that the current skills assessment regime for the skilled visa system be strengthened by:*

- *ensuring all testing is performed by an appropriate industry body and not by immigration officials;*
- *guaranteeing that workers who currently require an occupational license must successfully complete a skills and technical assessment undertaken by a Registered Training Organisation approved by Trades Recognition Australia before being granted a visa;*

- *introducing a risk based approach to assess and verify that workers are appropriately skilled for occupations that do not require an occupational licence; and*
- *introducing a minimum sampling rate of visas issued in order to verify that migrant workers are actually performing the work the employer has sponsored them to perform.'*

1.29 Government members of the Committee do not agree with this recommendation and are concerned that placing assessment or oversight of the skilled visa program in the hands of unions or industry bodies could create a conflict of interest. Government members also dismayed to once again see the Labor Chair's report suggesting that holders of skilled visas present risks as opposed to opportunities. It is disturbing that the Chair seems opposed to welcoming workers from around the world who bring with them great opportunities for Australian workers and industry to learn new approaches and new skills.

1.30 Recommendation 7 call on the Australian Government to '*consider the establishment of a new independent tripartite authority to provide advice and recommendations to government on skilled migration issues*'. Government members of the Committee are opposed to Recommendation 7. The creation of an independent authority would create additional layers of unnecessary oversight that would duplicate existing oversight functions, place an unfair burden on the Australian taxpayer, and add bureaucratic and administrative complexity to the skilled visa framework that would have little effect other than to slow down a process that the Chair's report already claims inaccurately is slow and complex.

1.31 Recommendation 8 calls on the Australian Government to '*introduce more stringent evidentiary requirements for labour market testing to ensure that the intent of labour market testing arrangements is achieved and Australian employment opportunities are protected*'. Government members of the committee agree in principle that the accuracy of labour market testing translates directly to the efficacy of the skilled visa framework. Government members however note that this recommendation is vague and does not venture to suggest what might constitute 'more stringent evidentiary requirements'.

1.32 Recommendation 9 recommends '*that the Australian Government resolves not to enter into any future free trade agreements that would involve labour market testing waivers*'. Government members of the committee do not support the application of prescriptive limitations to the negotiation of free trade agreements that may potentially have economy-wide benefits. Government members would, however, add that this recommendation is entirely hypothetical and should be treated as such.

1.33 Recommendation 10 recommends '*that the Australian Government undertake a review of the use and effectiveness of labour agreements under Australia's skilled migration program, and implement any necessary changes to ensure that:*

- *labour agreements are only entered into where there is publicly demonstrated evidence of a genuine skills shortage that cannot be addressed by the Australian workforce;*
- *all relevant stakeholders are genuinely consulted during the process of finalising labour agreements and provided with appropriate feedback in relation to concerns raised; and*
- *the Department of Home Affairs' reasons for entering into a labour agreement (or a renewal of any labour agreement) are made publicly available.'*

1.34 Government members of the Committee do not agree with Recommendation 10 of the Chair's report. Government members support the continued consultation between employers, employees and government to determine skills shortages and take the appropriate action where such shortages are identified.

1.35 Recommendation 11 recommends that the Australian Government '*guarantee adequate, additional funding if the income from SAF levies does not meet the needs of industry and the vocational education sector to provide high-quality training to apprentices and trainees*'. The view of Government members is that the Government has demonstrated its commitment to skills development in Australia, including the allocation of funding to skills-development programs.

1.36 Recommendation 12 calls on the Australian Government to '*commit to increasing overall funding levels for TAFE and vocational education and support a comprehensive and thorough commission of inquiry into Australia's post-secondary education system*.' While Government members agree in principle with the suggestion that the scope of educational and vocational training programs be reviewed and increased from time to time, the effective application of this suggestion would require consultation with, and the cooperation of, state and territory governments. Government members of the Committee would encourage COAG participants to further engage regarding TAFE and vocational education.

1.37 Recommendation 13 calls on the Australian Government to '*consider ways in which to encourage better information sharing between industry, vocational education and training providers and potential students in order to encourage student uptake and local employment in industries experiencing skills shortages*'. Government members of the Committee are of the view that this recommendation (Recommendation 13) duplicates the previous recommendation (Recommendation 12) and Government members' response would also be the same.

1.38 Recommendation 14 recommends '*that the Department of Education and Training be required to present a report to Parliament bi-annually on the progress of the National Partnership Agreement on the Skilling Australians Fund and the extent to which it is achieving the outcome of addressing skills shortages in the Australian labour market*'. Government Committee members are satisfied that there is sufficient transparency across this sector and would note that the cost of duplicating existing

functions would outweigh the benefits of providing a small amount of additional oversight.

1.39 Recommendation 15 calls on the Australian Government to *‘work with the Australian Bureau of Statistics and the National Centre for Vocational Education and Research to investigate and establish a research instrument to enable analysis of employer investment in the development and training of their workforces’*. Government members recognise that businesses increasingly seek less red tape and the Commonwealth needs to be mindful of any extra imposition on business. Government members have concerns about the likelihood of collecting a viable data sample without unduly imposing on the time, operating costs or privacy of businesses.

1.40 Recommendation 16 recommends *‘that the Australian Government implement all recommendations from the Report of the Migrant Workers’ Taskforce as soon as practicable’*. The Migrant Workers Taskforce was established by the Government in 2016 as part of a suite of programs designed to protect vulnerable workers. The Taskforce report was released on March 2, 2019 and the Government has accepted all 22 of the Taskforce’s recommendations.

1.41 Recommendation 17 recommends *‘that the Australian Government increase funding for Taskforce Cadena—or a similar taskforce—to ensure that the Taskforce is adequately resourced’*. The Chair’s report acknowledges at paragraph 6.67 that taskforce Cadena has made ‘an important contribution to reducing exploitation of workers’ and then goes on to speculate wildly about the efficacy and funding of the Taskforce. The Government has accepted the Migrant Workers Taskforce recommendation that a review be conducted of Taskforce Cadena within twelve months. Government members are confident that, as with all aspects of national security and border management, the Government and the Department of Home Affairs are consistently providing all necessary resourcing to Taskforce Cadena.

1.42 Recommendation 18 recommends *‘that the Australian Government require that employers pay wages for temporary visa holders into an Australian bank account’*.

1.43 Recommendation 19 recommends *‘that the Australian Government propose amendments to the relevant law to make it unlawful for temporary visa workers, including persons on student visas and working holiday visas, to apply for or to hold, an Australian Business Number (ABN)’*.

1.44 Recommendation 20 recommends *‘that the Australian Government consider amending the Fair Work Act 2009 and the Migration Act 1958 to grant unions standing, where appropriate, to commence civil actions for breaches of those Acts in relation to visa work conditions’*. Government members do not agree with this recommendation. Unions do not have standing to initiate action regarding visa work conditions because unions are not representative of the Australian workforce generally, nor of the specific occupations relevant to the skilled visa program.

1.45 Recommendation 21 recommends *‘that the Australian Government ensure that unions have standing to complain to the Fair Work Ombudsman or the Department of Home Affairs about concerns relating to the exploitation of temporary visa workers, even if that worker is not a union member’*. Government members of the Committee disagree with this recommendation. Granting standing to unions to initiate court action where they have no specific interest and do not have any relationship with the worker in question is simply absurd.

Recommendations of Government Members of the Committee

Recommendation 1

1.46 The Government members of the committee recommend that the Skilling Australians Fund be operated in regional locations in a manner that takes into account and is responsive to specific local needs.

Recommendation 2

1.47 The Government members of the committee recommend that the relevant Departments take mechanical, technological and social advancements into consideration and consider updating occupation lists to include new occupations (such as Drone Pilot) and evolving work environments and circumstances.

Recommendation 3

1.48 The Government members of the committee recommend that Government continues to support regional growth by incentivising skilled Australian workers to fill identified skilled shortages in regional Australia.

Recommendation 4

1.49 The Government members of the committee recommend that regional skilled visas, and employers who are deemed ‘low-risk’, are prioritised in the application processing.

Recommendation 5

1.50 The Government members of the committee recommend that a Government-led review of the TSMIT be conducted and that it specifically consider the challenges faced by regional and remote employers.

**Senator the Hon Ian Macdonald
Deputy Chair**

