



Electrical Trades Union

**Submission to Senate Standing Committee  
on Legal and Constitutional Affairs Inquiry  
into the effectiveness of the current  
temporary skilled visa system in targeting  
genuine skills shortages**

**December 2018**

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## **1 PRELIMINARY SUMMARY**

1. The ETU is opposed to the way in which the Government is overseeing Australia's visa system, particularly in relation to visa's with work rights attached to them.
2. Visa workers are being exploited in overwhelming numbers.
3. Too many Australian workers are missing out.
4. Too many employers are manipulating the system.
5. The ETU calls for significant reforms to Australia's visa system which adequately address:
  - a. the establishment of enforceable conditions on Australian businesses to invest in Australian workers skills and training;
  - b. requirements to consult with workers, unions and the local community about the utilisation of temporary skills visa's;
  - c. upholding occupational licencing and mandatory skills testing regimes;
  - d. the introduction of more appropriate financial thresholds for determining wages and market salaries;
  - e. establishing appropriate support, education and advocacy mechanisms for migrant workers; and
  - f. transparency with the Australian people on all operational aspects of visa categories, reviews, labour market agreements, market salary setting and location, number and types of visa's in operation.

## **2 INTRODUCTION**

The Electrical Trades Union of Australia (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents over 62,000 electrical industry workers around the country and the CEPU as a whole, represents over 101,000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs - Inquiry into the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages.

For more than 5 years in in Australia the public discourse about the need for strong borders and being tough of immigration has dominated political discourse. Despite this hyperbole, Government has overseen the weakening of Australian sovereignty, affording business carte blanche access to literally hundreds of thousands of migrant workers whilst in most circumstances doing nothing to address the skills shortages that underpins their arguments for needing to access temporary migrant workers.

Such is the deficiency of Australia's visa system and the lack of regulatory oversight and enforcement, exploitation of migrant workers is now a business model employer's freely using to apply downward pressure on Australian wages and conditions while bolstering their profits.

Australia's temporary skills visa system is at crisis point and needs urgent and significant reform.

## **3 THE INTERACTION BETWEEN THE TEMPORARY SKILLED VISA SYSTEM AND THE SYSTEM IN PLACE FOR TRAINING AUSTRALIAN WORKERS, INCLUDING HOW A SKILLS SHORTAGE IS DETERMINED**

One of the major failings of Australia's current temporary skilled Visa system is that there is absolutely no connection between the Visa's issued and a corresponding attempt to identify, develop and close those skills gaps within the domestic workforce.

The Temporary Skilled Migration Income Threshold (TSMIT) has also been subject to multiple indexation freezes with the most recent in place since 2013.

A simple calculation to increase the TSMIT by the annual Wage Price Index as at the September quarter year on year reveals that the threshold should already be above \$60,000 per annum.

YEAR	2013	2014	2015	2016	2017	2018
WPI		2.50%	2.30%	2%	2%	2.30%
Amount	\$ 53,900.00	\$ 55,247.50	\$ 56,518.19	\$ 57,648.56	\$ 58,801.53	\$ 60,153.96

The most recent information published by the Australian Bureau of Statistics in regard to average ordinary time earnings for ANZCO grouping Technicians and Trades Workers was - \$1,426.00 per week or \$74,152 per annum. This is far above the current TSMIT of \$1,036.26 per week or \$53,900.00 per annum and represents a difference of more than \$10 per hour for these occupations.

Wright and Constantin (2015)<sup>1</sup> conducted a survey of employers using the temporary skilled worker scheme and found that 86% of employers surveyed state that they have experienced challenges recruiting workers locally. Despite identified recruiting difficulties, the survey found that less than 1 in 100 employers surveyed had addressed 'skill shortages' by raising the salary offered.

Labour 'shortages' should first be addressed through a readjustment in the price of labour – increased wages.

The reality for many ETU members who are employed in workplaces which also employ migrant workers is that Australian workers are overlooked in all facets of the employment relationship. The situation in Australia is now so blatant that employers advertise online directly for migrant workers, completely overlooking the domestic workforce. Once employed, migrant workers are often given preference when it comes to employer provided training and during downturns migrant workers employment is retained while Australian workers are first to be made redundant.

Despite this appearance of preferential advantage towards migrant workers the reality is quite the opposite. Migrant workers are paid less than the Australian workers, have their wages stolen, aren't paid superannuation, don't receive overtime and casual loadings and are often poorly treated by the employer. While the ETU has come across this behavior all too often in our industries, the breadth of scale of these issues was demonstrated in the recently published report – Wage Theft in Silence.<sup>2</sup>


A cursory search for electrical jobs on the internet will find you hundreds of examples of employers, most of whom employ zero apprentices advertising for overseas electrical workers, including promoting that they can assist migrant workers with all of the requisite application criteria. They even blatantly advertise the lower pay rates for overseas workers. Figure 1 shows an example of between \$4 and \$8 per hour difference between an Australian worker and a migrant worker who will be performing the same work.

<sup>1</sup> [Wright and Constantin \(2015\)](#)

<sup>2</sup> [Wage Theft in Silence](#)

### Railway Electricians

Sydney Power Solutions - Sydney NSW  
\$46 - \$50 an hour - Temporary, Contract, Casual

[Apply Now](#)

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SPS are looking for electricians and electrical trade assistants in the Sydney area with their RIW (RISI) induction card and medical certificate for an immediate start.

Work will be for 8 weeks to start, with ongoing projects throughout the city as rail works continue to grow.

\$46-\$50 per hour plus penalties and travel allowance.

\$42-\$44 for overseas electricians.

**If you have not already completed your RISI ticket then we are arranging inductions for people. The details are below.**

\$190 for RISI ticket  
\$190 for medical: general fitness + drug and alcohol test

*Applicants will need to cover the costs themselves. However for those who contact Skill Shortage Solutions to book the course, our client is willing to refund \$100 of the course costs, after the applicant has completed 4 weeks work with our client.*

Figure 1.


The booming Australian solar construction and installation industry is rife with migrant worker exploitation and avoidance of employment and training of Australian workers. Frustratingly these projects are often subsidized by State and/or Commonwealth funds indicating that current Government procurement guidelines are inadequate and unenforced. Figure 2 is just one example of solar industry companies blatantly advertising for migrant workers' wages at a price below an Australian workers' wage.

These advertisements are available through a simple google search for "overseas electricians" which when entered, reveals literally pages and pages of sites filled to overflowing with job opportunities for migrant workers. A similar search for Australian locals will barely find you a dozen vacancies Australia wide.

### 5 X Electricians

Skill Shortage Solutions - Melbourne VIC  
\$32 an hour

[Apply On Company Site](#)



My client is a leading solar installation company with offices across Australia.

They are looking for electricians for long term work carrying out domestic solar installations.

The company is in the process of becoming a visa sponsor.

**Applicants must:**

- Be a qualified electrician (Australian or overseas qualified)
- Have a minimum 1 year's post apprenticeship experience.
- Have a full driver's license
- Be interested in gaining long term employment

**Applicants with any of the following will be highly regarded:**

- A full or provisional electrical license
- Solar installation experience

**Pay rates are as follows:**

- Fully licensed Electrician = \$40 per hour.
- Provisionally licensed Electrician = \$38 per hour
- Overseas qualified electricians willing to start the licensing process after a 2 week trial period = \$32 per hour

To apply applicant must be in Australia on a working holiday visa or be a permanent resident or Australian citizen. Applicants on working holiday visas may have the opportunity to apply for visa sponsorship after a successful trial period.

Figure 2.

Recently ETU members working on the construction of a new solar farm in regional Victoria reported over 200 backpackers on the job with only a minimal qualified Australian workforce engaged. Despite the project employing over 300 workers at its peak, the project employed zero apprentices. The construction of this project in a region with over 15% youth unemployment should have been an opportunity for local jobs and in particular, training opportunities through electrical apprenticeships. Instead the project was built with predominantly migrant workers, a proportionally small number of Australian workers not from the area and no apprenticeships.


Such is the incentive for employers to employ migrant workers rather than Australian workers we have now reached a point where employers advertise that they have established internal expertise within their company to provide expert advice and assistance to migrant workers seeking work Visa's.

As demonstrated in figure 3 below, the profitability of employing cheaper, often exploited foreign labour means that employers can afford to establish internal resources within their businesses to facilitate migrant workers navigating the often-complex processes of applying for a work visa while the company can still compete for work despite this additional overhead cost.

### UNLICENSED ELECTRICIAN JOBS

Brix Projects - Australia

[Apply On Company Site](#)



- Undertaking commercial and residential maintenance, repairs and installations
- Job management
- This is a full-time position and overtime work may be available

#### Electrician Skills and Experience Required

- Current EWP license preferred
- Current Electrical licence preferred
- Commercial experience preferred
- Exceptional problem solving skills
- Have a strong customer focus & excellent communication skills
- Be reliable & adaptable with a great work ethic
- Ability to maintain a high standard level of work and commitment to detail
- Be well presented and proud to be a part of our team
- Working together with labours and other trades in a team environment
- Good understanding of OHS
- Construction White Card, own tools, vehicle and PPE

#### On offer to the successful candidate

- Immediate start
- Competitive rates, allowances, super and penalties
- Fantastic opportunity to work on a range of projects with industry leading electricians
- Career progression and on-going training

#### Overseas Candidates


If you are currently overseas and are looking to relocate to Australia, or if you are already living and working in Australia and would like the opportunity to extend your stay or be eligible to apply for Permanent Residency, then BriX Projects can offer you immigration advice and visa application assistance. As we have such a high demand for experienced and skilled electricians we are able to offer sponsorship for the right candidates. If you would like to know more about how we can help you then contact our team today on 1800 621 066 or submit an enquiry online and one of our team will be able to give you all of the information that you need, or one of our in house migration agents can advise your eligibility.

5 days ago


Figure 3.

While each of these examples would indicate that employers are beginning to preference migrant workers over Australians, the advertising is regularly much more blatant as indicated in figure 4. Employers don't even bother advertising in the Australian jobs market now, simply choosing the option of advertising directly to foreign workers with the astonishing throw away line that the company "may consider local (Aus) candidate (s)".





**Electrician (Overseas Assignment)**  
AECOM ★★★★★ 3,508 reviews - Alice Springs NT

[Apply On Company Site](#)


AECOM has an exciting opportunity for a

Journeyman Electrician in Australia. The Electrician will assemble, install, test, and maintains electrical or electronic wiring, equipment, appliances, apparatus, fixtures, using hand tools and power tools. Diagnoses malfunctioning systems, apparatus, and components. Test equipment and hand tools to locate the cause of a breakdown and correct the problem. Connects wires to circuit breakers, transformers and/or other tests. Inspects electrical systems, equipment, and components to identify hazards, defects, and the need for adjustment or repair. Tests electrical systems and continuity of circuits in electrical wiring, equipment, and fixtures, using testing devices such as ohmmeters, voltmeters, and oscilloscopes to ensure compatibility and safety of system. maintains current electrician's license or identification card to meet government regulations. Plans layouts and installations of electrical wiring, equipment and fixtures. Based on job specifications and local codes, directs and trains workers to install, maintain, or repair wiring, equipment, and fixtures. Prepares sketches or follows blueprints to determine the location of wiring and equipment to ensure conformance to building and safety codes. Uses a variety of tools and equipment such as power construction equipment, measuring devices, power tools, testing equipment including oscilloscopes, meters and test lamps. Places conduit (pipes or tubing) inside designated partitions, walls, or other concealed areas. Pulls insulated wires or cables through the conduit to complete circuits between boxes. Performs other duties as assigned.

This is a sourcing requisition for future hiring needs.

**Minimum Requirements**

- + High school diploma or equivalent required.
- + Electrician licenses from country of origin required for EXPAT.
- + Military Training or similar vocational education trade training required.
- + Minimum 4 years experience as an electrician required. This is a Journeyman Position.
- + Active, fully adjudicate TS/PV clearance is required. May consider local (AUS) candidate(s) who are able to obtain a Department of Defence security clearance.

Figure 4.

The arguments put forward by some politicians, employers and others who choose to dismiss this crisis are easily debunked. Claims that employing foreign workers is more expensive simply does not stack up when the overwhelming evidence is that migrant workers are paid far below their Australian counterparts.

The few thousand dollars it costs in airfares and visa fees (which it has regularly been shown employers illegally recoup from migrant workers) are hardly a disincentive when the migrant worker is being paid hundreds (and sometimes thousands) of dollars a week less than their Australian counterpart. After a little more than a month, assuming the employer hasn't illegally withheld the airfare and visa costs, the difference in wages goes straight to the profit margin.

To make matters worse the current eligible occupations for skills shortage visa applications is inaccurate, drafted and reviewed in a vacuum of genuine industry engagement and worse, rarely enforced.

Historically the STSOL, MLTSOL & Regional skills listings were an item that were established and reviewed following extensive consultation with representatives of Government, business, workers and education providers which ensured that only genuine shortages made it onto the register of eligible occupations. Successive Federal and State Liberal Governments have guillotined the tripartite consultative bodies previously charged with providing this advice to the point that eligible occupations have become a complete farce.

Right now, apprentices and trainees are categorized as eligible skills shortage occupations in Australia. The federal Government would have us believe that companies advertising for apprenticeships receive so few applications that they should be allowed to access the international market to find young people looking to secure an apprenticeship because there is a shortage of young Australians hoping to secure an apprenticeship.

#### **4 THE CURRENT SKILLS ASSESSMENT REGIME, INCLUDING BUT NOT LIMITED TO, THE CORRECT APPLICATION OF ANZSCO CODES AND SKILLS TESTING REQUIREMENTS**

An independent and transparent process for both skilled and semi-skilled temporary migrants is essential to ensure that qualifications gained overseas and held by temporary overseas workers meet the contemporary requirements of Australian qualifications and licensing arrangements. This is in the interest of the workers, employer's and, in particular, the public and their safety.

For electrical occupations specifically, the current visa system delivers significant regulatory challenges at a time when the industry is already grappling with too many challenges, including defunding of the licencing and training institutions which are needed to uphold the quality and value of our well trained Australian electrical workers. The electrical industry is already experiencing occupational and public health and safety risks.

When concerns about maintaining occupational licencing standards have been put to the Government for example with free trade agreements, the response has been concerning. In answer to these important questions, the Government states that working visa applicants will still be required to demonstrate to the Immigration Department that they possess the requisite skills and experience to work in this country. This includes evidence of identity, work history, qualifications, memberships of relevant bodies or associations, references and other documents.

This confirms that the decision on actually applying a practical skills assessment in Australia are being vetted by the Immigration Department with little more than a paperwork inspection.

This is leading to situations where there is no guarantee that temporary workers will have the same level of skills, health and safety knowledge and qualifications as are required for local workers, potentially endangering themselves, other workers and the public.

No assessment of these workers skills and qualifications was performed by the department, the developer or the employer.

It also appears that the federal government wants to simply load up the already under resourced agencies responsible for skills testing which would lead to a greater reliance on licencing regimes in state jurisdictions as an occupational licencing 'safety net'.

The risks associated with this are enormous and are being realised now.

The pressure this has placed on resources for policing or enforcement of licencing checks by either level of government regulatory agencies is unacceptable and is just getting worse under these arrangements.

Free trade agreements are also providing for loopholes to skills assessments with the introduction of labour movement chapters which expressly exclude foreign workers from following the usual visa application processes. An example of this is the temporary entry of business persons provisions of trade agreements which has in turn seen the creation of a visa class that avoids any checks and balances relating to skills and specifically exempts the workers from Australian wages and conditions, the latter is dealt with in the following chapter.

In 2016 the ETU encountered a group of Chinese nationals working on a construction site in Melbourne installing car stackers. This group of workers was brought to Australia under claimed "unique highly specialised skills" despite the fact they were performing routine mechanical fitting work and electrical work that could have been performed by any number of Australian workers. Car stackers are a common installation in high rise residential dwellings that allow cars to be stacked on top of each other in limited garage space.

These workers were brought to Australia with;

- No Labour Market Testing;
- No verification of skills; and
- A requirement to be paid Chinese wages

Below is a copy of the letter sent to the department in support of these workers visa application.



When the ETU representative became involved it was discovered that not only were these workers performing high risk construction work without the requisite licences and qualifications, but they were also living in the basement of the construction site unable to afford anything else on their meagre Chinese wages.

ETU further discovered that the workers were not performing highly specialised work but were performing routine mechanical fitting work, boiler making work and that it was the workers intention to also wire, test and commission the electrical components of the equipment which is licenced electrical work.

After the ETU got involved the company swiftly sent them back to China never to be found again therefore hiding the full extent of exploitation that was apparently occurring.

Another astonishing detail that was unearthed during this episode was finding that the Department of Immigration issued the visa on the same day that it was applied for.<sup>3</sup>

## **5 THE RELATIONSHIP BETWEEN WORKERS ON SKILLED VISAS AND OTHER TYPES OF VISAS WITH WORK RIGHTS, INCLUDING THE RATIONALE AND IMPACT OF THE 400 VISA**

There is a strong need for a review into all the “Temporary Entry of Business Persons” provisions in Australian trade agreements. The broad definition of “contractual service providers” in labour mobility chapters of trade agreements are not designed to facilitate genuine trade in services, but to undermine local wages and conditions by providing greater freedom for employers to import labour on less favourable conditions, without the need to undertake Labour Market Testing.

Increasingly the temporary entry of business persons provisions of trade agreements is being used to exploit migrant workers, avoid employing Australian workers and is posing a serious risk to workplace health and safety.

Recently on a solar farm construction project just outside of Townsville ETU members became aware of a group of 4 workers, 2 Filipino and 2 Thai, who were engaged on the project under what appeared to be dubious employment arrangements. Concerns started to emerge after the ETU members noticed these workers had very limited English language proficiency, were often kept isolated from the rest of the workforce and it was noticed they never had any other food at meal times other than plain white rice.

Discussions with these workers revealed they were being paid just \$40 AUD per day and were employed under the sub class 400 visa arrangements. They were eating plain white rice for 3 meals a day as it was the only sustenance they could afford. The ETU members on site promptly called a Union meeting and “passed the hat around” to raise desperately needed funds for these workers. The ETU members then escalated the issue via their ETU Officials.

What was unearthed following this is extraordinary.

Schneider Electric had brought over 2 Filipino workers and 2 Thai workers on subclass 400 “Specialist” visas on the basis of the unavailability of locally skilled workers despite Townsville having an unemployment rate of 8.77% as at the 2018 June quarter and the ETU being aware of numerous unemployed members in the region who had been refused employment on the project despite applying.

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<sup>3</sup> Appendix A

The work which these 4 individuals were to perform, as stated to Immigration<sup>4</sup>, includes licensed electrical work but their skills and qualifications were never assessed, the workers were not licenced to perform it and Schneider freely admitted it paid these 4 workers \$40 per day plus an additional \$42 per day for food and accommodation. In fact Schneider's lawyers were adamant that, as these 4 are employed by a foreign entity, Schneider Electric Australia:

1. had done nothing illegal; and
2. was under no obligation to pay.

Despite this position and following action from the ETU, Schneider settled the matter by increasing the wages and paying backpay. This raises a further issue; these payments went to an offshore bank account and there was no way to confirm if;

1. The payment was received by the worker;
2. Who owned or controlled the bank account; and
3. If the workers were ultimately allowed to keep the money.

Once again, following the ETU intervention the migrant workers were soon "disappeared", presumably back to their country of origin.

Further inquiries by the ETU confirmed that whilst what Schneider had done was morally reprehensible, it was completely lawful under the sub class 400 regime, the single fastest growing visa stream in Australia right now.

## **6 THE EFFECTIVENESS OF THE CURRENT LABOUR MARKET TESTING ARRANGEMENTS**

The ETU believes that skilled migrants make a valuable and substantial positive contribution to Australia's economic, social and cultural fabric and must be treated with equity and respect -particularly with reference to wages and industrial conditions - as compared to Australian citizens.

In August 2018 in Australia for every job vacancy there was approximately 15 unemployed Australians. Record youth unemployment exists in many parts of the country and regional unemployment remains at record highs in most parts of Australia.<sup>5</sup>

The current processes for labour market testing are deeply deficient to the point of being obsolete. The most common form of labour market testing is for an employer to advertise for a few weeks online and then make application for a temporary skills

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<sup>4</sup> Appendix B

<sup>5</sup> [Australian Unemployed Workers Union Figures](#)

shortage. The department of immigration does not perform any form of verification of the employer's claims.

A further issue with the current process is that it is conducted almost entirely in secret as an exchange of emails between the employer and the department. The department even goes as far as to provide the template letter to the employer should the employer bother to notify a Union. The department then accepts that the employer having emailed the template letter to a Union means that meaningful stakeholder consultation has occurred.

It is our experience that employers don't even bother with the stakeholder letter simply claiming there isn't a union that represents their workforce. The processes around labour market testing are not published, there is no requirement to consider the views of stakeholders, there is no requirement to verify the employers claims and there are no actual criteria to genuinely demonstrate local labour isn't available to perform the work. Nothing in the process actually requires the employer to train Australians

There are currently no effective labour market testing arrangements in Australia.

The result is that in Australia as at March 2018 there were more than 2 million temporary entrants in Australia, including New Zealanders, and up to 1.3 million of these visa holders have some form of work rights. This equates to around 10%-11% of the total Australian labour force of over 12.4 million. Meanwhile there is approximately 2.6 million Australians unemployed or underemployed according to research firm Roy Morgan as at January 2018.<sup>6</sup>

The negative economic impacts of Australian businesses prioritising migrant workers over Australian workers coupled with the fact a huge proportion of those migrant workers are exploited cannot be overstated. Australia is in a state of crisis when it comes to ensuring local labour is employed first and that migrant workers are employed only when there is a genuine skills shortage.

## **7 THE ADEQUACY OF CURRENT SKILLED VISA ENFORCEMENT ARRANGEMENTS, WITH PARTICULAR REGARD TO WAGES AND CONDITIONS AND ACCESS TO INFORMATION ABOUT RIGHTS AND PROTECTIONS**

Exploitation of migrant workers is at unprecedented levels in Australia as evidenced in the 2016 Senate Inquiry Report – A National Disgrace: The Exploitation of Temporary Work Visa Holders.<sup>7</sup>

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<sup>6</sup> [Unemployment and Underemployment – Roy Morgan](#)

<sup>7</sup> [A National Disgrace](#)

Too often we are seeing employers using substandard accommodation, inflated overtime hours, transport and meals to artificially inflate VISA workers salaries to get over the threshold. The loophole created by the Guaranteed Annual Earnings must be closed so that the assessment only focusses on wages.

Further, current Market Salary Rate agreements are negotiated in secret between the Employer and Department of Immigration and Border Protection with no input from workers or their Unions or impacted communities.

Visa workers must have access to the Fair Entitlements Guarantee Scheme – as per Recommendation 18 of the ‘A National Disgrace’ Parliamentary report from 2016. Ensuring that the FWA applies to visa workers and that employers can’t breach their visa’s, so it doesn’t apply, which is the current situation. That is a major source of power employers have over visa workers as identified in the report.

Unfortunately, there are still many employers who seek to exploit overseas workers or not uphold their responsibilities to Australian workers. The nature of the instances includes:

- Workers being engaged where skilled and qualified Australian workers were available to do the work putting unnecessary burden on Australia’s welfare system;
- Breaches of employer sponsorship obligations;
- Under-payment of workers;
- Excessive working hours;
- Workplace bullying;
- Debt bondage;
- 457 visa workers nominated to work in skilled occupations and then being required by their employer to perform unskilled work on a regular or permanent basis;
- Employers offering to sponsor workers for permanent residency for a fee up to \$50,000
- Exorbitant charges and interest payments on loans for 457 visa holders to be placed in jobs;
- Salary deductions to pay for migrant agent fees on the promise of getting permanent residency;
- Threats from employers to not join a union, including contracts that 457 visa workers are forced to sign stipulating they can be sacked for talking to a trade union;
- Attempts by employers to recover costs such as accommodation and food; and
- A number of cases where overseas workers have uprooted themselves to come to Australia only to find after a short time (or immediately in some cases) the job is no longer there.

All overseas workers should have the right to join and be represented by a trade union and also have the right to be treated fairly and equitably.



The Government continues to negotiate and ratify trade agreements that include the removal of basic protections for Australia's domestic labour market testing rules and a failure to protect Australian jobs. Australian and overseas companies are able to employ unlimited numbers of temporary workers from many countries in hundreds of occupations across nursing, engineering and the trades without any obligation to provide evidence of genuine efforts to first recruit Australian workers.

The most disappointing thing about enforcement arrangements pertaining to migrant workers is that inevitably the only party punished when breaches are identified is the migrant worker themselves, usually unceremoniously sacked without their entitlements and placed on the first available plane home, usually unable to ever return to Australia – all for the crime of turning up to work and being exploited by their employer.

## **8 THE USE AND EFFECTIVENESS OF LABOUR AGREEMENTS**

Labour agreements create pools of exploitable workers, there are currently 348 agreements with thousands of workers employed under them and no evidence these employers are taking any steps to train Australian workers in the necessary skills or adequately test the local labour markets.

The only involvement Unions are granted in the labour agreement process is to be “consulted” as a relevant stakeholder in the same manner outlined in chapter 6 of our submission. Essentially, this means that the applicant employer (occasionally) provides the relevant union with a template letter<sup>8</sup> with their respective information regarding the request, asking for input.

This is the only consultation unions receive and the only opportunity unions are given to have input into the prospective labour agreement. There is no face to face discussions, no exchange of ideas or facts relevant to the application and no opportunity to ventilate or articulate concerns in a manner that could reasonably influence the outcome. Subsequent to receiving the “consultation” template letter, unions are not notified of the decision made by the department or in fact contacted by the department whatsoever.

The obligation on the employer is to send the relevant Union the stakeholder letter, and that's where it ends. There is no obligation to receive and forward a response, just to provide an “opportunity”, whatever that means. There is also no guarantee that any response unions provide to the employer will actually make its way to the department.

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<sup>8</sup> Appendix C

The ETU is aware of other unions who have copied the department into their responses each time but receive no confirmation from the department that it has been received or read.

The ETU's position on Labour Agreements is clear: Enterprise Migration Agreements (EMAs), Designated Area Migration Agreements (DAMA), Infrastructure Facilitation Agreements and other labour agreements must be abolished.

## **9 RECOMMENDATIONS**

The ETU submits the following recommendations to the review:

### **Recommendation 1**

Lift the Temporary Skilled Migration Income Threshold immediately to a minimum of at least \$62,000 with a review to lifting this rate higher to reflect genuine skilled wages.

### **Recommendation 2**

Abolish Guaranteed Annual Earnings to prevent employers from “packaging” migrant workers salaries and artificially inflating them.

### **Recommendation 3**

Abolish Labour Agreements

### **Recommendation 4**

Fix the Market Salary Rate Framework to ensure that market salaries are set on the advice of an appropriate statutory authority through established methods which are transparent, published and appealable.

### **Recommendation 5**

Review and determine a single consistent definition of Contractual Service Provider including looking at all the “Temporary Entry of Business Persons” provisions in FTA's and not just the narrowly defined meaning in ChAFTA for example.

### **Recommendation 6**

Significantly strengthen the skills assessment processes by;

- ensuring all assessments for the need for skills testing and verification is performed by an appropriate industry body and not by immigration officials;
- guaranteeing workers who currently require an occupational license must successfully complete a skills and technical assessment undertaken by a TRA approved RTO before being granted a visa;

- introducing a risk based approach to assess and verify workers are appropriately skilled in occupations that don't require an occupational licence; and
- introduce a minimum sampling rate of visa's issued to verify migrant workers are actually performing the work the employer has sponsored them to perform.

### **Recommendation 7**

Ensure that temporary visa holders are provided information about their workplace rights and entitlements, including the right to access and join a union to exercise that right by appropriately resourcing civil society, particularly unions, and responsible government agencies to ensure that temporary visa holders can access representation, information and advocacy about workplace rights, including the use of interpreters as required.

### **Recommendation 8**

Require all companies who employ workers on any form of temporary visa (including via a labour hire company) to register on a publicly available registry.

### **Recommendation 9**

Limiting situations in which temporary visa holders can obtain an ABN and making certain visa types ineligible or subject to special case by case exemptions determined by a relevant tripartite authority.

### **Recommendation 10**

Require temporary visa holders to be paid wages into an Australian bank account.

### **Recommendation 11**

Introduce an induction process designed to educate migrant workers about their rights and obligations associated with working in Australia that must be completed before a migrant worker can exercise their work rights.

### **Recommendation 12**

Amending the Migration Act to allow civil remedy proceeding regarding breaches of work visa provisions by employers, including that unions should have standing to bring actions on behalf of a class of workers.

## **10 CONCLUSION**

The current systems for temporary skills visa's are a national embarrassment. Exploitation of migrant workers coupled with the underutilisation and underinvestment in Australian jobs and skills requires urgent Government intervention.

## APPENDIX C

Attachment D

### Template stakeholder letter

Dear

Stakeholder consultation for proposed Labour Agreement for [*Company name*]

**Labour agreement type (*delete whichever not appropriate*): Fishing Template, Fast Food, Other Template, Non-Template (i.e. company specific)**

The Department of Immigration and Border Protection requires all organisations seeking access to a labour agreement to consult with relevant industrial stakeholders which best represent employees in occupations proposed under the labour agreement; the industry bodies which best represent employers in the industry; and any other agency or community group that may be impacted by the proposed labour agreement.

This letter is to inform you about our intentions in requesting a labour agreement and to seek your feedback. The department will take your views into account in their negotiations with us.

We are seeking access to overseas workers through a labour agreement because ...

**(briefly outline your reason for seeking a labour agreement.)**

**Attachment 1** provides the specific details we are required by the department to provide to you, including the numbers, location and occupations of workers sought, and information on concessions, salary, and other workforce information. Please see attached.

Please be advised that your organisation's written response (email is acceptable) is **requested within 10 working days of receipt of this correspondence** in order to be considered by the department as relevant to the labour agreement negotiation process. We are obliged to follow up with you **after a further five (5) working days** if we do not hear from you and **provide you with an additional five (5) working days** to respond.

I must advise that your response will not necessarily veto our labour agreement request but your input is valued and will be taken into consideration where evidence is provided that supports any objections. If we do not hear from you, the department will assume that you do not have a concrete objection to our proposal and the negotiation process will continue. If you voice significant concerns about our proposals, the department may contact you directly.

We would appreciate if you could treat this correspondence *in-confidence*. Copies of all correspondence between us will be provided to the department. Information provided in this process should not be disclosed to any other party.

I look forward to hearing from you.

Yours sincerely

**Attachment 1**

We are requesting the following occupations. The following table/s indicates the number of workers and locations of work proposed.

*(reproduce table for each occupation)*

Occupation		ANZSCO code	
<i>(a brief description of the qualifications and years of experience you expect workers to have will assist your stakeholders to make informed comment)</i>			
Position location/s (as specific as possible)	Number of workers sought in each year of agreement		
	Year 1	Year 2	Year 3

We are seeking the following concessions in respect of skill level and/or English language proficiency etc:

*(provide details – or N/A if none sought)*

We confirm that all overseas workers will be provided with terms and conditions no less favourable than those that are, or would be, provided to Australian workers doing the same work.

The salary arrangements for the overseas workers will be:

*(provide details including specific relevant award if relevant)*

Below is additional information we believe is relevant to our labour agreement proposal: