



# MCKELL INSTITUTE

Submission to Senate Inquiry into Temporary Migration

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March, 2020

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## About the Author

### **Abul Rizvi**

Abul Rizvi is a graduate from the ANU. He was the Immigration Department's Chief Financial Officer from 1991 to 1995 before becoming responsible for managing Australia's migration program from 1995 to 2007.

From 1998, Rizvi managed major growth in skilled temporary migration, visitors, working holiday makers and overseas students, including development of pathways to permanent migration. Between 1996 and 2007, Rizvi was Chair of the Commonwealth/State Working Party on State-Specific and Regional Migration. He was responsible for commissioning research on the demographic, economic and budgetary impact of immigration.

He was Deputy Secretary responsible for all aspect of immigration policy from 2005. Rizvi was awarded the Public Service Medal and the Centenary Medal for services to the development and implementation of Australian immigration policy.

From 2007 to 2015, Rizvi was Deputy Secretary in the Department of Communications responsible for broadcasting policy, internet regulation, the digital economy and regional telecommunications including mobile blackspots.

He is currently completing a PhD at Melbourne University on Australia's immigration policies

## About this Submission

This submission summarises findings from a forthcoming McKell Institute research project exploring the Australia's temporary migration program. In acceding to the requests for brevity by the Committee, this submission presents key findings from that research. The author and the McKell Institute welcomes any request by the Committee to present further details.

## About The McKell Institute

The McKell Institute is a progressive research institute dedicated to providing practical and innovative solutions to contemporary policy challenges.

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## Introduction

Australia is an immigration nation. For generations, people from all over the world have aspired to live and work in Australia, fuelling the nation's prosperity, and allowing Australia to claim the mantle of the world's most successful multicultural society.

In the financial year ending 30 June 2019, net long-term and permanent movement to Australia was 238,300. It is numbers like these that are essential to continued economic growth. But increasingly, those who do come to Australia enter on temporary migrant visas, at times with few paths towards permanency, limiting the long-term benefits that immigration policy should deliver, with potentially adverse consequences for Australia's economy in the long run.

Australia's net migration rate has remained relatively steady in recent years. But its permanent migration rate has been significantly reduced. In 2019, the Commonwealth announced a new immigration policy reducing the annual permanent migrant (non-Humanitarian) intake from 190,000 to 160,000, while at the same time introducing new measures to incentivise new migrants to seek employment in regional Australia.

That formal reduction in permanent migration represents what was already observable in the immigration data: a decline in permanent migration, with temporary migration increasing, particularly overseas students and asylum seekers.

However, many temporary migrants entering Australia find themselves in vulnerable work. Migrant workers are disproportionately impacted by workplace exploitation and wage theft.

Australia now maintains the second largest temporary migrant workforce in the OECD. This is driven predominantly by the relative size of Australia's overseas student program which has become essential to the survival of Australia's universities and one of Australia's largest export industries.

Policymakers should aspire to a migration policy that lives up to Australia's reputation as a welcoming, open society, while ensuring that the immigration system does not lead to adverse economic consequences for newly arrived migrants and temporary entrants, and the Australian public more broadly.

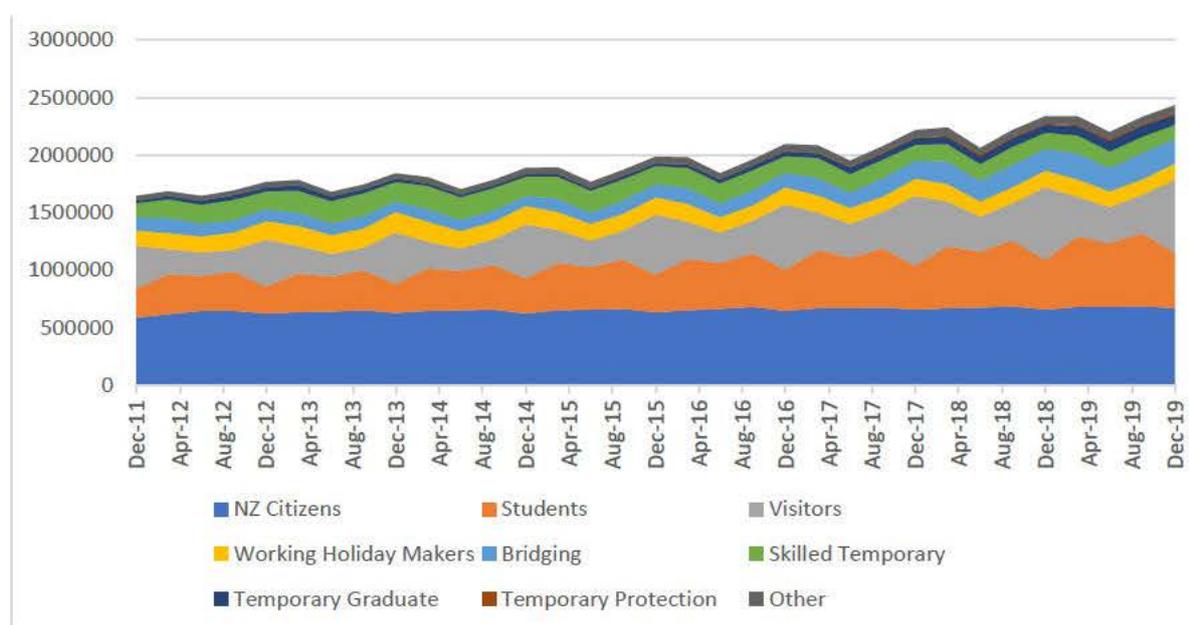
This submission highlights the nature of temporary migration policy today, puts forward the key areas of concern the Committee should explore in its deliberations, and offers concise recommendations to the Committee regarding the actions it should take to help address the shortfalls in Australia's current immigration framework.

## The State of Australia’s Temporary Migration System Today

Temporary migration covers a vast array of different visa types with varying eligibility criteria for visa applicants. While some depictions of temporary migrants can fuel headline media stories, the reality is, making generalisations about the entire class is problematic.

Temporary entrants include highly skilled employer sponsored migrants filling critical roles such as in the health workforce, NZ citizens, overseas students, temporary graduates, working holiday makers, seasonal workers, temporary protection visa holders, asylum seekers and temporary parents.

As seen in the chart below, the stock of temporary entrants in Australia continued to rise strongly until December 2019. The impact of the coronavirus on Australia’s labour market is likely to see some decline in that stock during 2020. Whether growth resumes will depend on both policy settings and the rate at which the labour market strengthens.



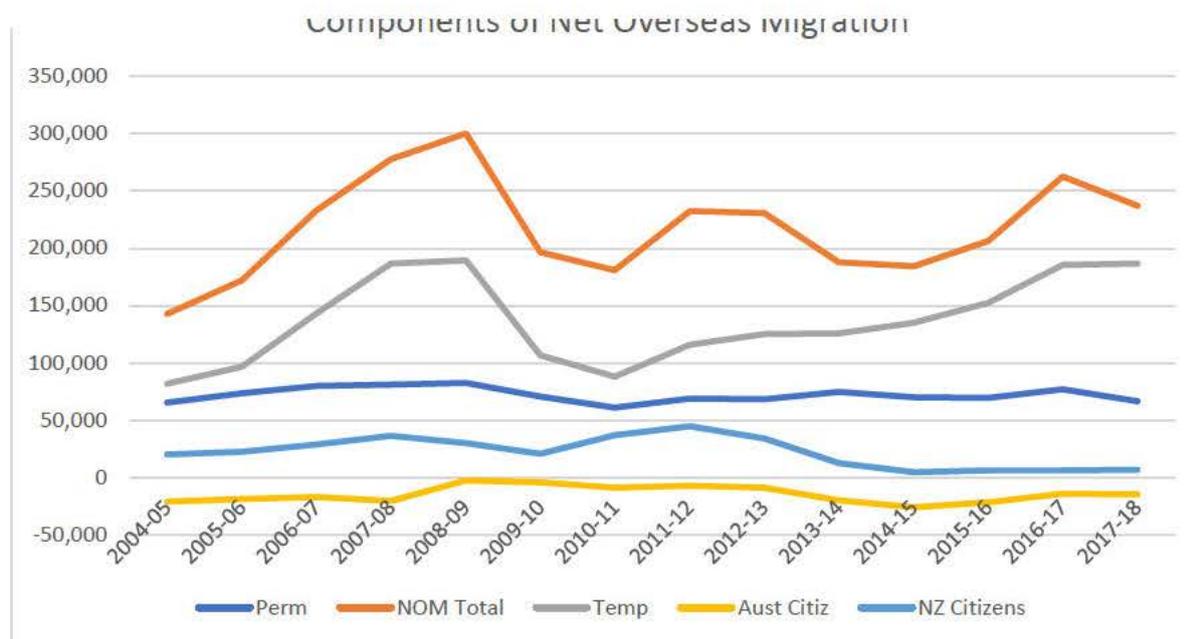
Source: Data.gov.au, Department of Home Affairs

There has been a growth in temporary entrants and decline in permanent migrants

In recent years, there has been a marked decrease in permanent migration. The 2019 Budget had planned for this to be offset by a much larger increase in temporary migration.

However, even before the impact of the coronavirus, there was strong evidence the increase in temporary migration forecast in the 2019 Budget would not be delivered. This was due to a mixture of changes to policies on specific visas as well as a weakening labour market. The chart below on components of net overseas migration highlights that there has been a net positive flow of migration to Australia, with the biggest category of intake being

temporary migrants. That is because a very substantial number of permanent migrants initially enter Australia as temporary entrants and then secure permanent residence after arrival. Australian citizens are the only category of net departures, meaning more citizens are leaving than those returning from abroad. The net contribution of New Zealand citizens has declined significantly since 2013, largely due to the strengthening of the New Zealand labour market relative to Australia's.



Source: ABS 3412

## Key Areas of Concern for the Committee to Consider

This submission focuses on the key areas of concern in Australia's current temporary migration framework that the Committee should consider. The existing system is inadequate in ensuring temporary migrant workers are protected while working in Australia, with wage theft rampant. It also notes that, while there is a critical role for temporary migration in Australia's economy, more realistic pathways towards permanency need to be explored.

### **1. Temporary migrants during the Coronavirus Crisis**

Immigrants have different levels of access to government services and benefits. In particular, temporary entrants have very limited access to either social support, Medicare (most temporary entrants are required to take out private health insurance), public housing, etc. While children of temporary entrants have access to government schools, in some jurisdictions this is subject to meeting relevant user charges.

Permanent migrants have access to most services other than the four year wait for access to social services – these are only available to Humanitarian Program entrants on arrival. The four year wait for access to social services also applies to New Zealand citizens who secure formal permanent residence.

As a result, temporary entrants and skill stream migrants, particularly primary applicants, represent a substantial net positive to the Commonwealth Budget. Humanitarian Program entrants have a negative impact in the first few years after arrival.

A joint Treasury/Home Affairs report (2018)<sup>i</sup> found that migrants to Australia have increasingly been young and skilled meaning they have softened the impact of Australia's ageing population, boosted labour force participation, and increased the diversity of Australia's workforce. The economic benefits that migrants have brought to Australia have unquestionably played a part in Australia's 28 years of uninterrupted growth.

While these arrangements are acceptable in normal circumstances, they are not appropriate during the COVID-19 economic shutdown. Following necessarily strict policy interventions to slow the spread of the virus, including the closure of all businesses associated with social gatherings, and a dramatic reduction in outbound international flights, many temporary migrant workers in Australia are facing a situation where they have no means to return to their home countries, no access to paid work, nor any access to income or social support. This submission notes the Government's active consideration of income support for workers in these visa categories.<sup>ii</sup>

The Government will need to consider this situation much more urgently by ensuring, for public health reasons, temporary entrants who are feeling ill to be able to visit a GP, obtain a coronavirus test and treatment as needed. The Government should also assist those who cannot get home to do so rather than become destitute, provide interim social support for

those unable to get home quickly. This particularly applies to New Zealand citizens who have been living in Australia long-term. The Government should also process asylum claims more quickly to recognise those that require protection, as there are around 100,000 asylum seekers currently in Australia.

## **2. Exploitation and abuse of temporary entrants is rife**

The other major issue facing temporary entrants, particularly in a weakening labour market, is the risk of exploitation. According to the Government's Migrant Worker Taskforce, exploitation and abuse of low skill workers is rife, particularly of temporary entrants. Results from the 2016 Wage Theft in Australia report<sup>iii</sup> indicate that among the 4,322 responses received from temporary migrant workers:

- 30 per cent said they earned \$12 per hour or less and 46 per cent said they earned \$15 per hour or less in their lowest paid job<sup>iv</sup>
- one quarter of international students and over one third of working holiday makers were paid around half the legal minimum wage
- underpayment was especially prevalent in food services, and in fruit and vegetable picking
- 44 per cent of respondents were paid in cash and half rarely received a pay slip.

The Attorney-General is reportedly developing new legislation to address this. A key issue will be whether the response will be adequate for the size of the problem and in particular, the situation of low skill temporary entrants.<sup>v</sup>

If the situation continues to deteriorate, the Government will need to consider a stronger role for unions in protecting the rights of temporary entrants through ensuring temporary workers understand their rights and how best to enforce these without the fear of being removed from Australia.

## **3. Recognising the long-term role of temporary migration in a modern economy**

Highly skilled temporary entrants undertake critical roles in the Australian economy but also pass on knowledge and information that helps young Australians in the same workforce to develop their skills.

Highly skilled people increasingly have careers that span a number of countries. Around 100,000 Australian citizens already leave Australia every year to live and work long-term in other countries.<sup>vi</sup> Highly skilled Australians are in demand around the world. Competition for highly skilled people will rise as the populations of developed economies, particularly that of Australia's largest trading partner China, rapidly age over the next 20 years. The median age of Australians departing is 28.4.<sup>vii</sup>

In addition, students and working holiday makers are critical to three of Australia's most important export industries, International Education, International Tourism and Agriculture.

It is essential Government explain the importance of these temporary entrance to Australia’s economy.

At the same time, Australia must manage a major low skilled employment conundrum. The vast bulk of unemployed and underemployed Australians have few high-level qualifications. But there are difficult (and sometimes dangerous) jobs in Australia that employers say Australians will not undertake (e.g. fruit picking, labouring). This is at a time where Australia has a relatively high and steadily rising underutilisation rate that will rise much further in 2020.<sup>viii</sup>

#### **4. There has been a surge in non-genuine asylum seekers in recent years**

Despite the existence of temporary entry visas that seek to address the shortage of workers for these difficult jobs (e.g. Seasonal Worker visa, Working Holiday Maker visa), Australian employers are increasingly relying on asylum seekers to undertake such work with over 100,000 asylum seekers having arrived on visitor visas in the last 5-6 years.<sup>ix</sup>

While the surge will now cease with the closing of the border to non-citizens and non-residents, there is an urgent need for the Government to resolve the situation of asylum seekers already in the country and in future to put in place arrangements that prevent another surge in non-genuine asylum seekers.

Applications that are refused at the primary stage are steadily moving onto the AAT (see Table 1). With an asylum clearance rate of 40 percent in 2018-19, and a migration clearance rate of 65 percent in 2018-19, the AAT remains a very long way from being able to finalise more applications than it is receiving. Table 1 highlights that the number of cases has more than tripled since 2016. Unless significant additional resources are provided to the AAT, its backlogs will continue to build as will those at the primary stage.

**Table 1: Migration and Asylum Applications on Hand at the AAT**

	<b>End July 2016</b>	<b>End June 2017</b>	<b>End June 2018</b>	<b>End June 2019</b>	<b>End December 2020</b>
<b>Migration Cases</b>	11,798	16,092	29,991	39,029	41,411
<b>Asylum Cases</b>	5,682	8,370	14,445	20,689	25,104
<b>Total</b>	17,480	24,462	44,436	59,718	66,515

Source: AAT Statistical Reports, AAT Website

#### **5. Workers on Designated Area Migration Agreements (DAMAs) and provisional visas are vulnerable to wage theft and exploitation**

Temporary migrants entering under DAMAs will mostly be people with low skills, little English and in low pay occupations. They will be totally beholden to their employers, may have little

understanding of their rights or how to report exploitative and abusive behaviour of their employer.

To some degree, migrants on the new provisional visa arrangements will also be similarly vulnerable. It is essential that the Government explains how the rights of these vulnerable migrants are to be protected and to strengthen these as appropriate.

In addition, the Government should release any research it relied upon to make major changes to provisional visa arrangements implemented from 16 November 2019 which altered the Regional Sponsored Migration Scheme (RSMS) into a five-year provisional visa rather than a direct permanent residence visa.

#### **6. The legal basis for restricting the number of partner visas has led to a growth in people on bridging visas**

There is currently a backlog of partner visa applications (i.e. persons who are applying on the basis of an ongoing partner relationship with an Australian citizens or permanent resident) of around 100,000. This backlog has been growing at around 15,000 to 20,000 per annum.

With the number of places for partner applications limited to under 40,000 per annum, this backlog will continue to grow and will contribute to an increasing number of such people entering Australia on visitor visas and then applying onshore. This is contributing to an unprecedented increase in the number of people in Australia on bridging visas.

The Migration Act does not allow the Government to limit the number of visas granted to the spouses of Australian citizens and permanent residents (a subset of partner applicants). The Government should explain the legal and policy basis for restricting partner visa places and what its plans are to address the growing backlog.

#### **7. People on protection visas need a clearer pathway to permanent protection**

Australia now has over 16,000 people on protection visas. These people are recognised refugees and have been living in Australia in uncertainty for many years. The prospects of these people ever being able to return to their country of citizenship are minimal.

It is time the Government recognised this and provided these people with permanent protection. This could be done at no cost within the existing Humanitarian Program.

#### **8. Reputation of Australia's international education industry being undermined**

There have been ongoing reports about a decline in education standards in Australia's international education industry. The veracity of these reports is not clear.

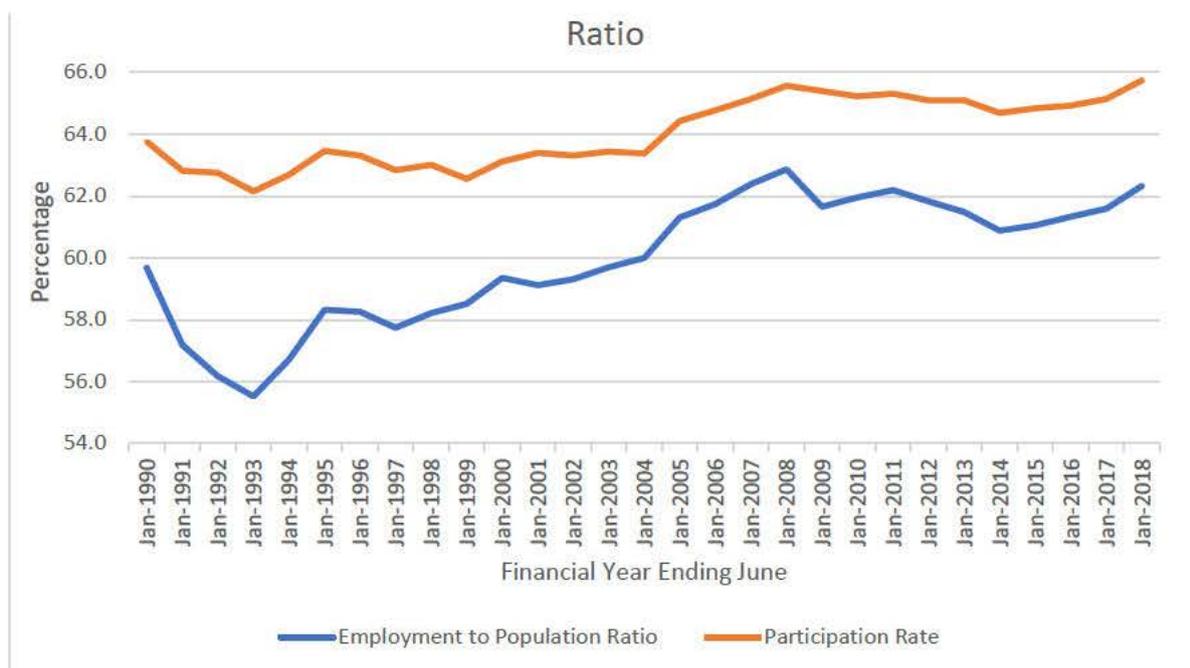
Given the importance of the industry, the Government cannot allow such reports to go unchallenged. Actions being taken by the Government to ensure the quality of the industry

should be reviewed and amended as appropriate. Following this, the Government should take steps to re-assure the Australian public, students and their parents on the quality standards of the industry.

### 9. Unskilled migration impact on the labour market

The consensus in the research is that skilled permanent migrants have a positive impact on the economy, employment and wages. There is no reason to think skilled temporary entrants would not also have a similar impact.

The chart below highlights a particularly strong increase in both the participation rate and the employment to population ratio since the year 2000. This was around the time that the Howard Government began increasing both temporary and permanent migration.



Source: ABS Catalogue 6202

The research is more equivocal about the impact of unskilled migration, especially when there is a large cohort of unemployed or underemployed existing residents with low skills and little education.

On the one hand, there are dangerous and difficult jobs in Australia, generally with low pay, that unemployed Australians are reluctant to take up (e.g. fruit picking). The policy question is whether greater measures should be taken to encourage and assist more unemployed Australians to take up these jobs or whether Australia should resign itself to eventually having to adopt something akin to the H-2A US Agriculture Visa. The H-2A visa is prone to exploitation given the program structure creates a power imbalance because guest workers are bound to a single employer and their livelihoods—their visas, housing, food, and

wages—are completely dependent on that employer. In recent years, workers have filed multiple lawsuits alleging some H-2A employers exploit them, steal their wages, provide substandard housing, or blackmail them into submission.<sup>x</sup>

### **10. An over-reliance on temporary migration could have a negative impact social cohesion**

A key issue is whether a large cohort of temporary entrants will have a negative impact on social cohesion.

The Australian Human Rights Commission (AHRC) in its online resource for local councils<sup>xi</sup> titled ‘Building Social Cohesion in our Communities’, suggests that social cohesion is the ‘bond or glue that binds people’. The AHRC focuses on preventing and responding to incidents of racism or conflict between groups. Despite the growth in temporary entrants in Australia’s population, the AHRC makes no explicit suggestions regarding social cohesion and temporary entrants.

While there are concerns about the exploitation of temporary entrants, there are also negative Australian attitudes to temporary entrants due to the way political and community leaders at times refer to temporary entrants or fail to correct public commentary in this space. Examples include negative comments about skilled temporary entrants ‘taking Aussie jobs’ (e.g. Kinnard 2016<sup>xii</sup>, Computer Daily News 2016<sup>xiii</sup>); or overseas students using the visa system to secure permanent migration by the ‘backdoor’<sup>xiv</sup>; or indeed the Deputy Prime Minister, Michael McCormack referring to the role of Pacific Island workers as being here to ‘pick our fruit’.<sup>xv</sup>

The issue of how Australians and their leaders publicly or privately discuss immigrants generally and temporary entrants in particular could well represent a risk not just to social cohesion but to vital Australian industries such as Tourism and International Education.

Local councils both in Australia and around the world appear to be taking a leading role in promoting social cohesion. Australia’s Welcoming Cities<sup>xvi</sup> initiative is a key example. However, it is worth considering whether state/territory governments and the Commonwealth can play a greater role in this space.

A key issue is the location of the immigration function within the Home Affairs portfolio. If social cohesion is a priority, is location of the immigration function within a portfolio focused predominantly on national security appropriate? The objective of social cohesion within this context may struggle to attract sufficient priority.

## Recommendations to the Committee

**Recommendation 1:** The Committee should recommend that the Government implements measures to encourage temporary entrants who are exposed to the coronavirus to self-isolate without losing income; assists temporary entrants unable to get home to do so; and provide appropriate social support in the interim.

**Recommendation 2:** The Committee should review evidence (including from Department of Home Affairs, Fair Work and relevant unions) on exploitation and abuse of temporary entrants across all categories (i.e. students, working holiday makers; work and holiday makers; skilled temporary entrants, seasonal workers; training visa holders; temporary graduates; temporary protection visa holders) and consider adequacy of the Government's response to date to the recommendations of the Government's Migrant Worker Taskforce and additional measures proposed by the Attorney-General.

**Recommendation 3:** The Committee should request Government advice on details of its plans, including funding, timetable and key milestones, to address the surge in onshore asylum seekers in the past 4-5 years and ensure genuine asylum seekers are processed quickly and provided with protection. The Committee should focus on ascertaining alternative strategies to address the surge and the backlogs including:

- a. better targeting of offshore agents who are organising the trafficking arrangements in co-operation with relevant overseas authorities;
- b. increased funding of asylum seeker application processing at both the primary and AAT stages – this should use a combined last-in, first-out approach as well as clearing older cases such that traffickers can see limits to their ability to profit from these scams;
- c. increased funding to remove unsuccessful asylum seekers quickly after each AAT decision; and
- d. priority investigations into onshore agents and labour hire companies involved in these scams.

**Recommendation 4:** Given the low pay, low skill and low English language concessions under Designated Area Migration Agreements, the Committee should consider the adequacy of mechanisms and Commonwealth-level monitoring arrangements to limit exploitation of temporary migrants under this visa.

**Recommendation 5:** The Committee should seek Government advice on long-term plans for the growing number of people in Australia on Temporary Protection visas. Propose pathways to permanent residence for these recognised refugees.

**Recommendation 6:** The Committee should request information from Government or other research that was used to support changes to the Regional Sponsored Migration Scheme (RSMS) into a five-year provisional visa rather than a direct permanent residence visa, to ascertain the justification for this reform.

**Recommendation 7:** The Committee should request any Government funded or other research that was used to support changes to the former sub-class 489 state/territory government sponsored skilled migration visa into a five-year provisional visa with much higher performance requirements for access to permanent residence.

**Recommendation 8:** The Committee should request Government advice on the legality of limiting the number of spouse visas issued each year and what plans the Government has to address the large and growing backlog of partner visas which is forcing an increasing number of people to enter Australia on visitor visas and apply for a partner visa onshore, thus contributing to the growth of people in Australia on bridging visas.

- a. Return processing of partner visa application in the permanent migration program to a demand-driven basis that would enable faster processing in line with the current application fee of almost \$8,000.

**Recommendation 9:** The Committee should request advice on the take up of the new temporary parent visas and the estimated impact of these on Australia's health and aged care system. Seek advice on:

- a. the level of existing and acceptable private health insurance coverage for temporary parents;
- b. how governments will ensure health and care costs not covered by insurance are met by sponsors;
- c. how governments will ensure temporary parents maintain private health insurance for the full duration of their stay;
- d. how temporary parents who are too ill to travel will be managed at the end of their five-year stay;
- e. funding allocated to monitor and manage these temporary parent visa holders.

**Recommendation 10:** The Committee should request advice on how the Government proposes to address the steady decline in applications for employer sponsored skilled temporary and permanent entry due to a combination of visa design changes made in 2017-18 and a weakening economy.

**Recommendation 11:** The Government requires a comprehensive plan to address the ongoing decline in the number of Working Holiday Makers, noting these are high-yield tourists and a highly mobile labour force. The Committee should consider measures to better address exploitation of these visa holders which has become well known through media reports.

**Recommendation 12:** The Committee should recommend that the Government addresses reports on reduction in education standards associated with the overseas students which are impacting negatively on the reputation of Australia's International Education industry.

## Conclusion

This submission has briefly explored the current nature of temporary migration in Australia, outlined the key areas of concern that should be prioritised by the Committee, and recommended specific courses of action for the Committee to undertake.

If we want Australia to continue to be a modern economy that is competitive on the global stage, we need to ensure we have the right immigration policy settings in place so that Australia and Australian citizens are net beneficiaries from the rapid people movement that will characterise the world in the 21<sup>st</sup> century.

That includes ensuring temporary entrants are not exploited but made to feel welcome. This submission has highlighted some of the inadequacies of our current arrangements, including the high prevalence of wage theft among new arrivals. Our formal migration program could not be delivered at current levels without a substantial feeder cohort of temporary entrants, but the Government needs to ensure sensible and clear pathways to permanent residence for temporary entrants who meet Australia's needs.

The McKell Institute welcomes any further opportunities to contribute to the Committee on this important area of inquiry and thanks the Committee for its work on this matter.

## End Notes

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- <sup>i</sup> TREASURY/HOME Affairs (2018), Shaping a Nation, Treasury Research Institute, 16 April 2018, <https://research.treasury.gov.au/external-paper/shaping-a-nation/>
- <sup>ii</sup> BENSON, Simon (2020), Coronavirus: Stranded visa holders thrown welfare lifeline and extended stay, The Australian, March 23 2020, Accessed online: <https://www.theaustralian.com.au/nation/politics/coronavirus-stranded-visa-holders-thrown-welfare-lifeline-and-extended-stay/news-story/5697ef9768c61255afa9330adcb10994>
- <sup>iii</sup> BERG & B FARBENBLUM, Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey, UNSW Law, Sydney and University of Technology Sydney, 2017.
- <sup>iv</sup> At the time of the survey the national minimum wage was \$17.70 per hour, or \$22.13 for casual employees. See the <https://www.fwc.gov.au/awards-agreements/minimum-wages-conditions/annual-wage-reviews/annual-wage-review-2015-16/national>.
- <sup>v</sup> McCAULEY, Dana (2020), Employers could be forced to name and shame themselves over wage theft, Sydney Morning Herald, 18 February 2020, Accessed online: <https://www.smh.com.au/politics/federal/employers-could-be-forced-to-name-and-shame-themselves-over-wage-theft-20200217-p541iz.html>.
- <sup>vi</sup> ABS Catalogue 3412
- <sup>vii</sup> ABS Catalogue 3101.
- <sup>viii</sup> ABS Catalogue 6202.
- <sup>ix</sup> CROWE, David (2020), Plane asylum seekers hit new peak – 50,000 waiting to be deported, Sydney Morning Herald, 16 February 2020, Accessed online: <https://www.smh.com.au/politics/federal/airplane-asylum-seekers-hit-new-peak-50-000-waiting-to-be-deported-20200216-p541b1.html>.
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- <sup>xi</sup> AUSTRALIAN HUMAN RIGHTS COMMISSION (2015), Building social cohesion in our communities, A summary of the online resource for local government, 2015, <https://www.humanrights.gov.au/our-work/race-discrimination/publications/building-social-cohesion-our-communities>.
- <sup>xii</sup> KINNARD, Bob (2016), Australian Temporary Work Visa concessions in the Singapore FTA package, The Australian Population Research Institute, 26 May 2016, <https://tapri.org.au/2016/05/>.
- <sup>xiii</sup> COMPUTER DAILY NEWS (2016), How Indian IT Professionals are using 457 visas to take Australian jobs, 7 December 2016, Accessed online: <https://www.channelnews.com.au/how-indian-it-professionals-are-using-457-visas-to-take-australian-jobs/>.
- <sup>xiv</sup> VAN ONSELEN, Leith (2020), Vice-chancellor: International students a permanent residency scam, Macrobusiness, 28 January 2020, Accessed online: <https://www.macrobusiness.com.au/2020/01/vice-chancellor-international-students-a-permanent-residency-scam/>.
- <sup>xv</sup> SMEE, Ben (2019), Pacific Islands will survive climate crisis because they ‘pick our fruit’, The Guardian, 16 August 2019, Accessed online: <https://www.theguardian.com/australia-news/2019/aug/16/pacific-islands-will-survive-climate-crisis-because-they-can-pick-our-fruit-australias-deputy-pm-says>.
- <sup>xvi</sup> WELCOMING CITIES, Connecting Thriving Communities, Accessed online: <https://www.bing.com/search?q=welcoming+cities&form=EDGTCT&q=PF&cvid=b234590f7d0d437fb43d9fb2>

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