



25 March 2020

SUBMISSION OF THE MIGRANT WORKERS CENTRE

THE SENATE SELECT COMMITTEE ON TEMPORARY MIGRATION

1. INTRODUCTION

- 1.1. The Migrant Workers Centre ('MWC') welcomes the opportunity to provide this submission to the Senate Select Committee on Temporary Migration to inquire into and report on "the impact temporary migration has on the Australian economy, wages and jobs, social cohesion, and workplace rights and conditions".
- 1.2. The MWC is a non-profit organisation located in Carlton, Victoria, helping migrant workers understand their rights and get empowered to enforce them. Our goal is to end labour exploitation and fix our workplace system so that every worker, regardless of their migrant status, is treated with dignity and respect.
- 1.3. We define 'migrant workers' as persons who were born in a country other than Australia and work in Australia under instructions for income. Migrant workers from all around the world and in various occupations come to the MWC to seek help in defending their workplace rights. As a result, we witness firsthand the prevalence of discrimination against and exploitation of migrant workers and its impact on migrant communities as well as the broader Australian society.
- 1.4. We also witness that Australia's weak protection of workplace rights and restrictive conditions attached to temporary visas make temporary migrant workers targeted victims of wage theft. Many temporary migrant workers hesitate to report wage theft due to fear of negative visa consequences or deportation.
- 1.5. Given the rampant wage theft and significant breaches of workplace rights of migrant workers, we believe that the current temporary migration program facilitates the commodification and exploitation of migrant labour and argue that Australia must urgently revamp its immigration system. This submission highlights the following issues that the MWC urges the Select Committee Chair to take into account:
 - a. Reforming the employer-oriented immigration system to protect migrant workers from exploitation

- b. Restoring the balance between temporary and permanent migration programs to maximise the benefits of labour migration
- c. Assisting migrant workers with access to redress against wage theft without increasing risks of negative implications on their life in Australia

2. SUMMARY OF RECOMMENDATIONS

A PEOPLE-CENTRED TEMPORARY MIGRATION PROGRAM

Recommendation 1. The federal government should provide information about workplace rights in community languages, upon issuing temporary visas with work rights, to those who are issued the visas offshore. It should also facilitate follow-up education upon arrival by funding trade unions and community legal centres to offer workplace rights workshops in community languages.

Recommendation 2. The federal government should revise the restrictive conditions of temporary visas that hinder holders of the visas from exercising their workplace rights and fighting against discrimination, exploitation, or harassment (see **Appendix 1** on page 20 for visa-specific recommendations).

Recommendation 3. The federal government should replace labour agreements with businesses that subordinate migrant workers to their employers with ones with regional governments that facilitate the settlement of temporary migrant workers and the development of regional Australia.

BETTER TRANSITION TO PERMANENT RESIDENCY

Recommendation 4. The federal government should provide adequate onshore pathways to permanent residency to temporary migrant workers of all visa subclasses who are already in the country and have contributed to its economy. The time they have spent working in Australia should be given greater weight in consideration of their applications for permanent residency.

Recommendation 5. The federal government should adjust the yearly maximum numbers of permanent and temporary visas issued and maintain an adequate ratio between the two to enable temporary migrant workers to acquire permanent residency within a reasonable time frame as long as they satisfy the points test.

Recommendation 6. The federal government should establish a genuinely tripartite, independent, and transparent body with responsibility and commensurate funding that can provide objective evidence-based advice to the government on matters pertaining to skills shortages, training needs, workforce capacity and planning, and labour migration.

STRONG PROTECTION OF WORKPLACE RIGHTS

Recommendation 7. Criminal sanctions should be introduced against serious forms of wage theft. The onus of proof should be reversed when employers have breached payslip and record-keeping obligations. Falsifying or failing to keep employee records should also be criminalised.

Recommendation 8. Additional penalties should be introduced against contraventions made disproportionately against migrant workers. In addition, employers knowingly influencing or coercing temporary migrant workers into breaching their visa conditions should be regulated and sanctioned.

Recommendation 9. Courts and tribunals should be reformed to enable fast and simple avenues for all workers to recover stolen wages.

Recommendation 10. The federal government should introduce a national labour hire licensing scheme that replicates and scales up the best-practice requirements of the Queensland and Victorian state schemes.

Recommendation 11. The federal government should protect the entitlements of every worker in the face of liquidation by amending the *Fair Entitlements Guarantee Act 2012* and extending the eligibility to make a claim under the Act to all, irrespective of their residency or visa status.

Recommendation 12. The federal government should proactively disseminate the message that the standards under the *Fair Work Act 2009* apply to every worker equally, irrespective of their residency or visa status.

Recommendation 13. A clear and strong firewall between the Fair Work Ombudsman and the Department of Home Affairs should be created by making comprehensive improvements to the existing Assurance Protocol to protect wage theft victims and whistle-blowers. When a migrant worker reports wage theft, any breaches of visa-specific work conditions should not provide a ground for cancelling the worker's current visa or denying a subsequent visa.

Recommendation 14. The federal government should establish a bridging visa with work rights to extend the stay of temporary migrant workers who are victims of workplace exploitation, harassment, or injury and enable them to access justice in court, compensation, or medical/psychological treatment.

FACILITATED SETTLEMENT

Recommendation 15. Australia's social security net should be expanded to cover temporary migrant workers who make contributions to the national economy and share the cost of operating welfare schemes.

Recommendation 16. The federal government should allow all refugees to stay permanently. All bridging visas granted to asylum seekers should have reasonably long expiries with work rights to facilitate their employment while they wait for protection outcomes.

Recommendation 17. Civil society organisations including trade unions, migrant community organisations, and community legal centres should be assisted with adequate funding to extend their services to migrant workers and meet their social, economic, and cultural needs.

Recommendation 18. Migration agents' adherence to the code of conduct should be actively regulated. Penalties should be applied to migration agents who knowingly facilitate employers to make fraudulent employment arrangements with migrant workers.

3. ECONOMIC AND SOCIAL COST OF THE CURRENT IMMIGRATION SYSTEM

- 3.1. A society prospers when its members are united in their values and are committed to the long-term sustainability of their communities. We suffer as a society when we are isolated as individuals and don't work together. In this frame, Australia's immigration policy must embrace and include migrants into our communities and society. This means providing meaningful assistance for settlement and integration and ensuring that their rights are upheld. **When we support migrants and give opportunities for all members of our society to contribute, we all benefit.**
- 3.2. This spirit was echoed by the former Minister for Immigration and Citizenship, Chris Bowen, when he criticised Europe's guest worker programs and stated that "people who share respect for our democratic beliefs, laws and rights are welcome to join us as full partners with equal rights".¹
- 3.3. Australia used to fully understand the advantages of a permanent migration program and reaped the benefits from it throughout the last century. In the last decades, however, the federal government switched to a "two-step immigration" policy that allows migrants to enter Australia on temporary visas and apply for permanent residence after they have participated in the country's labour or education market.²

¹ Chris Bowen, 'The genius of Australian multiculturalism', Address to the Sydney Institute (17 February 2011), recited from Chris Bowen, *Hearts & Minds: A Blueprint for Modern Labor* (Melbourne University Publishing, 2013).

² Robert G. Gregory, "The Two-Step Australian Immigration Policy and Its Impact on Immigrant Employment Outcomes," Discussion Paper (IZA Institute of Labor Economics, 2014); Peter Mares, *Not Quite Australian: How Temporary Migration Is Changing the Nation* (Text Publishing, 2016); Lesleyanne Hawthorne, "How Valuable Is 'Two-Step Migration'? Labor Market Outcomes for International Student Migrants to Australia," *Asian and Pacific Migration Journal* 19, no. 1 (2010): 5–36, <https://doi.org/10.1177/011719681001900102>.

- 3.4. This new system, which in principle should yield a win-win situation for migrants and Australian society, is incurring significant economic and social costs to both sides.

PROBLEMS OF TEMPORARY VISAS

- 3.5. Temporary migrant workers are regarded as a useful economic input that can be discarded when no longer required. Most temporary migrant workers are on visas that expire in a couple of years or months. Not every visa is renewable, and even when one has a renewable visa, getting it renewed is difficult and costly.
- 3.6. As a result, most temporary migrant workers live with constant fear about the possibility that they will be forced to leave Australia if they fail to secure permanent visas. This means that their relationship to our communities is precarious, too.
- 3.7. Temporary migrant workers bring in skills and experience that can make significant contributions to Australia, but they are likely to be under-utilised. The restrictive nature of temporary visas discourages businesses from engaging with temporary migrants to fill positions with greater responsibilities. As a result, temporary migrant workers are more likely to settle for opportunities at a level below their previous overseas experience and/or qualification.³ At the same time, businesses that engage with temporary migrant workers have to suffer from high staff turnover and bear the recurring cost of recruiting and training new workers.
- 3.8. Besides, the temporality of their visas discourages both temporary migrants and native-born residents from engaging with each other. The lack of interaction encourages dehumanising migrant workers, and leads to stratifying the society, accusing them for congesting cities and stealing jobs from native-born residents. At the same time, the stigma discourages temporary migrants from participating in Australian society, exacerbating the social divide.
- 3.9. We need to build an immigration system that allows every migrant to contribute to and enrich Australia. **The current system, which brings in workers from overseas to support our economy but leaves them with no pathways to be part of our communities, is not working towards building a harmonious and prosperous future for Australia.**

³ Agnieszka Kosny, Iracema Santos, and Alison Reid, "Employment in a 'Land of Opportunity?'" *Immigrants' Experiences of Racism and Discrimination in the Australian Workplace*, *Journal of International Migration and Integration* 18, no. 2 (2017): 483–97, <https://doi.org/10.1007/s12134-016-0482-0>; Andreas Cebulla and George Tan, "Skilled Migration to South Australia 2010-2014: Profile and Employment Outcomes of Recent Permanent and Temporary Migrants," *Economic Issues* (South Australian Centre for Economic Studies, 2019).

RESTRICTIVE CONDITIONS OF TEMPORARY VISAS

- 3.10. Temporary visas not only restrict the residency of their holders but also their employment prospects with various conditions attached to them. For example, most temporary skilled visas expire in 60 days after dismissal; Working Holiday Makers are generally not allowed to work in one workplace longer than six months; and student visa holders can work only up to 40 hours per fortnight.
- 3.11. These restrictions make the power gap between employers and temporary migrant workers insurmountably wide. This is not to say that temporary migration, in itself, necessarily leads to the exploitation of migrant workers. Rather, the current practices of the temporary migration program—specifically, the prioritisation of employer demand and the exercise of cancellation powers by the Department of Home Affairs—create an atmosphere in which migrant workers are left open to exploitation. The limited time temporary visas allow to their holders to access Australia’s wage justice system significantly limits migrant workers’ chance to seek remedies if they get their wages stolen. Employers know that migrant workers have no alternative but to comply with the terms set by the employers, many migrant workers simply endure exploitative work conditions. Practically, there are more reasons for employers to exploit migrant workers on temporary visas than to abide by the laws.
- 3.12. One of the driving forces of the temporary migration program is employer demands. It is important, however, to note that skill shortages identified by employers do not necessarily represent genuine failures of domestic skills training and supply. A study of temporary skilled visas finds that prevailing conditions or wages that fall short of workers’ remuneration demand also result in recruitment difficulties and can be misinterpreted as skill shortages.⁴ It is not to say that we should restrict migration. Rather, we acknowledge that temporary skilled visa holders make invaluable contributions to Australia by bringing their skills. In addition, a survey of temporary skilled workers and their employers suggests that between 69 per cent and 86 per cent of these workers are involved in training native-born workers.⁵
- 3.13. What we are concerned about is that many employers believe they can recruit “certain behavioural traits and interpersonal competencies ... including increased loyalty, the supposedly harder working nature and the better attitudes” through temporary migration.⁶ If employers find these qualities attractive and more easily recruitable among temporary

⁴ Chris F. Wright and Andreea Constantin, “An Analysis of Employers’ Use of Temporary Skilled Visas in Australia,” Inquiry into the Impact of Australia’s Temporary Work Visa Programs on the Australian Labour Market and on the Temporary Work Visa Holders (Canberra, Australia: Senate Education and Employment References Committee, 2015), 30.

⁵ Migration Council Australia, “More than Temporary: Australia’s 457 Visa Program” (Inquiry into the impact of Australia’s temporary work visa programs on the Australian labour market and on the temporary work visa holders, 2013), 21.

⁶ Wright and Constantin, “An Analysis of Employers’ Use of Temporary Skilled Visas in Australia,” 32.

migrant workers than native-born workers, it is worth questioning the relationship between these qualities and temporary migration. These qualities are not something one is born with; they are qualities one adopts when located in precarious conditions for self-protection.

3.14. Another factor that makes most temporary migrants in vulnerable conditions is the lack of social security net. Although they make contributions to the national economy and share the cost of operating welfare schemes, temporary migrant workers are not covered by these schemes. Temporary migrant workers have a higher share of working age population and are expected to contribute more taxable income than they cost to the social security net.

3.15. A majority of temporary migrant workers are not eligible for Medicare enrolment, although many of them are exposed to occupational health and safety hazards at a higher rate. A couple of years ago, for example, a migrant worker was found dead from a natural cause without getting any medical treatment in time.⁷ Suppose the worker died from an unknown virus as infectious as COVID-19. The expected cost of leaving temporary migrant workers uncovered by the social security net can be higher than the cost of covering them.

3.16. **Australia’s social security net should be expanded to cover temporary migrant workers who make contributions to the national economy and share the cost of operating welfare schemes.**

3.17. It is particularly urgent to extend the Fair Entitlement Guarantee (‘FEG’) to temporary migrant workers for equity and fairness. The FEG is a federal government scheme to protect workers from employer bankruptcy. Many temporary migrants have left Australia empty-handed after their employers filed for bankruptcy when workers with Australian citizenship or permanent residence were paid up to 13 weeks of unpaid wages and entitlements, superannuation, and redundancy payments. Many migrant workers express their loss of hope over the Australian justice systems when they find their employers continue to have thriving businesses through illegal phoenix activities.⁸

3.18. **The federal government should protect the entitlements of every worker in the face of liquidation by amending the *Fair Entitlements Guarantee Act 2012* and extending the eligibility to make a claim under the Act to all, irrespective of their residency or visa status.**⁹ In addition, the FEG should be redesigned to function as a workplace rights protection rather than a social security measure.¹⁰

⁷ SBS News, “Fruitpicker’s death prompts calls for better protection of migrant workers” (2 November 2015), <https://www.sbs.com.au/news/fruitpicker-s-death-prompts-calls-for-better-protection-of-migrant-workers>.

⁸ The Guardian, “Legal loophole leaves migrant workers with thousands of dollars in unpaid wages” (30 September 2019), <https://www.theguardian.com/australia-news/2019/sep/30/legal-loophole-leaves-migrant-workers-with-thousands-of-dollars-in-unpaid-wages>.

⁹ Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (Parliament of Australia, 2016).

¹⁰ Migrant Workers’ Taskforce, “Report of the Migrant Workers’ Taskforce” (Department of Jobs and Small Business, 2019), 98.

3.19. We must fix these problems by making temporary visas less precarious and increasing protections for migrant workers' workplace rights.

BROKEN BALANCE BETWEEN PERMANENT AND TEMPORARY VISAS

3.20. Another factor that fails the current immigration system is the broken balance between permanent and temporary migration. The federal government has uncapped temporary migration intakes while tightly controlling permanent migration intakes. As a result, the number of temporary visa holders newly entering Australia is rapidly growing, although the number of permanent visas issued is on the decline.

Table 1. People on Temporary Visas with Work Rights in Australia

Visa Category	Number
Special Category	668,687
Student	480,543
Working Holiday Maker	141,142
Temporary Resident (Other Employment)	39,079
Temporary Resident (Skilled Employment)	119,160
Temporary Graduate	89,324
Grand Total	1,537,935

Source: Department of Home Affairs, "Temporary entrants visa holders pivot table at 31 December 2019" (Commonwealth of Australia, 2019).

3.21. Table 1 shows that there are over 1.5 million people in Australia today who are on temporary visas with work rights.¹¹ Assuming that the population on temporary visas includes 5.97% of children aged less than 15 and that its labour force participation rate is 66.0% the same as the entire population in Australia according to the Census 2016,¹² there are 1,015,037 temporary migrant workers.¹³ This number does not include the workers who stay on other temporary visas with work rights such as bridging visas and temporary protection visas. Nor does it include the unknown number of people who are working while staying on visas with no work rights or expired visas. Therefore, **it is not an overstatement that there are over one million temporary migrant workers in Australia.**

¹¹ Department of Home Affairs, "Temporary entrants visa holders pivot table at 31 December 2019" (Commonwealth of Australia, 2019).

¹² The percentage of children aged less than 15 can be lower than 5.97% because not all temporary visas allow primary visa holders are allowed to accompany family members. On the other hand, the labour force participation rate can be higher because temporary visa holders have a higher share of working age population.

¹³ Australian Bureau of Statistics, "6202.0 Labour Force, Australia" (February 2020).

- 3.22. Most of these temporary migrant workers wish to be able to call Australia home. A survey of people on temporary skilled visas, funded by the Department of Immigration and Citizenship and undertaken by the Social Research Centre, suggests that over 70 per cent of temporary migrant workers are interested in staying longer in Australia.¹⁴ On the other hand, 81 per cent of the temporary migrant workers the MWC has met so far were planning to apply for visas with the right to permanent residence.
- 3.23. However, ways for temporary migrant workers to acquire permanent residency in Australia are highly limited: they need to find an employer to sponsor them for permanent residency applications or satisfy the Department of Home Affairs' points test and score high enough to be invited to submit independent applications. In addition, there is a yearly limit to the number of permanent visas issued. In 2018-19, for example, the federal government issued only 109,713 skilled visas with permanent residence. At the same time, it granted 2,772,889 new and renewed temporary visas with work rights, even when we exclude temporary protection visas and bridging visas with work rights.¹⁵
- 3.24. This broken balance between permanent and temporary migration has been worsening in the last decades. If we set aside the special category visas granted to citizens of New Zealand, we can see that the federal government now issues almost three times the number of temporary visas with work rights it did two decades ago (Figure 1).
- 3.25. Temporary migrant workers have only a small chance to acquire permanent residency. Out of the 109,713 skilled visas with permanent residence issued in 2018-19, 56.8 per cent were granted to those onshore.¹⁶ Taking into consideration that there are over one million temporary migrant workers in Australia, **only 6 per cent of them can expect to be able to move on to permanent residency.**
- 3.26. Temporary migrant workers who belong to the remaining 94 per cent are likely to be "permanently temporary" during their time in Australia.¹⁷ They have no other option but to hop from one temporary visa to another to continue legally staying in Australia.
- 3.27. The current two-step immigration system is not sustainable. Relying on so many migrant workers' labour to maintain our economy and keeping them barred from having representation and participating in our political system greatly damages our democratic institutions.

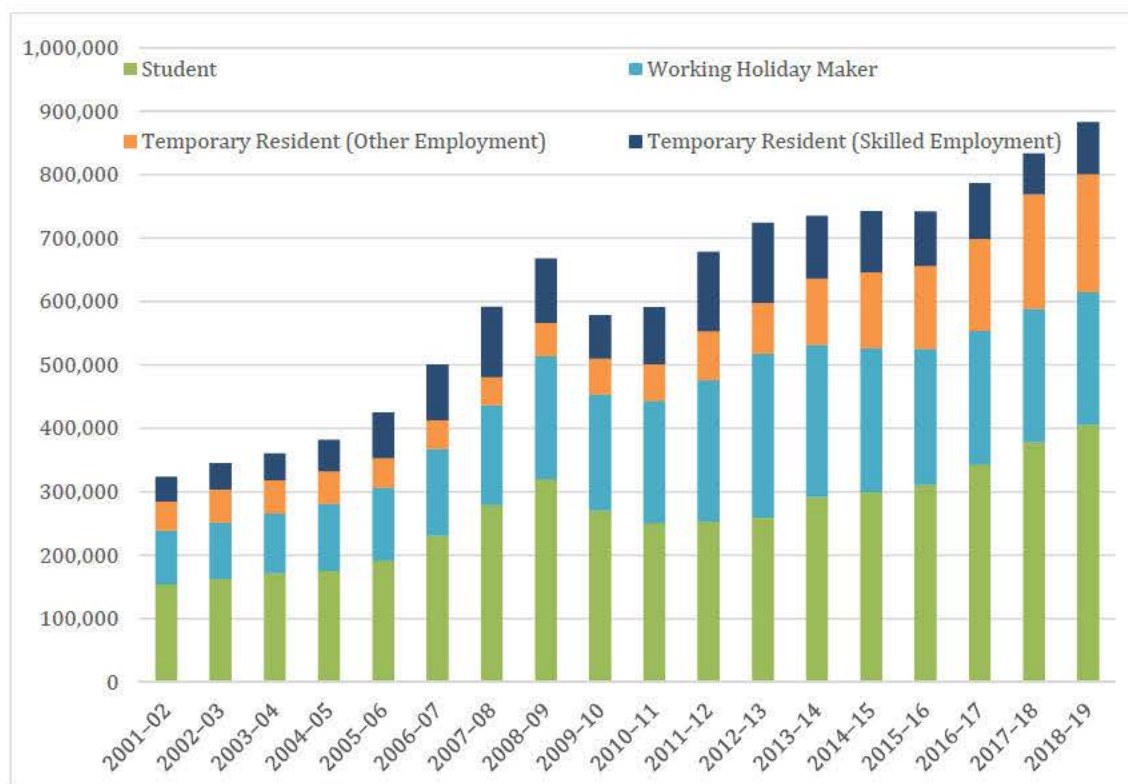
¹⁴ Migration Council Australia, "More than Temporary: Australia's 457 Visa Program," 29.

¹⁵ Department of Home Affairs, "Australian Migration Statistics" (Commonwealth of Australia, 2019).

¹⁶ Department of Home Affairs, "Australian Migration Statistics" (Commonwealth of Australia, 2019).

¹⁷ Peter Mares, "Temporary Migration and Its Implications for Australia," Papers on Parliament (Parliament House, 2012).

Figure 1. Issuance of Temporary Visas with Work Rights (excluding 444), 2001 to 2019



Source: Department of Home Affairs, “Australian Migration Statistics, 2018-19” (Commonwealth of Australia, 2019).

3.28. **The federal government should provide adequate, onshore pathways to permanent residency to temporary migrant workers of all visa subclasses who are already in the country and have contributed to its economy.** The time they have spent working in Australia should be given greater weight in consideration of their applications for permanent residency.¹⁸

3.29. In addition, the federal government should also adjust the yearly maximum numbers of permanent and temporary visas issued and maintain an adequate ratio between the two in order to enable temporary migrant workers who desire permanent residency to acquire it within a reasonable time frame as long as they satisfy the points test.

¹⁸ Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*.

4. LABOUR MARKET COST OF THE EMPLOYER-ORIENTED IMMIGRATION SYSTEM

- 4.1. Another characteristic of Australia's immigration system is its employer-oriented nature. Visas such as temporary skilled visas and Working Holiday Maker visas have gone through numerous changes to meet the specific demands of businesses. During the ongoing COVID-19 crisis, for example, the federal government eased the work restrictions of student visas to enable supermarkets to hire a large number of casual employees for a short term.
- 4.2. Skilled visas are more responsive to employer demands than any other visas. In most cases, a migrant worker applying for a temporary or permanent skilled visa needs to have their qualifications and employment records verified by a relevant organisation authorised by the federal government. The skills assessment authority contacts the worker's current and former employers to confirm their employment period, occupation, earnings, and duties performed. In addition, a permanent skilled visa is granted only when an employer nominates a migrant worker or when the federal government or a state government invites the worker. Either way, a migrant worker applying for permanent residence are required to demonstrate that there are Australian employers who value and demand their skills.
- 4.3. This employer-oriented nature of our immigration system deprives migrant workers of power to protect their workplace rights from employers who already have disproportionate power over workers.¹⁹ Combined with weak protection of workplace rights, our immigration system creates an atmosphere in which temporary migrant workers are left open to exploitation.
- 4.4. Migrant workers find it challenging to speak up when they experience discrimination or injustice at work because of the insurmountable power gap posed by their temporary visas. The biggest hurdle against their flight from exploitative conditions is the fear of getting dismissed and losing their livelihood and residency in Australia. It also discourages them from attempting anything that might harm their increasingly slim chances of acquiring permanent residence such as seeking help from unions or the Fair Work Ombudsman.
- 4.5. The MWC has witnessed a variety of forms of wage theft targeting migrant workers that range from underpayment to extortion.²⁰ Some of the most prevalent forms of wage theft reported to the MWC include:
 - a. Denying migrant workers the right to correct information about their award rates and entitlements

¹⁹ Migrant Workers Centre, "Submission to the Senate Economic References Committee's inquiry on unlawful underpayment of employees' remuneration" (5 March 2020).

²⁰ In this submission, any underpayment, withholding, or misappropriation of the wages and entitlements prescribed by the *Fair Work Act 2009* or the *Superannuation Act 1976* constitutes wage theft.

- b. Paying migrant workers at arbitrarily discounted rates from their award rates with the excuse of their limited work experience, visa conditions, or limited competence in English
 - c. Forcing migrant workers to pay back money in exchange for employment or costs associated with employment
 - d. Forcing migrant workers to pay back costs of visa sponsorship or nomination or partnering with a migration agent to charge such costs to migrant workers
- 4.6. Below we illustrate some examples that highlight how temporary visa statuses jeopardise migrant workers with wage theft:

Case 1. Skilled visa holders trapped in exploitation in exchange of permanent residence

Tony (pseudonym) came to Australia with his family as a certified welder with years of experience in his home country. His plan was to get his hard work recognised, win his employer's nomination for permanent residence, and get his family settled in Australia for good.

There was one catch in his plan. However hard he worked, his employer wanted him to do more work. Tony was often sent to various worksites on a tight schedule, which left him little time for lunch or bathroom breaks. He worked over 60 hours per week and often had to sacrifice family time on weekends to go to work. Tony needed a test result of Competent English or higher for permanent residence application, but he had no time at all to study English after work or on weekends.

One day, Tony overheard his native-born co-workers talking about overtime penalty rate. They were wondering how the employer could afford to pay Tony and other temporary migrant workers the penalty rate for all the overtime work they did. It was only then that Tony realised that his employer had been discriminatorily underpaying temporary migrant workers. He was upset but could do nothing for fear his employer would not nominate him for permanent residence. Tony recently got a higher paying job offer from a partner business but had to turn it down to complete the required minimum three years with the current employer for permanent residence application.

Case 2. Regional businesses preying upon Working Holiday visa holders

Some rural towns in Australia have nicknames such as "Horror Hill" or "Helltown" among migrant workers. In such towns, exploitation and bullying is rife, underpayment is a norm, and proper accommodations are hard to find. A majority of workers there are Working Holiday Makers trying to meet a certain period of specified work requirement before being able to apply for subsequent Working Holiday visas.

Michael (pseudonym) needed to work in rural areas for at least 88 days if he wanted to extend his Working Holiday visa to a second year. He met a labour-hire provider in "Horror Hill" and got a strawberry-picking job. *To work at the farm, Michael had to rent a bed from*

the labour-hire provider. He paid the labour-hire provider \$120 per week to stay with 15 others in a four-bedroom house. He paid him an extra \$5 per day for transportation.

Michael was paid at a rate of \$2 per tray and barely earned what he owed to his labour-hire provider/landlord. He left “Horror Hill” to fill the remainder of his 88 days with a better-paying job. He got a job at an abattoir in “Helltown” from another labour-hire provider, who also charged him \$120 for a bed. At the abattoir, Michael was paid his award rate but still earned little money: his payslip would list all kinds of deductions such as employment commission to the labour-hire provider, training, and Q-fever vaccination.

Case 3. Student visa holders being forced to breach their visa conditions

Anna (pseudonym) came to Australia to study English. Due to her visa condition that prohibits her from working more than 40 hours per fortnight and the geographical restriction of seeking work around her language institute, most of the jobs she could find were casual kitchen hands positions at cafés and restaurants in downtown Melbourne.

Anna worked for several employers, none of whom signed a contract or gave her a copy of the Fair Work Information Statement. And she was underpaid by all. One café paid workers on student visas only 50% of their award rates. No penalty rates or casual loading were applied. Workers were fired at the whim of the manager who controlled the roster.

Another café hired only temporary migrant workers and paid them each \$70 cash in hand for a 12 to 14 hour-long day. What’s worse, the employer offered Anna a job on the condition she worked three days a week. Anna ended up breaching her visa condition to pay her tuition and bills. After a couple of weeks, Anna asked her employer to reduce her hours so she could allocate more time to her study. The employer gave her a look, said no, and suggested in a half-joking manner that he could report her to the government if she didn’t comply his order.

- 4.7. As shown above, temporary migrants are more likely to fall victim to wage theft. According to the FWO’s annual reports, 76 per cent of the FWO’s 50 litigations in the 2015-16 financial year involved a visa holder, and more than \$3 million was recovered for all visa-holders. In 2018-19, over 80 per cent of new litigations involved protecting migrant workers.
- 4.8. Be they for skilled or “unskilled” labour, the conditions attached to temporary visas allow employers to have disproportionate power over temporary migrant workers. Some employers misuse this power to underpay their workers and deny their workplace entitlements.
- 4.9. Temporary skilled visas were systematised in 1996 under the premise of adopting a “policy more relevant to the needs of business”.²¹ Initially, the visas were reserved to facilitating global businesses to undertake international and intra-corporate transfers of managers and

²¹ Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry: Future Directions* (Australian Government, 1995), para 3.29.

professionals, but the federal government enabled domestic businesses to utilise it to supply labour without giving workers job security. Holders of temporary skilled visas can work in Australia only in their nominated occupations and only for their sponsoring employers. When their contracts terminate or if they get dismissed, they are required to leave the country in 60 days unless they find another sponsoring employer. In other words, when temporary skilled visa holders lose jobs, they lose their livelihood as well as residency.

- 4.10. On the other hand, the federal government has also increased the intake of other temporary migrants on visas with work rights such as Working Holiday Makers and international students to address the so-called “unskilled” labour shortages. These visas have no sponsorship requirement but are subject to other more restrictive work conditions. For example, most Working Holiday Makers cannot work at one workplace for longer than six months, and international students can work only up to 40 hours a fortnight. These conditions make it challenging for these visa holders to find jobs, not to mention good working conditions. The MWC has met with many workers on these visas who say they feel grateful for their employers for merely offering them jobs.
- 4.11. The normalisation of wage theft against migrant workers has pushed Australia to a point of creating a dual labour market divided along migration/residence statuses. Some industries have become almost exclusively dependent on the migrant workforce. The dependence leads to a structural distortion of the economy and chronic skill shortages. For example, according to a survey of farmers conducted by the Victorian Farmers Federation in 2019 suggests that 71 per cent of the horticultural industry is dependent on undocumented migrant workers.²² The MWC’s experience also suggests that some business owners maximise their chances of profiting from wage theft by employing only migrant workers. A survey of farm workers conducted by the National Union of Workers in 2019 confirms the MWC’s observation: 98 per cent of the survey participants were migrant workers, and all the participants who disclosed how much they were getting paid reported underpayment. This is a clear manifestation that a dual labour market compromises the productivity of the national economy and negatively affects the job market.
- 4.12. It is without question that wage theft targeting migrant workers has a negative impact on Australia. It steals revenue from government taxes and superannuation contributions. Also, it harms Australia’s diplomatic and global trade relations and tourism by ruining its reputation. For example, there have been petitions overseas asking foreign governments to make diplomatic interventions and end Australia’s exploitation of Working Holiday Makers in countries.²³

²² Victorian Farmers Federation, “VFF Calls for AG Visa to Legalise Workers” (7 November 2019).

²³ See, for example, several petitions submitted to the South Korean President (www1.president.go.kr/petitions) asking for interventions on behalf of South Korean working holiday makers who fell victim to wage theft in Australia.

- 4.13. The federal government should proactively disseminate the message that the standards under the *Fair Work Act 2009* apply to every worker equally, irrespective of their residency or visa status.
- 4.14. We demand that criminal sanctions should be introduced against serious forms of wage theft. The onus of proof should be reversed when employers have breached payslip and record-keeping obligations. Falsifying or failing to keep employee records should also be criminalised.
- 4.15. Additional penalties should be introduced against contraventions made disproportionately against migrant workers. In addition, employers knowingly influencing or coercing temporary migrant workers into breaching their visa conditions should be regulated and sanctioned.
- 4.16. Business practices that disproportionately affect migrant workers should be reviewed and addressed with appropriate legal measures. Exploitation of migrant workers through labour hire arrangements is such a practice.²⁴ One of the urgent tasks for the federal government is to introduce a national labour hire licensing scheme that replicates and scales up the best-practice requirements of the Queensland and Victorian state schemes.
- 4.17. Migrant workers also suffer from a qualification and employment mismatch. A South Australian survey of skilled migrants, both permanent and temporary, reveals that many migrant workers have difficulties in finding employment opportunities that match their skills.²⁵ The employment prospect is even worse for other temporary migrants such as international students or Working Holiday Makers. The latter in particular is not given a fair chance to apply their skills in Australia because extending these visas to a second or third year is contingent on their undertaking work in a specified field or industry in a designated area of regional Australia for a specified period of time.
- 4.18. The distorted two-step immigration system has created a reserve army of labour as the inflow of temporary migrants is largely left uncapped and unregulated. The perceived competition in the job market grows accordingly, potentially derailing improvements of wage and entitlements in the industries that rely on the migrant workforce or that require little training or experience before job placement.
- 4.19. The MWC believes that our immigration policy should be reoriented from one responding to employer demand to one building communities. Continuing the current temporary migration program will only reinforce the dual labour market. Increasing the quota of permanent migrants who are willing and ready to work in Australia, including in

²⁴ Migrant Workers Centre, *Report of the National Conference on Labour Hire Reform* (Victorian Trades Hall Council, 2019).

²⁵ Cebulla and Tan, "Skilled Migration to South Australia 2010-2014: Profile and Employment Outcomes of Recent Permanent and Temporary Migrants," 9.

underpopulated regions, and will better address the challenges of temporary migration and skill shortages.

5. BUILDING A MORE EFFECTIVE AND JUST IMMIGRATION SYSTEM

- 5.1. Australia should sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and revise the immigration system for the protecting of all migrant workers, irrespective of their visa status.
- 5.2. The federal government should establish a genuinely tripartite, independent, and transparent body with responsibility and commensurate funding that can provide objective evidence-based advice to the government on matters pertaining to skills shortages, training needs, workforce capacity and planning, and labour migration. The federal government, business councils, and trade unions should have equal numbers and standing in the body.
- 5.3. The MWC recommends that the federal government revise the restrictive conditions of temporary visas that hinder holders of the visas from exercising their workplace rights and fighting against discrimination, exploitation, or harassment (see **Appendix 1** on page 20 for visa-specific recommendations). In addition, we recommend that all refugees should be allowed to stay permanently. All bridging visas granted to asylum seekers should have reasonably long expiries with work rights to facilitate their employment while they wait for protection outcomes.
- 5.4. One of the barriers temporary migrant workers face while seeking remedies to wage theft is the limited time they have left on their visas to access Australia's wage justice system. The federal government should revise the restrictive conditions of temporary visas that subordinate holders of the visas to their employers and make it hard for the visa holders to exercise their workplace rights and fight against discrimination, exploitation, or harassment. This visa for the victims of wage theft should be regarded as a qualifying substantive visa for another visa application.
- 5.5. When wage theft is brought to court by a migrant worker, no breaches of visa-specific work conditions suspected or identified should provide a ground for cancelling the worker's current visa or denying a subsequent visa. A clear and strong firewall between the Fair Work Ombudsman and the Department of Home Affairs should be created by reinforcing the existing Assurance Protocol to protect migrant workers who are victims of wage theft and whistle-blowers. The victims should be protected throughout their lifetime in Australia without having any negative consequences on their subsequent visa applications.
- 5.6. Courts and tribunals should be reformed to enable fast and simple avenues for all workers to recover stolen wages. Together with the FWO, they should be readily accessible to

temporary migrant workers and non-English-speaking workers who are likely to experience wage theft at a higher rate.

- 5.7. There should be additional penalties for contraventions made disproportionately against migrant workers. Although the *Protecting Vulnerable Workers Act 2017* created some measures of protection for them by, for example, increasing penalties for serious contraventions and prohibiting employers from making unreasonable requirements to workers, they are only applicable to contraventions made “knowingly” and “systematically”.²⁶ Narrowly defined measures are likely to be inadequate and beyond the reach of many migrant workers who are engaged in small businesses or areas of industries where it is hard to prove contraventions. Penalties should be applicable to both business owners and managers as well as labour hire users (i.e. hosts of labour hire workers) who are in control of decisions that lead to wage theft.²⁷
- 5.8. In addition, there is an urgent need to regulate and sanction employers knowingly influencing or coercing temporary migrant workers into breaching their visa conditions.²⁸ Some employers deliberately encourage migrant workers to breach their visa-specific work conditions (e.g. having their student visa-holding employees work longer than the allowed 40 hours per fortnight) and subsequently underpay the workers with threats of having them deported for visa condition breaches. There should be additional penalties for contraventions of the *Fair Work Act 2009* in combination with the *Migration Act 1958*.
- 5.9. The federal government should provide information about workplace rights in community languages, upon issuing temporary visas with work rights, to those who are issued the visas offshore. It should also facilitate follow-up education upon arrival by funding trade unions and community legal centres to offer workplace rights workshops in community languages. A community-based response can be effective in identifying wage theft against migrant workers. Migrant workers often do not have clear information about their entitlements or Australian migration programs and fear any potentially negative visa impacts of interacting with government authorities or having records of legal procedures. Civil society organisations including trade unions, migrant community organisations, and community legal centres should be assisted with adequate funding to be able to extend their services to migrant workers and meet their social, economic, and cultural needs.
- 5.10. Information about how to exercise the freedom of association should be proactively promoted for temporary migrant workers. Evidence shows that migrant workers who are union members are more satisfied with their employment and more likely to stay in Australia over a long term.²⁹

²⁶ Stephen Clibborn and Chris F. Wright, “Employer theft of temporary migrant workers’ wages in Australia: Why has the state failed to act?,” *Economic and Labour Relations Review* 29, no. 2 (2018): 207-227, 218.

²⁷ Migrant Workers Centre, *Report of the National Conference on Labour Hire Reform*, 15.

²⁸ Migrant Workers’ Taskforce, “Report of the Migrant Workers’ Taskforce,” 124.

²⁹ Migration Council Australia, “More than Temporary: Australia’s 457 Visa Program.”

- a. Unions must be facilitated to access temporary migrant workers at the pre-departure and post-arrival stage.
- b. Resources must be provided to unions to support, advocate on behalf of and organise temporary migrant workers.
- c. Unions must have the right to bring civil penalty proceedings against businesses in relation to breaches of the *Migration Act 1958*.

5.11. Migration agents' adherence to the code of conduct should be actively regulated. The MWC hears from many migrant workers who are tricked into fraudulent employment arrangements and exploitative work conditions by their migration agents. In the absence of close monitoring, a complex and transnational web of migration agents, labour hire providers, and accommodation providers has been created that preys on migrant workers. Some migration agents operate overseas without registration with the Office of the Migration Agents Registration Authority. Victims of these unregistered migration agents have been left without recourse as the Office considers complaints only about registered migration agents. Victims of registered migration agents also face difficulties as the majority of complaints are finalised within six to 12 months.³⁰

- a. The Office's monitoring and regulation should be extended to unregistered migration agents.
- b. Migration agents should be prohibited from being an associated entity of labour hire providers and be penalised when they directly or indirectly profit from exploiting migrant workers.

6. CONCLUSION

- 6.1. The existing combination of a liberal temporary migration program and a restrictive permanent migration program is unsustainable. It is paramount to remind ourselves of the principle of our immigration policy of enhancing Australia's long-term economic gain and social cohesion and restore the balance between temporary and permanent migration.
- 6.2. The prioritisation of employer demand in operating the temporary migration program has led to distorting Australia's labour market, normalising wage theft against migrant workers, and harming the country's international reputation and relations. The MWC urges the

³⁰ Office of the Migration Agents Registration Authority, "Make a complaint about an agent" (n.d.), <https://www.mara.gov.au/using-an-agent/resolving-disputes-with-your-agent/make-a-complaint-about-an-agent/>.

Senate to recognise the importance of this issue with a view to achieving just outcomes for the victims of wage theft.

- 6.3. The MWC has sought to focus this submission on a particular issue of temporary migration and its impact on Australia as requested and summarized its recommendations as presented in the box below. We would, however, be pleased to provide the Senate with further assistance in relation to protecting migrant workers in general, regardless of visa subclasses.

Appendix 1. Recommendations on Revising Visa-Specific Conditions

The Migrant Workers Centre recommends that the federal government revise the restrictive conditions of temporary visas that hinder holders of the visas from exercising their workplace rights and fighting against discrimination, exploitation, or harassment:

Temporary Skill Shortage visa

- a. Workers should be provided with at least 90 days to find another sponsor in the event of termination of their employer sponsorship.
- b. Employers should be disqualified to sponsor migrant workers in the future if they are found to have exploited or contributed to exploiting migrant workers or restricted their freedom of association or movement.
- c. The federal government should replace labour agreements with businesses that subordinate migrant workers to their employers with ones with regional governments that facilitate the settlement of temporary migrant workers and the development of regional Australia.

Temporary Work (Short Stay Specialist) visa

- a. Varying amounts of Temporary Skilled Migration Income Threshold (TSMIT), higher than the current AUD 53,900, should be applied to highly specialised occupations.

Working Holiday Maker visas

- a. The federal government should abolish a third-year extension of Working Holiday Maker visas to prevent the visas from being misused as a de facto temporary “unskilled” visa.
- b. A second-year extension of Working Holiday Maker visas should not be contingent on the satisfaction of the specified work requirement but on the declaration of having abiding by Australian laws including the *Migration Act 1958* and the *Income Tax Assessment Act 1997*.
- c. Volunteer experience should not provide ground for visa extension even under extreme circumstances such as the ongoing bushfire relief.
- d. The federal government should remove Condition 8547 that prohibits Working Holiday Makers from working for one employer longer than six months.

Student visa

- a. Student visas should be issued only to students who are enrolled in a course that requires at least 40 class hours of study per fortnight and is offered by an education service provider registered with the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).
- b. The federal government should remove Conditions 8104 and 8105 that prohibits students from working more than 40 hours a fortnight.
- c. Education service providers registered with the CRICOS should employ career counsellors who are trained about workplace rights and provide students with information and consultation about how to exercise workplace rights.
- d. The federal government should delicense education service providers that are found guilty of breaching the *Fair Work Act 2009* or the *Migration Act 1958* or of contributing to the exploitation of migrant workers.