Inquiry into the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages

ACTU Submission to Senate Standing Committee on Legal and Constitutional Affairs

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Introduction

Australia has an underclass of exploited temporary visa holders and a temporary skilled visa system that is currently driven by the interests of business rather than the interests of the Australian people. We need to transform Australia's visa system by putting Australia's workers first, ending the exploitation of temporary visa holders and prioritising permanent migration.

Australian Unions have a long-standing view that the migration system should preference permanent, rather than temporary migration in Australia. We believe the current trend towards temporary employer-sponsored migration is effectively outsourcing decisions about our national migration intake to employers and their short term needs, over the national interest and a long term vision for Australia's economy and society. This shift should not be blindly accepted as some inevitable, inexorable trend that must continue. Instead, it should be subject to critical questioning and debate. Unions continue to have concerns with a skilled migration program that relies excessively on temporary employer-sponsored migration, as is the case with the current system.

The current visa system needs reform. Any further changes to the temporary skilled visa system must not;

1. Lead to an expansion of the temporary work-related visa system where there are more temporary overseas workers, who are at significant risk of exploitation, operating in areas in which genuine skilled labour market shortages do not exist;

2. Continue to operate without adequate labour market testing, thereby compromising the integrity of the visa system and undermining employment opportunities for local workers;

3. Enable employers to avoid their responsibilities to first invest in domestic training and look to the local labour market for local workers before employing temporary overseas workers; and

4. Facilitate the continual abuse of the visa system in which temporary visa holders are purportedly in Australia to fill a particular skills shortage yet actually work in different position to that specified, including in lower skilled positions.

5. Allow for the undermining of local wages, workplace rights and local work-related standards, such as health and safety.

6. Allow for exploitation of overseas workers, including affording overseas workers fewer workplace protections, compared to Australian workers. Australian unions have well-documented concerns with the operation of our temporary visa program, but it is clear to us that the problems extend to a range of different visa types where overseas workers can find themselves in vulnerable situations.

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.

As recently as 2011 there were around 1.6 million temporary entrants in Australia and 1.7 million temporary entrants in Australia at the end 2012.

This compares to the current permanent migration intake of around 170 - 180, 000 per annum which is determined and capped on an annual basis.

At a time when unemployment remains problematic (particularly in some regional areas)- there are over 1 million underemployed workers and youth unemployment is in double digits- the Australian community needs to have confidence that such a large and growing temporary work visa program is not having adverse impacts on employment and training opportunities for Australians, particularly young people.

The community also needs to be assured that employers and others are not using the temporary skilled migration programme as an instrument of wage suppression or exploiting vulnerable temporary overseas workers who are unaware of their rights or not in a position where they feel able to exercise those rights.

Unfortunately, the evidence available from our affiliated unions and other sources is that both Australian and overseas workers are being disadvantaged on a regular basis under the current policy and program settings that govern temporary work visas.

It is time now for a fundamental reassessment of a skilled migration program that places such emphasis on temporary and employer-sponsored forms of migration without due recognition of the inherent flaws and dangers in the present system.

We set out below a package of recommendations to help address these issues and ensure that the temporary work visa program, to the extent that it is required, operates in the best interests of all workers.

Key Recommendations

Key Points

The ACTU welcomes the opportunity to make a submission to this Inquiry into the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages.

The ACTU is the peak body for Australian unions, made up of 46 affiliated unions. We represent almost 2 million working Australians and their families.

Australian unions have had long-standing and well-documented concerns with the operation of the TSS visa program, but it is clear to us that the problems extend to a range of other temporary visa types where overseas workers can find themselves in vulnerable situations. We therefore welcome the fact the Inquiry encompasses all temporary work visa types.

At a time when official unemployment figures remain stubbornly around 5% and youth unemployment is more than double that, the Australian community needs to have confidence that our large and growing temporary work visa program is not having adverse

impacts on the wages, employment and training opportunities for Australians, particularly young people.

Equally, the community needs to be assured that employers and others are not exploiting vulnerable temporary overseas workers who are unaware of their rights or not in a position where they feel able to exercise those rights.

Unfortunately, the evidence available from our affiliated unions and other sources is that both Australian and overseas workers are being disadvantaged and exploited on a regular basis under the current policy and program settings that govern temporary work visas. This has been happening far too often and for far too long for it to be dismissed as a few isolated cases in an otherwise well-functioning program. It is time now for a fundamental reassessment of a skilled migration program that places such emphasis on temporary and employer-sponsored forms of migration without due recognition of the inherent flaws and dangers in doing so.

In the submission that follows, we set out a package of recommendations to help address these issues and ensure that the temporary work visa program, to the extent that it is required, operates in the best interests of all workers. In support of this position, we first outline the overall ACTU position on skilled migration matters, and provide some background information on the nature and dimensions of the temporary work visa program.

Key Recommendations

1. **Recalibrating the balance of the skilled migration program toward permanent, independent migration**

   - The current weighting of Australia's skilled migration program towards temporary and employer-sponsored pathways should be re-evaluated, with greater emphasis given to the permanent, independent stream as the 'mainstay' of the skilled migration program.

2. **Improved labour market testing**

   The ACTU recommends more rigorous evidentiary requirements for labour market testing to be incorporated into legislation and associated program guidelines to ensure the intent of the legislation is achieved and Australian employment opportunities are protected. This should include:

   - A mandatory requirement for all jobs to be genuinely advertised as part of labour market testing obligations;
   - The introduction of minimum requirements for mandatory job ads, similar to the UK Resident Labour Market Test;
   - A requirement that jobs be advertised for a minimum of four weeks;

- A requirement that labour market testing has been conducted no more than 4 months before the nomination of a TSS (457) visa worker;

- A ban on job advertisements that target only overseas workers or specified visa class workers to the exclusion of Australian citizens and permanent residents;

- A crackdown on job ads that set unrealistic and unwarranted skills and experience requirements for vacant positions, with the effect of excluding otherwise suitable Australian applicants; and

- The Minister to use the provision at s.140GBA (5) (b) (iii) of the *Migration Act* 1958 to specify other types of evidence that should be provided as part of labour market testing, including evidence of relocation assistance offered to successful applicants, and evidence of specific measures to employ those disadvantaged or under-represented in the workforce, such as indigenous workers, unemployed and recently retrenched workers, and older workers.

- Labour market testing should apply to all occupations under the TSS (457) visa program. Existing exemptions because of international trade agreements should be removed.

- There should be no further waivers of labour market testing in trade agreements entered into by Australia. Any review of labour market testing, rules should be the subject of proper consultation with unions and other stakeholders including consultation through a new independent, tripartite Ministerial Advisory Council on Skilled Migration (MACSM).

- Where Australian Governments nevertheless continue to make commitments on the 'movement of natural persons' in free trade agreements that provide exemptions from domestic labour market testing laws, those commitments should not be extended to the category of 'contractual service suppliers' given the expansive meaning given to that term across professional, technical and trade occupations.

- The Migration Regulations should be amended as necessary to make clear that labour market testing applies not only to 'standard business sponsors' under the standard TSS (457) visa program, but applies also to all positions nominated by 'approved sponsors' under any labour agreement, Enterprise Migration Agreement (EMA) or Designated Area Migration Agreement (DAMA).

- The current sponsorship obligation 'to keep records' be expanded to specifically include records of labour market testing undertaken.

- In the interests of transparency and community confidence in the TSS (457) visa program, the Department of Home Affairs make information and data on the TSS occupations list and the operation of the labour market testing provisions publically available on at least a quarterly basis. Provision of such information and discussion

of the TSS occupations list and labour market testing should be a standing agenda item for the new independent, tripartite Ministerial Advisory Council on Skilled Migration

3. Address the prevalence of an exploited underclass of migrant workers

There are important policy measures that should be introduced to better protect temporary migrant workers from exploitation. These include, but are not limited to, the recommendations in the Senate inquiry report 'A National Disgrace: the Exploitation of Temporary Work Visa Holders'. Some crucial reforms include:

- Regulating high risk areas. For example, by establishing a national licensing regime for labour hire firms.

- Providing equal workplace rights for temporary migrant workers. For example, breaches of the Migration Act should not result in a loss or reduction of protection under the Fair Work Act.

- The reforms should help enable temporary migrant workers to effectively enforce their workplace rights. For example, the government should 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 appropriate resourcing

4. Labour agreements should be abolished

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

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

5. TSMIT needs to be recalibrated to a higher rate

- There is now a gap of more than A$26 000 between the salary floor for temporary skilled migrant workers and annual average salaries for Australian workers.

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

6. 400 visa series needs to be reformed

- The 400 visa series visa category has become a "new frontier for unscrupulous employers" looking to exploit cheap foreign labour at the expense of Australian workers.

- The 400 visa series needs to be reformed so that employers are not circumventing the TSS visa rules and regulations surrounding labour market testing.

7. Misuse of ABN's is prevalent amongst temporary visa holders. The ABN system must be reformed

- 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.

8. Labour market testing should not be removed through free trade agreements and the definition of contractual service provider should be reviewed

- 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.

- In recent months with the ratification of the TPP11 the Australian Government has yet again entered into a free trade agreement where it has removed the obligation on employers to conduct labour market testing before temporary overseas workers fill Australian jobs. Australian and overseas companies will be able to employ unlimited numbers of workers from 6 additional TPP member 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. In doing so, Australia has agreed to the worst deal of any TPP country in terms of what it has given up in relation to migration safeguards. The Government should not support an agreement that removes this basic protection in support of Australian jobs.

9. Significantly strengthen the skills assessment processes

- Significantly strengthen the skills assessment processes and ensure testing is by the appropriate industry body and not by immigration officials ensuring that training and licensing obligations for skilled trades must be maintained with skills testing required for particular industries and professions. 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.

The skills assessment processes must be significantly strengthened by:

- ensuring all testing is performed by an appropriate industry body and not by immigration officials;
- guaranteeing that workers who currently require an occupational license must successfully complete a skills and technical assessment undertaken by a 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.

10. Working Holiday Maker Visa needs to be reformed

- The Home Affairs should conduct a public assessment and review of the potential impact the additional labour supply from this visa program has on employment opportunities, as well as wages and conditions, for Australian citizens, particularly on young Australians in lower-skilled parts of the labour market. The review should be conducted with the oversight of a tripartite body.

- Governments should have the option of imposing quotas or capping working holiday visa numbers and exercise that option where labour market conditions require it. Given the current state of the labour market, now is such a time for a cap to be imposed. An annual quota for the visa should be determined based on advice from the tripartite Ministerial Advisory Council for Skilled Migration and taking into account the labour market conditions for young Australians.

- The Home Affairs should provide consolidated and publicly available information on the working patterns of working holiday visa holders. This should include the number of working holiday visa holders that do exercise their work rights, the duration of their employment, the number of employers they work for, their rates of pay, and the locations, industries, and occupations they work in. If this information is not currently able to be produced, then DIBP should report to the Ministerial Advisory Council for Skilled Migration on how this data can be collected.

- job ads that advertise only for working holiday visa holders or that use the inducement of a second working holiday visa be banned.

- The second year working holiday visa be abandoned altogether.

- Remodel the work rights attached to the working holiday visa so that it operates as a genuine holiday visa with some work rights attached, rather than a visa which in practice allows visa holders to work for the entire duration of their stay in Australia.

11. **Ensure that temporary visa holders are provided information about their workplace rights and entitlements**

- 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.

12. **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.**

13. **There are significant concerns about the Government's proposal to privatise visa processing and the impact it may have on the integrity of the visa system. The government should not continue with these proposals.**

14. **The Ministerial Advisory Council on Skilled Migration must be a genuine tripartite and independent council**

- If the Ministerial Advisory Council on Skilled Migration (MACSM) is to be meaningful it needs to be a genuine tripartite council. MACSM should be reconstituted as a genuinely tripartite, independent, and transparent body. MACSM in the past has been neither genuinely tripartite, nor sufficiently independent from government. Until recently, the ACTU was the sole union presence on MACSM. An impartial observer cannot help but conclude that MACSM did not represent a reasonably balanced range of views. MACSM needs to have a balanced representation from business, the unions and government.

- The primary basis for occupations being included on any TSS occupation list must be empirical evidence going to a genuine labour market shortage that cannot be resolved through increasing wages or training Australian workers.

Background and context

ACTU position on the skilled migration program

The ACTU and affiliated unions have had a long and significant interest in the skilled migration program, particularly those parts of the program where temporary visa holders with work rights are involved.

Unions have often represented qualified Australian workers whose primary rights to skilled jobs have been ignored by employers preferring to use temporary overseas workers, as well as representing temporary visa workers whose livelihoods have been threatened by employers and agents who have taken unfair advantage of them.

It has often been the temporary TSS (old 457 visa program) that has captured the attention in these cases, but many of the same issues apply across a range of temporary visa types, including working holiday visas and student visas. Later sections of the submission detail many of the cases of exploitation that have been reported.

Our interest in temporary work visas, and the debate that surrounds them, has always been driven by three key, interrelated, priorities.

The first is to maximise jobs and training opportunities for Australians - that is, citizens and permanent residents of Australia, regardless of their background and country of origin – and ensure they have the first right to access Australian jobs.

The second is to ensure that the overseas workers who are employed under temporary visas are treated well, that they receive their full and proper entitlements, and they are safe in the workplace – and if this does not happen, they are able to seek a remedy just as Australian workers can do, including by accessing the benefits of union membership and representation.

The third is to ensure that employers are not able to take the easy option and employ temporary overseas workers, without first investing in training and undertaking genuine testing of the local labour market. This is also about ensuring those employers who do the right thing are not undercut by those employers who exploit and abuse the temporary work visa program and the workers under it.

As we have emphasised throughout this debate, Australian unions strongly support a diverse, non-discriminatory skilled migration program. Our clear preference is that this occurs primarily through permanent migration where workers enter Australia independently. At the same time, we recognise there may be a role for some level of temporary migration to meet critical short-term skill needs. However, there needs to be a proper, rigorous process for managing this and ensuring there are genuine skill shortages and Australian workers are not missing out on jobs and training opportunities.

Labour market testing forms a central part of the regulatory framework for the TSS visa program, if not other temporary visa types. It is simply untenable to have a situation where employers are able to employ temporary overseas workers without any obligation to first employ or make any genuine effort to employ Australian workers; yet this was the situation that prevailed from 2001 right up until 2013 when a new legal obligation to conduct labour market testing was passed by the Australian Parliament.

At the same time, vigorous safeguards need to be in place to protect the interests of overseas workers on temporary visas. These workers are often vulnerable to exploitation by virtue of being dependent on their employer for their ongoing prospects in Australia, including, in many cases, their desire for sponsorship and permanent residency.

Overview of Facts on migration

- First, there are large numbers of Temporary migrant workers (TMWs) in Australia, currently around 1.2 million persons[1].

- Second, those numbers have increased strongly over the past 15 years.

- Latest stock data indicate that international students form the largest group, accounting for 535 811 persons at the end of March 2018 (with graduates on the 485 visa adding a further 65 246).

- Working holiday makers and temporary skilled workers are also substantial groups, accounting for 148 124 and 151 596 persons respectively. Holders of bridging visas, most of whom have work rights, have expanded to 194 875 persons.

- It is difficult to estimate the total number of undocumented workers. Although not as significant as in other OECD countries, this group may still include up to 100 000 persons.

- The smallest contribution comes from lower-skilled workers on the Seasonal Worker Programme (SWP), which, though growing, accounted for only 8457 visa grants in 2017-18.[2]

- In all, the total number of TMWs in Australia is around 1.2 million persons. If we include New Zealand citizens and permanent residents, who can enter Australia under a special subclass 444 visa, without time limits on their stay and with unrestricted work rights (though without access to most social security payments), then the total is close to 2 million persons[3].

- The turn to temporary labour migration is a relatively recent phenomenon in Australia, which is beginning to overshadow and indeed displace the traditional emphasis on permanent migration. One index of the relation between the two streams comes from ABS data for November 2016. These data revealed that 1 666

[1] Campbell Iain 'Temporary migrant workers, underpayment and predatory business models', in 'Australia's Wages Crisis', University of Adelaide Press, November 2018

[2] Most figures are from Department of Home Affairs 2018. But estimates for graduate visa holders are from Webster 2018; estimates for undocumented workers are from Howells 2011; and estimates for the SWP are from Howes 2018. See Campbell Iain 'Temporary migrant workers, underpayment and predatory business models', in 'Australia's Wages Crisis', University of Adelaide Press, November 2018

[3] Ibid. Note: The number of New Zealanders is large, amounting to 669 115 persons in March 2018. However, because numbers are stable (Department of Home Affairs 2018) and the pattern of labour market integration parallels the mainstream of the workforce

900 persons who were born overseas had arrived in Australia in the previous 10 years and were aged 15 years and over on arrival (excluding Australian and New Zealand citizens before arrival). Amongst this group, 599 200 had first arrived on a permanent visa, while 1 058 000 had arrived on a temporary visa.

- Despite the significance of temporary labour migration, reliable data are sparse and scattered. There is little disagreement, however, that net TMW numbers in Australia have increased strongly over the medium term. Official stock data indicate that the visa programmes for international students, temporary skilled workers and working holiday makers have tripled in numbers since the late 1990s.[4] These three visa groups are the main channels for the overall increase in TMW numbers.

The shift away from permanent, independent migration

The size of the temporary visa workforce must be viewed in the context of the changing balance of the overall skilled migration program away from permanent migration.

Permanent migration has very much been the basis for the success story of immigration in Australia over a number of decades. As is well known, the Australian labour market absorbed large numbers of immigrants from the end of the Second World War onward, and these formed the basis for a major expansion in the manufacturing sector as well as large-scale construction projects, such as the Snowy Mountains hydro-electricity scheme.[5] The distinctive feature of this program of immigration, in contrast to the European experience of 'guest workers', was permanent settlement.[6] In other words, these immigrants became Australian citizens and their families were raised in Australia.

As a consequence, the occupational trajectories of second-generation immigrants have shown marked differences to those of their parents, with the scenario of the children of factory workers becoming professionals not being uncommon. In terms of the macro-economy, immigration to Australia since the 1940s has generally been regarded as positive because it increases aggregate demand and it lowers the age profile of the workforce.

However, as Home Affairs itself has noted in a recent discussion paper,[7] in more recent years the focus has shifted markedly, with 'demand-driven' employer-sponsored migration increasingly holding sway under successive governments of both persuasions. The bulk of Australia's migrant workforce now comes from employer-sponsored and temporary migration, with a large component of 'guest workers' now in the Australian labour market in the form of visitors on temporary visas with work rights.

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[5] Jock Collins 1988, *Migrant hands in a distant land: Australia's post-war immigration*, Leich-hardt: Pluto Press
[6] Stephen Castles and Godula Kosack 1985, *Immigrant workers and class structure in Western Europe*, Second edition, New York: Oxford University Press
[7] Discussion paper: Reviewing the Skilled Migration and 400 Series Visa Programmes, Department of Immigration and Border Protection, Australian Government, p. 7.

As we outlined above, this has included specific skills-based visas (TSS), working holiday visas, student visas, and New Zealand citizen visas, with full working rights (though limited social security entitlements). The growth of these categories since the early 2000s has been dramatic: the first two categories each now almost match permanent skilled arrivals in terms of their magnitude and together far exceed permanent arrivals. The rise in student visas has been remarkable, as was the sudden drop when various restrictions were imposed to prevent abuse of the system and the use of these visas as a backdoor into permanent residency.

This trend towards temporary and employer-sponsored migration is effectively outsourcing decisions about our national migration intake to employers and their short-term needs, over the national interest and a long-term vision for Australia's economy and society. This shift should not be blindly accepted as some inevitable, inexorable trend that must continue. Instead, it should be subject to critical questioning and debate within the Australian community.

Unions continue to have concerns with a skilled migration program that relies excessively on employer-sponsored migration. This is a concern that applies particularly to the temporary, employer-sponsored TSS visa program, but it applies also to the permanent, employer-sponsored programs; the Employer Nomination Scheme (ENS) and the Regional Sponsored Migration Scheme (RSMS). This concern plays out in different ways.

At the individual level, employer-sponsored visas where workers are dependent on their employer for their ongoing visa status increases the risk for exploitation as workers are less prepared to speak out if they are underpaid, denied their entitlements, or otherwise treated poorly. For example, this is one of the continuing objections that unions have to the permanent RSMS visa because it virtually bonds the visa holder to the same employer for two years. If the visa holder leaves the employer within 2 years, the Department can cancel the visa. Regardless of how often the Department actually exercises its discretion to cancel the visa, the fact that it has the power to do so leaves a cloud hanging over those visa holders.

The now well-worn pathway from a temporary TSS visa to a permanent employer-sponsored visa 10 creates the same kind of problems in that temporary overseas workers with the goal of employer-sponsored permanent residency have their future prospects tied to a single employer. Under visa rule changes effective from 2017, TSS visa workers must stay with their TSS sponsor for a minimum period of 2 years before becoming eligible for an employer-sponsored permanent residency visa with that employer.

Again, this makes them much more susceptible to exploitation and far less prepared to report problems of poor treatment in the workplace for fear of jeopardising that goal. This was a core problem identified back during the Deegan review in 2008.

By contrast, the Home Affairs department , appears to see employer-sponsorship only in a positive light, citing the benefits for the visa holder of guaranteed employment and arguing that it serves to protect the rights of employees and decreases the likelihood of exploitation. There is no recognition of the many problems associated with employer-sponsorship and dependence on a sponsoring employer that are played out on a regular basis. This includes a number of recently reported cases of visa holders and visa applicants being forced to pay their sponsors large sums of money in return for promises of future employment and sponsorship.

At a broader level, the concern referred to above is that the trend to 'demand-driven', employer-sponsored and temporary work visa programs effectively outsources decisions over an ever-increasing part of the migration intake to employers.

The risk here is that the migration program will increasingly be responding to what the DIBP itself described as employers' 'immediate business needs', rather than being structured in a rational and coherent way that allows for longer-term skill needs of the Australian workforce and economy to be addressed.

The increasing shift to a more 'demand driven' skilled migration program, appears to rest on an assumption that the short term interests of employers are consistent with, and reflect, the long term interests of the Australian economy and of the migrant workers themselves. This is not necessarily the case. As Professor Sue Richardson has observed, "it is in the employers' interests to have more of a given skill available at all times: they do not consider the personal and social costs of oversupply of specific skills.

The OECD has also emphasised the risks associated with an excessive reliance on employer preferences:

"A regulated labour migration regime would, in the first instance, need to incorporate a means to identify labour needs which are not being met in the domestic labour market and ensure that there are sufficient entry possibilities to satisfy those needs. In theory, employers could be considered the group of reference for determining this, but historically, requests by employers have not been considered a fully reliable guide in this regard, at least not without some verification by public authorities to ensure that the requests represent actual labour needs that cannot be filled from domestic sources".

This demonstrates again the need for all forms of employer-sponsored migration to be underpinned by rigorous labour market testing, monitored and enforced by the Department with tripartite oversight.

The growing trend towards temporary and employer-sponsored migration, rather than permanent, independent, migration represents a major shift in how the migration program has traditionally operated, and it has occurred without any real debate. The ACTU position and our recommendation to the Inquiry is that the current weighting of Australia's skilled migration program towards employer-sponsored pathways should be re-evaluated, with greater emphasis given to the permanent, independent stream as the 'mainstay' of the skilled migration program.

Our preference for permanent over temporary migration recognises that permanent migrants provide a more stable source of skilled workers with a greater stake in Australia's future and in integrating into all aspects of Australian community life. With permanent residency, migrants have a secure visa status. This makes them less susceptible (though not immune) to exploitation and less likely to generate negative impacts on other Australian workers in terms of wages, employment conditions and job and training opportunities.

Our preference for independent over employer-sponsored migration recognises the risks outlined above that are inherent in employer-sponsored visas where workers are tied to their sponsoring employer.

Rationale for labour market testing

One of the fundamental principles underpinning the skilled migration program must be that Australian workers – citizens and permanent residents – have the first right and opportunity to access Australian jobs.

If public statements on the subject are taken at face value, there appears to be universal support for this principle across the party political spectrum, and from unions, employers and community groups.

If that principle is accepted, then it follows, in our submission, that there needs to be a mechanism, a process, to ensure that this is actually occurring in practice. A requirement for labour market testing provides such a mechanism, ensuring there is independent assessment and verification of whether employers wishing to employ overseas workers have first made all reasonable efforts to find a suitably qualified Australian for the position and were not able to find one.

In our submission, a legal requirement for labour market testing to occur is a logical extension of the principle that the priority should always be to employ Australians first. Without genuine labour market testing, it is entirely unclear how the Government and the community, not to mention affected workers, can be assured that Australian workers are in fact being given priority.

Whether it is young people looking for their first job or older workers looking get back into the workforce or change careers, they deserve an assurance that they will have priority access to local jobs before they can use temporary workers from overseas. That is why the labour market testing requirements currently in place under the TSS visa program are so important to ensure that employers have a legal obligation to employ Australians first.

The arguments against labour market testing from employer representatives are tired and predictable and do not stand up to scrutiny. They include assertions that the laws are too onerous and impose an administrative burden on employers, that employers will always look to employ Australians first, and that the TSS visa program simply responds to labour market changes.

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 with no evidence employers are taking any steps to train Australian workers in the necessary skills or adequately test the local labour markets.

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

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 the worker, 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. For example 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.

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.

The emptiness of employer commitments to training

The private sector's enthusiasm for temporary work visa programs are not matched by its commitment to training local workers - that is, citizens and permanent residents of Australia, regardless of their background and country of origin. One such example is the resources sector.

In 2010 the National Resources Sector Employment Taskforce published its report Resourcing the Future which found that the resources sector

> employs considerably fewer apprentices than would be expected from its share of trade employment. In fact the sector would have to double its number of apprentices to be on par with other industries. 8

The National Centre for Vocational Education and Research (NCVER) has data which shows that the 'in-training' numbers (of the workforce currently undertaking an apprenticeship or a traineeship) for automotive, engineering and construction jobs declined between 2010 and 2014 (-2.4% and -17% respectively), while the general technical and trades category only increased by 6.3% (see Table 1 below). This is a poor performance for a state which has been supposedly experiencing a resource 'boom' in these years during which the overall numbers of employees in these occupational groups increased (see Table 2 below). The mediocrity of WA's performance is further highlighted when we look at the training rates for those occupations, which are derived from the number of apprentices and trainees in–training as a proportion of individuals employed (see Table 3 below).

Table 1: Examples in Western Australia

WA: In-training as at the end of quarter by selected training characteristics, June 2010 & 2014 ('000)			
	June Q 2010	June Q 2014	*% Change*
Technicians and trades workers	22.5	23.9	*+6.3%*
32 - Automotive and engineering	7.4	7.2	*-2.4%*
33 - Construction trades workers	4.6	3.8	*-17.0%*

[8] NSRT *Resourcing the Future Report*, p. 33 http://www.innovation.gov.au/Skills/National/Documents/FinalReport.pdf

Table 2

WA: Employee numbers at the end of quarter by selected training characteristics, May 2010 & 2014 ('000)			
	May Q 2010	May Q 2014	*% Change*
Technicians and trades workers	168.6	192	*+13.9%*
32 - Automotive and engineering	51.3	63.4	*+23.6%*
33 - Construction trades workers	21.2	28.1	*+32.5%*

Table 3

WA: Training rate at the end of quarter by selected training characteristics, June 2010 & 2014 (%)			
	June Q 2010	June Q 2014	*Difference*
Technicians and trades workers	13.3%	12.4%	*-0.9%*
32 - Automotive and engineering	14.4%	11.4%	*-3.0%*
33 - Construction trades workers	21.6%	13.5%	*-8.1%*

Sources: NCVER *Apprentices and trainees 2014 - June quarter: state and territory data tables*; ABS *6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2014* Note that since ABS does not publish employee numbers in occupation for the June Quarter, the May Quarter figures are used to derive the training rate.

The ACTU concerned that the resources boom period saw a squandering of opportunities to develop a skilled local workforce. A key reason for was the lack of commitment by major private sector employers to employ and train local workers. The 400 series visa program has become an enabler of this anti-social behaviour

Temporary Skilled Migration Income Threshold

TSMIT's protective ability is only as strong as the level at which it is set. In its original iteration back in 2009, it was set at A$45 220. This level was determined by reference to average weekly earnings for Australians, with the intention that TSMIT would be pegged to this because the Australian government considered it 'important that TSMIT keep pace with wage growth across the Australian labour market'.[9] This indexation occurred like clockwork for five years[10].

[9] Explanatory Statement, Migration Regulations 1994 (Cth), Specification of Income Threshold and Annual Earnings (IMMI 13/028).
[10] Joanna Howe, Associate Professor of Law at the University of Adelaide, has made some pertinent points in her recent article 'Is there a wage crisis facing skilled temporary migrants" regarding the TSMIT threshold

But since 1 July 2013, TSMIT has been frozen at a level of A$53 900. This decision has occurred with very little parliamentary fanfare or public scrutiny. In fact, few appear to have noticed this very deliberate attempt to erode TSMIT's place as an essential integrity measure within the TSS visa's regulatory framework. In 2014, the then Minister of Immigration and Border Protection used his discretion to not index TSMIT, following a review of the integrity of the 457 visa scheme in that year. This decision was consistent with a finding from this review, which recommended that there be no further indexing of TSMIT until a full review of TSMIT was conducted.11 The subsequent 2016 review of TSMIT, conducted by John Azarias, did indeed recommend that TSMIT be indexed in accordance with the seasonally adjusted Wage Price Index.5 The review recognised that the 457 visa programme is aimed at skilled and experienced workers and that employers seeking to nominate workers in occupations where salary levels are below TSMIT should use the TSMIT exemption provision or pursue a labour agreement[12].

The Review noted these mechanisms allow 'considerable scope for sponsors to access workers who would not otherwise be eligible',[13] and suggested that indexation should occur in a regular and planned manner, which is visible and publicly transparent.7 Notably, the government, to date, has not provided a response to this review or adopted its key recommendation that TSMIT be indexed to the Wage Price Index on an annual basis. A 2016 Senate Committee report observed that the consequence of failing to index TSMIT is that 'the salary floor decreases in real terms each year as wage inflation occurs (Howe 2018)

There is now a gap of more than $26 000 between the salary floor for temporary skilled migrant workers and annual average salaries for Australian workers

There is now a gap of more than $26 000 between the salary floor for temporary skilled migrant workers and annual average salaries for Australian workers (Howe 2018). This means that the TSS visa can increasingly be used to employ temporary migrant workers in occupations that attract a far lower salary than that earned by the average Australian worker

[11] 4
[12] Joanna Howe 'Is there a wage crisis facing skilled temporary migrants" in 'Wages crisis in Australia'
[13]

Table One: Comparison table of the annual average salaries and TSMIT

Time period	Annual average salaries[9]	TSMIT	Indexation	Difference between annual salary and TSMIT
2009-10	$62 270	$45 220	n/a	$17 050
2010-11	$65 328	$47 480	5.00%	$17 848
2011-12	$67 881	$49 330	3.90%	$18 551
2012-13	$70 340	$51 400	4.20%	$18 940
2013-14	$73 980	$53 900	4.80%	$20 080
2014-15	$75 603	$53 900	0.00%	$21 703
2015-16	$77 194	$53 900	0.00%	$23 294
2016-17	$78 832	$53 900	0.00%	$24 932
2017-18	$80 278	$53 900	0.00%	$26 378

Source: Joanna Howe 'Is there a wage crisis facing skilled temporary migrants" in 'Wages crisis in Australia' Based on data from ABS, Average Weekly Earnings, Australia, Catalogue no 6302

An example — cooks and chefs

Joanna Howe '*Is there a wage crisis facing skilled temporary migrants"* provides some illuminating examples how the failure to index TSMIT means that the minimum wage for overseas workers is being increasingly eroded over time.

Under the new TSS visa framework, the occupation of 'Chef ' is on the four-year medium-to long-term occupation list, whereas 'Cook' is on the two-year list, with the latter providing no pathway to permanent residency. This is intended to reflect that the Australian economy has a greater long-term need for chefs but the occupation of 'Cook' is one that local workers could be trained to undertake within a two-year period, thus eliminating the need to bring in overseas workers in that occupation.

But this does not occur in a simple, linear fashion. If employers find it cheaper to hire overseas workers as cooks than Australian workers, they are likely to continue to offer these jobs to overseas workers rather than locals. The failure to index TSMIT means that the minimum wage for overseas workers is being increasingly eroded over time. With the average cook in Australia earning A$53 130 according to one assessment,14 which is right on the border of TSMIT's current level, the decision not to index TSMIT enables more employers to hire overseas cooks (Howe 2018).

This is coupled with the possibility that unscrupulous employers will choose to nominate an overseas worker as a 'Chef ' rather than a 'Cook' to enable a four year period of employment rather than two years, with some migration agents providing employers and workers advice on how to do this.15 Although advocates of the present system will argue that employers have to test the labour market through advertising, this is a process that is

difficult for Home Affairs to properly and rigorously scrutinise, and one that has been discredited before, including by the government's own review which recommended its replacement with an independent labour market testing model.16 In this way, employers can recruit overseas workers as 'Chefs', who will mainly be performing the job of a 'Cook' and being paid at the lowest level possible under TSMIT. The failure to index TSMIT means that this type of subterfuge becomes a profitable undertaking for an employer (Howe 2018).

Temporary Skills Shortage (TSS) is 457 visa lite

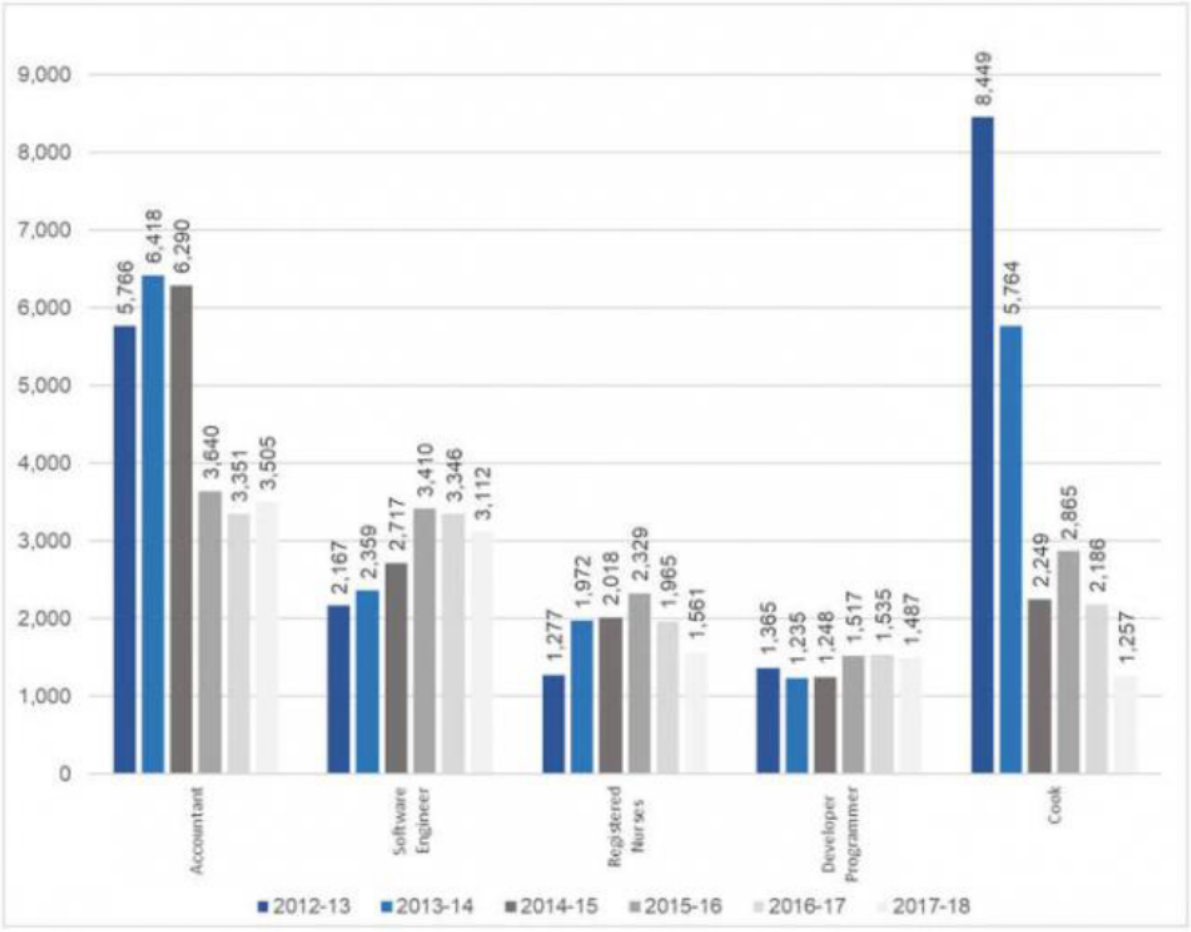
As part of the TSS reforms the Skilled Occupation List has been replaced by a Medium to Long-Term Strategic Skill List (MLTSSL). This makes selection conditional on whether an occupation might be needed in two to ten years' time. The MLTSSL includes numerous professions that the government's own Department of Employment has judged to be oversupplied, including accounting and engineering

The 435 occupations that remain on list, which include roof tilers, carpenters, joiners, chefs, cooks, midwives, nurses, and real estate agents, do not accurately reflect the genuine labour shortages in Australia. Indeed the changes to the occupations list are only the equivalent of around one in ten visa holders. This system will continue to prevent young Australian workers from getting their first job and do not contain sufficient safeguards to stop the exploitation of temporary visa holders.

Top five occupations granted permanent visas in the skilled stream in 2017-18 were:

- Accountants (3505)
- Software Engineer (3112)
- Registered Nurses (1561)
- Developer Programmer (1487)
- Cook (1257)

Figure One: Top five occupations granted permanent visas



Yet, according to the Department of Jobs and Small Business' "historical list of skills shortages in Australia", not one of these professions was in shortage over the four years to 2017, whereas Software Engineer has never been in shortage in the 31 year history of the series.

Table one: No national labour shortage in selected occupations according to Department of Jobs and Small Business

Occupation	No national shortage	Number of years with no national shortage
Accountants (3505)	2009 -2017	8
Software Engineer (3112)	1986 - 2017	31
Registered Nurses (1561)	2012-2017	5
Cook (1257)	2013-17	4

Example: WesTrac made more than 330 blue-collar workers and apprentices redundant in WA while keeping on temporary visa holders. Clearly showing there is no labour shortage

An example of the lack of such commitment to training and employing local workers came at the end of 2013, when one of our affiliates, the Australian Manufacturing Workers Union (AMWU), reported that the heavy machinery services company WesTrac had made more than 330 blue-collar workers and apprentices redundant in WA while keeping on foreign employees. This employer insulted its workforce by assembling workers in a caged off area at its South Guildford base in Perth on three successive mornings. Managers called out names of those workers who did not fulfil a 'skills matrix' test. Those workers included 75 apprentices. When WesTrac had indicated to the AMWU the previous month that jobs would be cut, it told the union that 457 Visa workers would be given the same priority as experienced locals.

There was clearly no 'skills shortage' at WesTrac if the company was getting rid of staff – yet the employer still favoured retaining 457 visa workers. This example demonstrates that employers need more regulation, not less, when they are given permission to utilise the 400 series visa system. They are in need of more 'red tape' not less.

The 400 visa series visa category has become a "new frontier for unscrupulous employers" looking to exploit cheap foreign labour at the expense of Australian workers

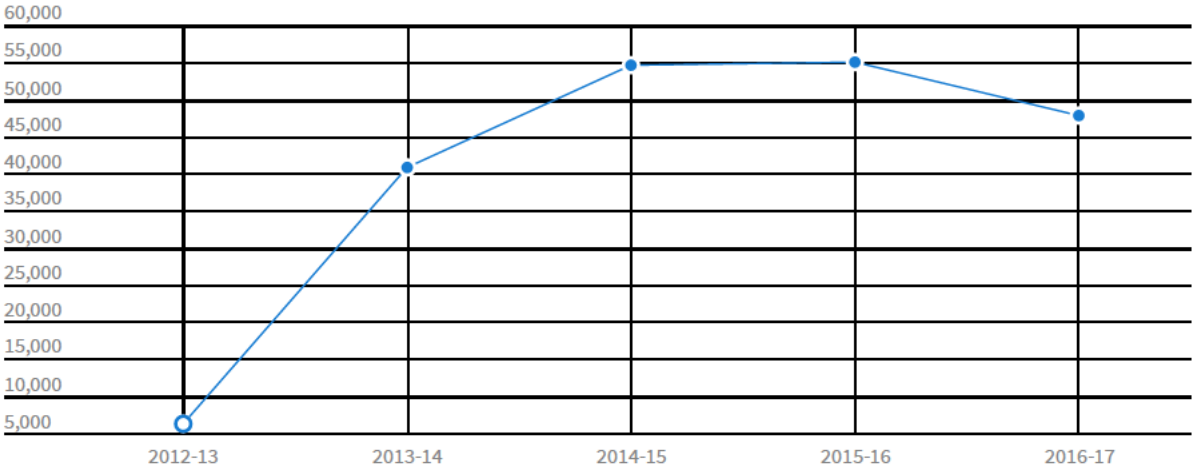
In the past decade, hundreds of thousands of workers have been employed on short stay visa categories, including the 400's predecessor the 456, with at least 11 cases before the Fair Work Ombudsman. But academic migration experts warn despite the examples of

exploitation, the Department of Immigration and Border Protection has little detail on the employment of these workers[14].

Among them, Chinese labourers flown in to dismantle the former Mitsubishi car plant in the Adelaide Hills paid $1.90 an hour, Filipino metal fabricators paid $4.90 an hour to install animal feed mills in NSW, and nine Indonesian timber workers flown into Tasmania and promised bonuses when they returned home[15].

400 visas are sometimes approved within 24 hours with seemingly minimal oversight. Despite the government's requirement that the work be "highly specialised", the visa has been used to fill semi-skilled positions for which qualified Australian applicants were available[16].

Figure One: There are now up to 50,000 subclass visas granted per year



Source: Department of Immigration and Border Protection, 2017. Note: The subclass 400 visa was introduced in March 2013 and replaced the 456 and 459 visas.

[14] https://www.smh.com.au/politics/federal/a-new-frontier-the-littleknown-alternative-to-the-457-foreign-worker-visa-20170901-gy8p0j.html

[15] ibid

[16] https://www.smh.com.au/politics/federal/a-new-frontier-the-littleknown-alternative-to-the-457-foreign-worker-visa-20170901-gy8p0j.html

The misuse of ABN's is prevalent especially amongst temporary visa holders

The use of sham contracting (i.e. the practice of disguising an employment relationship as one of principal and independent contractor), is a widespread problem across the Australia economy. To be an Australian worker in 2018 is to lack bargaining power, face stagnant wage growth and increasingly to be put on ABN as an independent contractor so your employer can avoid paying leave entitlements and superannuation. In relation to the ABN system, it remains clear that manipulation of ABNs facilitates and legitimises sham contracting, wage theft, and phoenixing by attempting to put the ABN holder outside of the reach of the PAYG system and the ambit of industrial legislation.

The problem is particularly acute with temporary visa holders in the construction and cleaning sectors. Whilst legitimate contracting arrangements occur across all industries, there is little doubt that many so- called independent contractors are in fact employees. Sham contracting not only undermines employment standards and gives law-breakers a competitive advantage over legitimate employers and those making use of bona fide contracting arrangements, it also has serious implications from public revenue. It has been estimated that almost $2.5 billion per annum of tax revenue is lost in the construction industry alone through the abuse of sham contracting arrangements.

Abuse of the ABN system is a central feature of the sham contacting problem in several industries. The ATO estimated in 2013 that about 9% of all ABNs being relied on did not belong to the person using that number. Many jobs are still being advertised on the basis that having an ABN is a prerequisite even though the position is clearly to be fulfilled by an employee. There are also many thousands of multiple ABN holders and completely 'inactive' ABN's. Some employers distribute ABN's that they have obtained to their new employees. These practices further undermine the integrity of the current ABN system. Holding an ABN often means virtually nothing in terms of the capacity of the holder to conduct a lawful and legitimate business operation.

Workers who come into the country on temporary work visas do so on the basis that they are working as employees, not that they are conducting their own business enterprise. If they were coming for that latter purpose they would require a different visa. In that case ABNs are not and should not be available to temporary visa workers. There should be a screening process put in place by the ATO to ensure that these categories of workers are not issued with ABNs and so are not subject to the exploitative practice of sham contracting.

There are significant concerns about the Government's proposal to privatise visa processing and the impact it may have on the integrity of the visa system.

The Department of Home Affairs's Request for Information (RFI) Delivering Visa Services for Australia – Assessments Against Visa Criteria indicates a long-term plan to outsource the vast majority of processing assessments and decision-making, including skilled visas. This would cover complex subjective assessments in categories including assessment of

character, capacity to financially support stay in Australia, genuine student status, genuine temporary stay, and compliance with work conditions17.

Former Department of Immigration Deputy Secretary Abul Rizvi has raised concern about visa integrity if the profit motive is driving decisions by outsourced providers, risking fraudulent visas as Australian visas can be worth a significant sum, especially if work is offshored18.

There already has been a substantial community and economic impact from the increased costs of visa applications and worsening processing times caused by permanent staffing cuts. The privatisation of visa processing will only make this situation worse and further undermine the integrity of the system.

Conclusions

Creating a visa system that is fit for purpose is best achieved by gradually reversing, rather than deepening, the trend toward increasing levels of temporary migration in Australia. Obliging employers to train Australian workers and increasing workplace protections for migrants and local workers must be paramount in any changes to the visa system. Local workers should be considered first and training and retraining Australians should be the first port of call for meeting skills needs as opposed to the use of exploited migrant labour.

The normalisation of an exploited underclass of migrant workers, to serve the commercial interests of big business, is nothing less than a national disgrace. Reforms to address this exploitation are urgently needed.

Key Principles of the Migration system must be the following:

The interest of local workers must be paramount

The interests of local workers should be paramount. Temporary work visas, and the debate that surrounds them, should be driven by three key, interrelated, priorities.

1. The first is to maximise jobs and training opportunities for Australians - that is, citizens and permanent residents of Australia, regardless of their background and country of origin – and ensure they have the first right to access local jobs.

2. The second is to ensure that employers are not able to take an easy option and employ temporary overseas workers, without first investing in training and genuinely looking to and utilizing the local labour market.

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[17] Department of Home Affairs (2018, 12 January) Delivering visa services for Australia - Request for Information RFI 22/17 B4 Assessments against visa criteria

[18] Abul Rizvi (2018, 28 September). Privatising visa processing – the alarm bells are ringing (Part 2). Pearls and Irritations. Retrieved from https://johnmenadue.com/abul-rizvi-privatising-visa-processing-the-alarm-bells-are-ringing-part-2/

3. The third is that vigorous safeguards need to be in place to protect the interests of overseas workers on temporary visas. These workers are often vulnerable to exploitation by virtue of being dependent on their employer for their ongoing prospects in Australia, including, in many cases, their desire for sponsorship and permanent residency.

The migration system should preference permanent, rather than temporary, migration in Australia

Australia had a paradigm of permanent, rather than temporary migration for most of the twentieth century. That system was predicated on the primacy of civic inclusion as an Australian ideal; the idea that if you lived and worked in Australia, paid taxes and abided by the law, you should also get a say in the content of those laws, as well as the chance at full participation in our social, economic and political life.

Australia must return to the paradigm of permanent migration being at the forefront of the migration system rather than the current focus and priority on temporary 'guest worker' programs.

The migration system is currently employer driven rather than in the interests of working people and the country as a whole

The shift to admit large numbers of long-term temporary migrants was not the result of any democratic policy discussion, but rather has occurred incrementally, through the aggregate impact of myriad visa programs. There has been significant growth in the current number of temporary visa holders over the last ten years. Unlike permanent migration, temporary migration is completely uncapped as it is driven by the demands of employers.

The migration system must be rebalanced to only address genuine skills shortages. Employers are not using the migration system to fill skills shortages but actually want to avoid raising wages and training Australian workers

There is a difference between a recruitment difficulty, which can be resolved through training local workers or raising wages, and a genuine skills shortage. The ACTU fears employers are claiming skills shortages when in fact the situation more truly reflects a short term recruitment difficulty. There is an incentive for employers to do this because employers want to avoid paying proper wages or training local workers.

Wages need to rise to stimulate increased labour supply before a skills shortage can be deemed to exist. Situations where employers are not willing to raise wages in order to attract more potential candidates should not be regarded as a true labour shortage.

A recent report by Dr Chris F. Wright and Dr Andreea Constantin University of Sydney Business School: "An analysis of employers' use of temporary skilled visas in Australia" surveyed employers that use temporary skilled visa holders. The report highlighted the following;

> *'Only a very small proportion of employer respondents claim that they would seek to address skilled vacancies by increasing the salary being offered, which is generally considered a necessary precondition for a skills shortage to exist. Therefore, even where employers are using the 457 visa scheme because of skills shortages, the shortages that exist do not appear to be acute.*[3]*'*

In fact the report highlighted that 14% of employer sponsors using the previous 457 scheme claim not to have difficulties recruiting from the local labour market (which begs the question as to why they are using the 457 visa system). Only 11% of employer respondents said that training existing employees is the strategy most preferred when they have difficulties recruiting skilled workers and less than 1% were prepared to increase wages or offer incentives to prospective candidates in order to address their recruitment problems. The report came to the following conclusion;

".....The problem of the 457 visa not fulfilling its stated objective .....These employers should be encouraged to utilise alternative strategies to address their recruitment difficulties before using the 457 visa. Improving job quality to attract a wider pool of candidates, greater investment in structured training to facilitate career development opportunities for existing and prospective employees, and other measures likely to engender long term workforce commitment and retention are likely to be more effective than the 457 visa scheme for helping these employers to alleviate their recruitment problems in a more systematic manner.[4]"

The new TSS (old 457) visa does nothing to overcome this systematic use of temporary workers by employers as a means of keeping wages low. The TSS occupations include cooks, roof tilers, engineers and nurses. These are occupations in which there is supply of Australian workers willing to do this work

Australia has a prevalent underclass of migrant workers that are second class citizens. The normalisation of an exploited underclass must be urgently addressed

Subclass TSS (former 457) workers, international students and working holiday makers all suffer disproportionate levels of wage theft, discrimination, intimidation, unfair dismissal, and pressure to do unreasonable work.

- One in three international students and backpackers are paid about half the legal minimum wage, according to the new report 'Wage Theft in Australia', the most comprehensive study of temporary migrants' work and conditions in Australia. The report draws on survey responses from 4,322 temporary migrants from 107 countries in all states and territories. It was authored by Laurie Berg, a senior law lecturer at UTS, and Bassina Farbenblum, a senior law lecturer at UNSW Sydney.

- In Sydney 80% of surveyed international students working in hospitality and retail were found to be underpaid, with 35% reporting wages of $12 an hour or less.

- Another investigation found that close to 80% of foreign language job advertisements offered unlawful rates of pay[19].

[19]

Example of serious abuse and exploitation: Roy Hill iron ore project

An allegation of serious abuse and exploitation of the 457visa system and workers comes from our affiliate the Construction, Forestry, Mining and Energy Union (CFMEU) concerning the Roy Hill iron ore project. The CFMEU received a detailed complaint in 2014 from a whistle-blower on the project alleging that

- There were between 150 to 200 white collar 457 visa workers employed by the contractor Samsung C&T on the project, about half of whom are Korean nationals.
- Most 457s were young workers, under age 30 or so and many are female workers.
- The 457 visa workers were working excessive hours – over 84 hours a week – and were grossly underpaid, with rates of only around $16 an hour.

Many 457 visa workers were not working in the occupations approved for their visas – a breach of the sponsoring employer's obligations

There have been hundreds of examples of rampant exploitation of workers on visas such as students and Working Holiday Maker visa holders. Exploitation of working holiday workers in the farm sector includes cases of underpayment, provision of substandard accommodation, debt bondage, and employers demanding payment by employees in return for visa extensions. Evidence released from the Fair Work Ombudsman in 2016 revealed the systemic exploitation of working holiday makers where 28% did not receive payment for work undertaken and 35% stated they were paid less than the minimum wage. In addition over the past 18 months or more, we have witnessed a seemingly endless wave of stories of serious worker exploitation and intimidation in a number of well-known franchises, including 7-Eleven, Pizza Hut, Caltex, Domino's Pizza and United Petroleum. Yet the Government seems content to sit on its hands.

We have seen hundreds of examples where exploited vulnerable workers are paid under the legal rate of pay and face severe exploitation. Unfortunately this has become an all too common experience. Many of these exploitative activities have become normalised and are a business model for some unscrupulous employers.

When low-wage workers are cheated out of even a small percentage of their income, it can cause major hardships like being unable to pay for rent, child care, or put food on the table. Wage theft from low paid workers is also detrimental to society, as it contributes to widening income inequality, wage stagnation, and low living standards—interrelated problems that drive inequality in our society.

Australia is facing significant underemployment and wage stagnation. There are genuine concerns that high levels of temporary migration suppresses wage growth and discourages the employment of local workers.

It is time for a fundamental review and reassessment of the temporary work visa program in the interests of all workers - Australian citizens and permanent residents, and temporary overseas workers. This is also important for the Australian community as a whole and for

Australia's international reputation as a fair and safe place for overseas nationals to work, as well as for all those employers who are doing the right thing by employing and training Australians, or, where they do have a genuine requirement to use overseas workers, treating those workers well and in accordance with their legal obligations.

Key Recommendations

1. **Recalibrating the balance of the skilled migration program toward permanent, independent migration**

   - The current weighting of Australia's skilled migration program towards temporary and employer-sponsored pathways should be re-evaluated, with greater emphasis given to the permanent, independent stream as the 'mainstay' of the skilled migration program.

2. **Improved labour market testing**

   The ACTU recommends more rigorous evidentiary requirements for labour market testing to be incorporated into legislation and associated program guidelines to ensure the intent of the legislation is achieved and Australian employment opportunities are protected. This should include:

   - A mandatory requirement for all jobs to be genuinely advertised as part of labour market testing obligations;
   - The introduction of minimum requirements for mandatory job ads, similar to the UK Resident Labour Market Test;
   - A requirement that jobs be advertised for a minimum of four weeks;
   - A requirement that labour market testing has been conducted no more than 4 months before the nomination of a TSS (457) visa worker;
   - A ban on job advertisements that target only overseas workers or specified visa class workers to the exclusion of Australian citizens and permanent residents;
   - A crackdown on job ads that set unrealistic and unwarranted skills and experience requirements for vacant positions, with the effect of excluding otherwise suitable Australian applicants; and
   - The Minister to use the provision at s.140GBA (5) (b) (iii) of the Migration Act 1958 to specify other types of evidence that should be provided as part of labour market testing, including evidence of relocation assistance offered to successful applicants, and evidence of specific measures to employ those disadvantaged or under-represented in the workforce, such as indigenous workers, unemployed and recently retrenched workers, and older workers.

- Labour market testing should apply to all occupations under the TSS (457) visa program. Existing exemptions because of international trade agreements should be removed.

- There should be no further waivers of labour market testing in trade agreements entered into by Australia. Any review of labour market testing, rules should be the subject of proper consultation with unions and other stakeholders including consultation through a new independent, tripartite Ministerial Advisory Council on Skilled Migration (MACSM).

- Where Australian Governments nevertheless continue to make commitments on the 'movement of natural persons' in free trade agreements that provide exemptions from domestic labour market testing laws, those commitments should not be extended to the category of 'contractual service suppliers' given the expansive meaning given to that term across professional, technical and trade occupations.

- The Migration Regulations should be amended as necessary to make clear that labour market testing applies not only to 'standard business sponsors' under the standard TSS (457) visa program, but applies also to all positions nominated by 'approved sponsors' under any labour agreement, Enterprise Migration Agreement (EMA) or Designated Area Migration Agreement (DAMA).

- The current sponsorship obligation 'to keep records' be expanded to specifically include records of labour market testing undertaken.

- In the interests of transparency and community confidence in the TSS (457) visa program, the Department of Home Affairs make information and data on the TSS occupations list and the operation of the labour market testing provisions publically available on at least a quarterly basis. Provision of such information and discussion of labour market testing should be a standing agenda item for the new independent, tripartite Ministerial Advisory Council on Skilled Migration

3. Address the prevalence of an exploited underclass of migrant workers

There are important policy measures that should be introduced to better protect temporary migrant workers from exploitation. These include, but are not limited to, the recommendations in the Senate inquiry report 'A National Disgrace: the Exploitation of Temporary Work Visa Holders'. Some crucial reforms include:

- Regulating high risk areas. For example, by establishing a national licensing regime for labour hire firms.

- Providing equal workplace rights for temporary migrant workers. For example, breaches of the Migration Act should not result in a loss or reduction of protection under the Fair Work Act.

- The reforms should help enable temporary migrant workers to effectively enforce their workplace rights. For example, migrant workers should be put in contact with unions at the pre-departure and post-arrival points.

- Prevent employers profiting from law-breaking. The onus of proof should be reversed when the employer has breached its pay-slip and record-keeping obligations in all circumstances involving temporary workers.

4. Labour agreements should be abolished

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

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

5. TSMIT needs to be recalibrated to a higher rate

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

- There is now a gap of more than A$26 000 between the salary floor for temporary skilled migrant workers and annual average salaries for Australian workers.

6. 400 visa series needs to be reformed

- The 400 visa series visa category has become a "new frontier for unscrupulous employers" looking to exploit cheap foreign labour at the expense of Australian workers

7. Misuse of ABN's is prevalent amongst temporary visa holders. The ABN system must be reformed

- 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.

8. Labour market testing should not be removed through free trade agreements and the definition of contractual service provider should be reviewed

- The Australian Government has yet again entered into a free trade agreement where it has removed the obligation on employers to conduct labour market testing before temporary overseas workers fill Australian jobs. Australian and overseas companies will be able to employ unlimited numbers of workers from 6 additional TPP member 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. In doing so, Australia has agreed to the worst deal of any TPP country in terms of what it has given up in relation to migration safeguards. The Government should not support an agreement that removes this basic protection in support of Australian jobs

- 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.

9. Significantly strengthen the skills assessment processes

- Significantly strengthen the skills assessment processes and ensure testing is by the appropriate industry body and not by immigration officials ensuring that training and licencing obligations for skilled trades must be maintained with skills testing required for particular industries and professions 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.

10. Working Holiday Maker Visa needs to be reformed

- The DIBP conduct a public assessment and review of the potential impact the additional labour supply from this visa program has on employment opportunities, as well as wages and conditions, for Australian citizens, particularly on young Australians in lower-skilled parts of the labour market. The review should be conducted with the oversight of a tripartite body.

- Governments should have the option of imposing quotas or capping working holiday visa numbers and exercise that option where labour market conditions require it. Given the current state of the labour market, now is such a time for a cap to be imposed. An annual quota for the visa should be determined based on advice from the tripartite Ministerial Advisory Council for Skilled Migration and taking into account the labour market conditions for young Australians.

- The DIBP provide consolidated and publicly available information on the working patterns of working holiday visa holders. This should include the number of working holiday visa holders that do exercise their work rights, the duration of their employment, the number of employers they work for, their rates of pay, and the locations, industries, and occupations they work in. If this information is not currently

able to be produced, then DIBP should report to the Ministerial Advisory Council for Skilled Migration on how this data can be collected.

- job ads that advertise only for working holiday visa holders or that use the inducement of a second working holiday visa be banned.

- The second year working holiday visa be abandoned altogether.

- Remodel the work rights attached to the working holiday visa so that it operates as a genuine holiday visa with some work rights attached, rather than a visa which in practice allows visa holders to work for the entire duration of their stay in Australia.

11. Ensure that temporary visa holders are provided information about their workplace rights and entitlements

- 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

12. 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.

13. There are significant concerns about the Government's proposal to privatise visa processing and the impact it may have on the integrity of the visa system. The government should not continue with these proposals.

14. The Ministerial Advisory Council on Skilled Migration must be a genuine tripartite and independent council

- If the Ministerial Advisory Council on Skilled Migration (MACSM) is to be meaningful it needs to be a genuine tripartite council. MACSM should be reconstituted as a genuinely tripartite, independent, and transparent body. MACSM in the past has been neither genuinely tripartite, nor sufficiently independent from government. Until recently, the ACTU was the sole union presence on MACSM. An impartial observer cannot help but conclude that MACSM did not represent a reasonably balanced range of views. MACSM needs to have a balanced representation from business, the unions and government.

- The primary basis for occupations being included on any TSS occupation list must be empirical evidence going to a genuine labour market shortage that cannot be resolved through increasing wages or training Australian workers.

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