



Australian Government

Australian Government response to the
Senate Education and Employment Reference Committee report:

**A National Disgrace: The Exploitation of Temporary Work Visa
Holders**

APRIL 2024

Recommendations

Recommendation 1:

2.111 The committee recommends that the Department of Immigration and Border Protection routinely publish data on the number of temporary migrants resident in Australia by length of stay. This data should account for transitions between temporary visa categories. The committee also recommends that brief periods of time spent outside Australia during a transition between visas should not restart the clock on calculating the total length of time spent in Australia on temporary visas.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2:

2.112 The committee recommends that the Department of Immigration and Border Protection conduct a review of proposals to give greater weight to time spent living in Australia in consideration of applications for permanent residency. The review should also consider the merits of setting a limit on the period of time after which it would be considered reasonable for a temporary visa holder to qualify for permanent residency.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3:

3.259 The committee recommends that the Department of Immigration and Border Protection be required to maintain an online public register of current labour agreements in operation, as well as any future Designated Area Migration Agreements. The committee also recommends that the register note any exemptions provided under a labour agreement.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 4:

3.260 The committee recommends that the Department of Immigration and Border Protection be required to advise all stakeholders that were consulted as to the outcome of the labour agreement application.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 5:

3.266 The committee recommends that the Temporary Skilled Migration Income Threshold (TSMIT) be indexed to average fulltime weekly ordinary time earnings (AWOTE) as at 1 July 2015 and that indexation occur each financial year.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 6:

3.286 The committee recommends that the Ministerial Advisory Council on Skilled Migration (MACSM) be re-constituted as a genuinely tripartite, independent, and transparent body with responsibility and commensurate funding to provide objective evidence-based advice to government on matters pertaining to skills shortages, training needs, workforce capacity and planning, and labour migration (including Designated Area Migration Agreements and the full range of temporary visa programs with associated work rights). The committee further recommends that the reports produced by MACSM be made publicly available.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate

Recommendation 7:

3.302 The committee recommends that the replacement of local workers by 457 visa workers be specifically prohibited.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 8:

3.303 The committee recommends that the current exemptions on labour market testing for ANZSCO skill levels 1 and 2 be removed.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 9:

3.304 The committee recommends that the Migration Regulations be amended to specify that labour market testing applies to all positions nominated by approved sponsors under labour agreements and Designated Area Migration Agreements.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 10:

4.100 The committee recommends that the reconstituted MACSM review the Working Holiday Maker (417 and 462) visa program. The review should include, but not be limited to, an examination of the costs and benefits of the continued operation of the optional second year extension to the visa, and the costs and benefits of providing

government with the ability to set a cap on the numbers of Working Holiday Maker program visas issued in any given year.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 11:

4.101 The committee recommends that the Department of Immigration and Border Protection be sufficiently resourced to allow it to pursue inter-agency collaboration that would enable it to collect and publish the following data on the Working Holiday Maker visa program:

- **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; and**
- **their rates of pay, and the locations, industries, and occupations they work in.**

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 12:

4.102 The committee recommends that the reconstituted Ministerial Advisory Council on Skilled Migration (MACSM) review the Seasonal Worker program to ensure the program is meeting its stated aims.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 13:

5.78 The committee recommends that employer sponsors of a 457 visa worker (professional) be required to also employ an Australian tertiary graduate in the same enterprise on a one-for-one basis.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 14:

5.79 The committee recommends that employer sponsors of a 457 visa worker (trade) be required to demonstrate that apprentices represent 25 per cent of the sponsor's total trade workforce (with the threshold for this requirement being the employment of four or more tradespersons).

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 15:

5.80 The committee recommends that the current training benchmarks be replaced with a training levy paid per 457 visa holder employed in the business. The committee recommends that the levy be set at up to \$4000 per 457 visa worker and that the levy be paid into existing government programs that specifically support sectors experiencing labour shortages as well as apprenticeships and training programs. The committee notes that this levy would need to be closely monitored to ensure it is paid by the sponsor and not passed on to the visa holder.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 16:

5.81 The committee recommends a short review be conducted into the costs to employers of running graduate employment programs, and the desirability and feasibility of directing funds collected from the training levy to assist employers implement and administer graduate programs, such that Australian tertiary graduates are afforded ready access to graduate employment positions.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 17:

5.82 The committee recommends that the following data be collected and made publicly available on an annual basis (either by the relevant statutory agency, or the relevant government department):

all new registrations of nurses and midwives on temporary work visas;
the number of employers currently sponsoring skilled tradespersons (ANZSCO level 3) on 457 visas;
the number of apprentices and trainees employed directly by these 457 sponsors, in total and by sponsor industry and state/territory;
the trades in which those apprentices are being trained, including the number of apprentices in the same trade classifications in which the 457 visa workers are employed; and
whether the apprentice and trainee numbers in each category have increased, decreased, or have not changed since approval of the employer as a sponsor.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 18:

6.95 The committee recommends that the Fair Entitlements Guarantee Act 2012 be amended to make temporary visa holders eligible for entitlements under the Fair Entitlements Guarantee.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 19:

6.96 The committee recommends that the immigration program be reviewed and, if necessary, amended to provide adequate bridging arrangements for all temporary visa holders to pursue meritorious claims under workplace and occupational health and safety legislation.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 20:

6.97 The committee recommends an audit of all workers rehabilitation and compensation schemes to determine whether temporary migrant workers who suffer a debilitating, life-long disability as the result of a workplace accident would be treated equally with Australian citizens or permanent residents in similar circumstances. The audit should also determine if a temporary migrant worker's entitlements would be diminished or restricted in any way if that worker were no longer to reside in Australia. Subject to the outcome of the audit, the committee recommends the government consider taking proposals to the Council of Australian Governments (COAG) for discussion.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 21:

6.98 The committee recommends that universal free vaccination be extended to the babies and children of all temporary migrants living in Australia, irrespective of their visa status.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 22:

8.253 The committee recommends that the Department of Immigration and Border Protection review the procedures used in cases involving severe worker exploitation to ensure that a victim-centred approach exists in practice such that the potential victims of people trafficking and slavery-like conditions are afforded an adequate opportunity in a safe and secure environment to report any offences committed against them.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 23:

8.263 The committee recommends that the Migration Act 1958 and the Fair Work Act 2009 be amended to state that a visa breach does not necessarily void a contract of employment and that the standards under the Fair Work Act 2009 apply even when a person has breached their visa conditions or has performed work in the absence of a visa consistent with any other visa requirements.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 24:

8.269 The committee recommends that Section 116 of the Migration Act 1954 be reviewed with a view to amendment such that visa cancellation based on noncompliance with a visa condition amounts to serious noncompliance. The xiii committee further recommends that Section 235 of the Migration Act 1954 be reviewed with a view to amendment such that a contravention of a visa condition amounts to a serious contravention before a non-citizen commits an offence against the section.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 25:

8.272 The committee recommends that any new visa class or extension to a visa issued under changes arising from the Northern Australia White Paper, and any visa issued pursuant to a Free Trade Agreement, explicitly provide that any temporary worker is afforded the same rights and protections under the Fair Work Act 2009 as an Australian worker. The committee further recommends that any work performed in breach of a condition under any new visa class or extension to a visa arising from the Northern Australia White Paper, or any visa issued pursuant to a Free Trade

Agreement, does not necessarily void a contract of employment and that the standards under the Fair Work Act 2009 apply even when a person has breached their visa conditions.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 26:

8.285 The committee recommends that Treasury and the ACCC review the Franchising Code of Conduct (and if necessary competition law) with a view to assessing the respective responsibilities of franchisors and franchisees regarding compliance with workplace law and whether there is scope to impose some degree of responsibility on a franchisor and the merits or otherwise of so doing.

8.286 The committee further recommends that Treasury and the ACCC review the Franchising Code of Conduct with a view to clarifying whether the franchisor can terminate the franchise agreement without notice where there are reasonable grounds for believing that serious contraventions of the Fair Work Act 2009 have occurred.

8.287 The committee further recommends that consideration be given to the merits or otherwise of any amendment that would allow the franchisor to terminate the franchise agreement without notice where there are reasonable grounds for believing that serious contraventions of the Fair Work Act 2009 have occurred.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 27:

9.228 The committee recommends that universities consider how best they might develop proactive information campaigns for temporary visa workers around workplace rights.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 28:

9.231 The committee recommends that the Department of Immigration and Border Protection provide funding on a submission basis for non-governmental organisations, registered employer organisations, trade unions, and advocates to provide information and education aimed specifically at improving the protection of the workplace rights of temporary migrant workers.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 29:

9.239 The committee recommends that the identities of migrant workers who report instances of exploitation to the Fair Work Ombudsman or to any other body should not be provided to the Department of Immigration and Border Protection. The committee further recommends that this prohibition should be written into the Memorandum of Understanding between the Fair Work Ombudsman and the Department of Immigration and Border Protection.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 30:

9.295 The Committee recommends that the 'recklessness' defence in section 357(2) of the Fair Work Act 2009 be replaced with a 'reasonableness' defence.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 31:

9.299 The committee recommends that the government commit to undertake an independent review of the resources and powers of the Fair Work Ombudsman, and the

penalty, accessory liability, and sham contracting provisions under the Fair Work Act 2009. The government should appoint, by 30 June 2016, an independent tripartite panel to conduct the review.

9.300 The review should make recommendations on the adequacy of the resources of the Fair Work Ombudsman; the appropriateness of the powers of the Fair Work Ombudsman; the appropriateness of the penalty provisions under the Fair Work Act 2009; the utility of the accessory liability provisions under the Fair Work Act 2009; and the utility of the sham contracting provisions under the Fair Work Act 2009.

9.301 The committee further recommends that the review report be provided to the Minister of Employment by 30 October 2016, and that the report be tabled in both Houses of Parliament by 30 November 2016. The committee provides Terms of Reference for the review in Appendix 3.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 32:

9.309 The committee recommends that a licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour. There should be a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license. In addition, labour hire contractors that use other labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a license.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 33:

9.320 The committee recommends that Australia ratify the International Convention on Protection of the Rights of All Migrant Workers and their Families.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.