

Permanent

VS

**temporary
migration**



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Migration



Permanent VS temporary migration

Australia has an underclass of exploited temporary visa holders and a migration 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 by the Government 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;
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 rorting of the visa system in which temporary visa holders are purported to be 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 December 2016 there were more than 2 million temporary entrants in Australia¹, 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 2012².

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 high (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 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.

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.
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.

1 <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/temp-entrants-aus-31-dec-2016.pdf>

2 <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/temp-entrants-newzealand-dec12.pdf>

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.

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

3 Dr Chris F. Wright and Dr Andreea Constantin University of Sydney Business School "An analysis of employers' use of temporary skilled visas in Australia" 2015

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 objectiveThese 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

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 pay⁵.

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.

⁴ Ibid

⁵ "Lighting Up the Black Market: Enforcing Minimum Wages" - This report by Unions NSW looked at research involving analysing job advertisements in two separate audits conducted in March 2016 and April 2017. Overall, 78 per cent of the businesses examined advertised rates of pay below the relevant minimum award rate. On average, underpaid jobs were advertised at \$14.03 an hour, representing an average underpayment of \$5.28 an hour when compared with the relevant minimum awards. The lowest rates of pay were \$4.20 an hour for a nanny and \$9 an hour for an office clerk. In 2015-16 the minimum award rates for those jobs were \$18.91 and \$18.38 respectively.

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.

We commend the following package of recommendations for consideration.

Key Recommendations

1. Local workers should be considered first. Training and retraining Australians should be the first port of call for meeting skills needs

The first principle of any new visa system should be 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. Such reforms would ensure that employers are not able to take the easy option and employ temporary overseas workers, without first investing in training and looking to 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.

2. Recalibrate 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.

3. 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.

4. 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.

5. The government should not sign trade agreements that will remove labour market testing – such as 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.

6. 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.

Concluding remarks

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.