

# **ACTU congress 2009**

## **Future of Work**

### **Temporary Overseas Worker Policy**

1. The ACTU believes that the current and future skills needs of Australia can be best met through a strategic approach to:
  - a) skill development, including increased investment in training, support for higher level qualifications, support for training and retraining of existing workers and support for broad-based qualifications;
  - b) effective labour market planning and forecasting tied to industry development planning; and
  - c) the use of permanent migration where appropriate.
2. The ACTU rejects the use of temporary overseas labour by employers in industries where local labour cannot be attracted due to poor wages and conditions (except for agreed seasonal labour programs).
3. In cases where there are genuine shortages of skilled workers that cannot be filled by the Australian workforce, temporary skilled overseas workers may provide a short-term response while skill replacement programs are put in place to address the skills needs of the local workforce on an on-going basis.
4. Congress believes that rigorous labour market testing requirements must be implemented so as to ensure that overseas workers are not brought to Australia where there is labour available locally or where employers could adequately train local workers to perform the job.
5. Before engaging workers from overseas, employers should actively seek participation in the workforce from groups currently disengaged from the labour market, including Aboriginal and Torres Strait Islander peoples, older workers, workers with disabilities, and women returning to the workforce.

6. The ACTU recognises and supports the existence of special arrangements for overseas entertainers working temporarily in Australia. Congress supports the MEAA's current campaign to prevent any watering down of the current *Guidelines on the entry into Australia of foreign actors for the purposes of employment in film and television productions* as well as its campaign to ensure that the Government fulfill its election commitment on the use of Australian support acts.

## Employment arrangements

7. Recognition and protection of the rights of temporary overseas workers and their families must be central to Australia's temporary overseas labour programs.
8. All temporary overseas workers in Australia have the right to decent work.
9. All workers have the right to equal pay for work of equal or comparable value. Temporary overseas workers have the right to be paid at the market rate applicable to permanent residents undertaking the same or similar work. Temporary workers should be paid in Australian dollars by the Australian employer, preferably into an Australian bank account in the name of the overseas worker.
10. Temporary overseas workers have the right to the same benefits, allowances, superannuation, loadings, leave and other entitlements as permanent residents doing the same or similar work.
11. Temporary overseas workers have the right to join, and be represented by, a trade union.
12. Upon arrival in Australia, all temporary overseas workers should receive training on their right to join and participate in a union, other employment rights, occupational health and safety, and cultural awareness.
13. Temporary overseas workers and their families should have access to quality public education and educational support and the public health system either through payment of the Medicare levy or an equivalent health insurance scheme.
14. Congress recognises that temporary overseas workers are more vulnerable to exploitation. This vulnerability arises as a result of immigration requirements, language barriers, family disruption, stress and a lack of familiarity with the Australian legal system. Safeguards and

strategies must be in place to ensure the rights of these workers are protected.

## **Skills recognition**

15. A system must be introduced for verification and recognition of the qualifications gained overseas and held by temporary overseas workers prior to those workers obtaining visa approval that meet the same standards as those established for permanent migration. This system must ensure that the qualifications held by temporary overseas workers meet the contemporary requirements of Australian qualification and licensing arrangements.

## **Sanctions**

16. Sponsorship of temporary overseas workers is a privilege not a right. Any employer found abusing the rights and protections afforded to temporary overseas workers should be excluded from further sponsorship and should be subject to civil and criminal penalties.

## **Pathways to permanent residency**

17. Congress recognises that many temporary overseas workers become permanent residents. We support measures to improve the capacity of temporary overseas workers to access permanent residency without having to rely on their employer.

## **Labour agreements**

18. The ACTU believes that the labour agreement process requires comprehensive reform.
19. Any company wishing to access temporary overseas labour through a labour agreement should sign a memorandum of understanding with the ACTU and relevant unions. This MOU should:
  - d) specify the number and occupations of temporary skilled overseas workers to be sponsored;
  - e) include specific commitments by the company directed at addressing the skills shortage in the occupations for which temporary overseas workers are sought;

- f) require the company to exhaust all avenues for sourcing appropriate local labour and to notify the ACTU and relevant affiliates before employing temporary overseas workers;
- g) include an undertaking by the company to comply with applicable ILO conventions which apply to temporary overseas workers;
- h) require the company to provide temporary overseas workers with terms and conditions of employment that are at least equivalent to those terms and conditions that are, or would be, applicable to the company's Australian workforce;
- i) provide for ongoing consultation with the ACTU and relevant affiliates on matters in the agreement; and
- j) include a dispute settlement procedure.

## **Migration agents**

- 20. All migration agents should be licensed and subject to a strict code of practice. Violation of the code should constitute valid reason for withdrawal of a license.

## **International agreements**

- 21. Free trade agreements are directed at the regulation of goods and services. They should not regulate the movement of temporary workers. Inclusion of chapters within FTAs regulating natural persons undermines the capacity of national governments to reform their temporary migration policies as they see fit and should be opposed.

## **Seasonal work programs**

- 22. Any extension of temporary work rights to unskilled and/or semi-skilled workers must only take place following the reaching of agreement between the Government, the ACTU and relevant unions. Any agreement reached must recognise and protect the rights of the temporary overseas workers.

## **The role of government agencies**

- 23. The presence of temporary overseas workers in Australian workplaces should be properly viewed as a labour and employment issue, not simply as an immigration issue. Government agencies with specific industrial relations responsibilities should be fully engaged with, and assume a role

in, the monitoring and compliance arrangements for temporary overseas workers. Such agencies should be adequately funded to perform these functions effectively.

24. The ACTU and affiliates resolve to adopt the following as priorities:

- a) work with trade unions in other countries to ensure temporary overseas workers are informed of their rights and of employment conditions prior to arriving in Australia;
- b) organise temporary overseas workers;
- c) assist temporary overseas workers integrate into workplaces;
- d) lobby for the introduction of a system for ensuring that qualifications gained overseas and held by temporary skilled overseas workers meet the contemporary requirements of Australian qualifications and licensing arrangements;
- e) pursue improvements to the labour agreements process so as to ensure labour agreements are genuinely consultative and that employers cannot use these agreements to bypass the general requirements of the 457 visa scheme;
- f) press for reforms to enable temporary overseas workers to more easily change sponsors if their employment is unsatisfactory;
- g) campaign for a properly resourced monitoring and compliance system administered by the appropriate Commonwealth agencies;
- h) monitor the implementation of reforms to the 457 visa program;
- i) monitor the use by employers of other temporary work visas and lobby for reforms of these visa categories as necessary; and
- j) campaign for the Australian Government to ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.