

Skilled Migration

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 skilled migration where appropriate.
2. The fundamental principle underpinning the skilled migration program must be that Australian workers have the primary right to Australian jobs. The use of skilled migration should not be a substitute for properly investing in and training the Australian workforce. Instead, it should be supplementary to the supply of skilled workers delivered through domestic education and training and by increasing the labour force participation of those who continue to be under-represented in the workforce.
3. Where skilled migration is required to address genuine skill needs that cannot be met domestically, Congress reaffirms the view this should be done predominantly through permanent skilled migration where people enter independently.
4. The preference for permanent over temporary migration recognises that permanent migrants provide a stable, effective and targeted source of skilled workers; have a greater stake in Australia's future and in integrating into all aspects of Australian community life; and, being less susceptible to exploitation and more secure in their jobs, are less likely to generate negative impacts on Australian workers in terms of wages, employment conditions, and job and training opportunities.
5. The preference for independent over employer-sponsored migration recognises the risks that are inherent in employer-sponsored visas where workers are dependent on their employer for their ongoing visa status. In these circumstances the risk of exploitation is much greater as overseas workers are less prepared to speak out if they are underpaid, denied their entitlements, or otherwise treated poorly.

6. 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.
7. 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.
8. Congress believes that rigorous labour market testing requirements must be implemented for all elements of the skilled migration program 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.
9. 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, unemployed job-seekers, and women returning to the workforce.

Employment arrangements

10. Recognition and protection of the rights of overseas workers and their families must be central to Australia's skilled migration program.
11. All overseas workers in Australia have the right to decent work, whether they be on temporary or permanent residency visas.
12. Congress recognises that temporary overseas workers are particularly 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. This includes affording trade unions broader access to conduct workplace visits.
13. Temporary overseas workers have the right to be paid at the market rate, represented by collective bargaining agreements covering the occupation, applicable to Australian citizens and permanent residents undertaking the same or similar work in their industry or occupation.
14. 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.
15. 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.
16. Temporary overseas workers have the right to join, and be represented by, a trade union.

17. 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.
18. Temporary overseas workers and their families must 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 by their employer.

Skills recognition

19. 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. In respect of trades workers, this skills recognition process shall be through the legislated TRA process. For other workers, competency assessment through recognised RPL, RCC or mutual recognition processes must be implemented and followed. In both instances, these processes shall be paid for by the sponsoring employer, or his/her employer at the time of engagement, where this is different.

Sanctions

20. 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 have no further access to temporary overseas workers, whether sponsored or unsponsored, and should be subject to civil and criminal penalties.

Pathways to permanent residency

21. 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.
22. However any such transition to permanent residency status should not be automatic. It should be underpinned by a rigorous process of labour market testing to ensure that labour market conditions used to justify the granting of the original temporary visa are still valid and the primary rights of Australian workers and young people to Australian jobs are fully protected and respected.

Semi-skilled pathways

23. Congress views with concern the increasing push from employers and within Government to expand the migration program to cover semi-skilled occupations.
24. Workers in semi-skilled occupations are generally able to develop these skills within a shorter period of time or through combinations of off-the-job and on-the-job training and therefore it is reasonable to expect that employers will obtain these workers from the local labour market. Bringing in semi-skilled workers from overseas also creates greater potential for exploitation by unscrupulous employers because these workers are likely to have more limited bargaining power and often have lower English language skills.
25. As a fundamental position of principle, the skilled migration program, as the name implies, should be targeted at skilled occupations in the trades and professions that cannot be met domestically.
26. Access to specialised semi-skilled occupations may be appropriate in limited circumstances but this should only occur after a detailed assessment of the labour market at the time and only after establishing that no Australian workers are available to do the work, even with retraining and/or relocation. Such occupations should only be considered, if at all, where they require a higher level of training and/or experience, such as a certificate III and three to five years' experience. The definition of specialised semi-skilled occupations should be agreed upon following tripartite consultation.
27. 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. All semi-skilled temporary migration should occur through migration Labour Agreements that are signed by the relevant union with coverage of the occupation.

Registered Employment Authorities

28. Tripartite Registered Employment Authorities (REAs) should be established to provide proper scrutiny and oversight of all employer-sponsored and temporary skilled migration programs. REAs should replace the existing Regional Certifying Bodies that have failed to provide sufficient rigour or transparency in assessing whether there are genuine skill shortages that cannot be filled locally.

Labour agreements

29. The ACTU believes that the labour agreement process requires comprehensive reform. It is seriously deficient both in terms of a process for consultation and the range of matters on which labour agreement proponents are required to consult on. This means there can be no confidence on the part of unions, the Government or the wider community that employers and labour hire companies wishing to source 457 visa workers under a labour agreement are first doing all they can to employ and train the local workforce.

30. To address these deficiencies, unions will continue to request the following evidence and commitments from labour agreement proponents before considering whether to support or oppose an agreement:
- a) A specific date of expiry, after which the agreement (and the employment of the temporary workers) will either terminate or be comprehensively renegotiated;
 - b) the number and occupations of temporary skilled overseas workers to be sponsored over each of the years covered by the proposed agreement and the specific roles they will perform;
 - c) the award/agreement classification and job titles of the workers;
 - d) the specific locations in which the workers will be employed;
 - e) the specific entity or entities who will be the direct employer of the workers;
 - f) the specific locations in which the workers will be employed;
 - g) the wages and conditions the visa workers will receive and the proposed industrial instrument that will cover them;
 - h) how the proposed wages and conditions compare to the wages and conditions of the equivalent Australian workers and the market rate for the industry or occupation;
 - i) a commitment from the company to exhaust all avenues for sourcing appropriate local labour workers, including the use of industry managed databases of unemployed workers where they exist, with evidence to demonstrate the nominated occupations, and the number of positions for each occupation, will in fact be required, and the evidence that these positions cannot be filled by Australian citizens and residents;
 - j) evidence of recent and ongoing recruitment efforts, including evidence of the wage rates the jobs have been advertised at and relocation assistance that has been offered to allow Australian workers to take up the positions;
 - k) specific commitments by the company directed at addressing the skills shortage through training in the occupations for which temporary overseas workers are sought;
 - l) a workforce profile which shows the proportion of overseas workers to Australian workers;
 - m) information on the process for settling the 457 visa workers in Australia, including assistance with accommodation, visa costs and expenses, including an undertaking by the company to comply with applicable ILO conventions which apply to temporary overseas workers; and

- n) a commitment to notify the ACTU and relevant affiliates before employing temporary overseas workers and to provide relevant unions with access to the workers within the first month of their employment to ensure compliance with labour agreement obligations.
 - o) Measures to allow for ongoing testing of skills demand during the term of the labour agreement to ensure that local opportunity is not displaced.
31. The ACTU and unions will advocate for the matters above to be included as formal consultation requirements under the labour agreement program. In addition, the ACTU and unions may seek to formalise these requirements by signing a memorandum of understanding with companies that propose labour agreement. Concessions to standard 457 visa requirements should not be considered as part of template labour agreements in low wage industries where there is a high rate of 457 sponsor sanctions.

Enterprise and Regional Migration Agreements

32. Relevant unions will take an active role in the consultation process for proposed Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs) to ensure that Australian workers are being given first opportunity at jobs in the resource sector. This includes existing workers in the sector, as well as those currently under-represented in the workforce including Indigenous workers, women, older workers, and unemployed job-seekers.
33. Unions will not support the making of EMAs or RMAs unless satisfied that every effort has first been made to fill positions locally, that concrete measures are in place to employ and train locally in future, and the employment of 457 visa workers on the project will not undercut the wages and conditions of Australian workers.
34. A particular focus will be the training plan that is presented to unions by EMA and RMA proponents. The EMA and RMA training plan must demonstrate clearly how the project will reduce reliance on overseas labour by targeting training at those occupations in short supply, including specific apprenticeship training commitments.
35. For every EMA and RMA covered worker who has been or is being trained, an Australian worker shall be trained.
36. While unions will respond to individual EMA proposals as they arise, Congress also believes the EMA submission guidelines as a whole need to be strengthened in terms of the information and evidentiary requirements that are placed on EMA proponents. This is crucial to ongoing community confidence in the EMA process. Key changes required include genuine labour market testing, preference for local workers in redundancy situations, and basic information on the number and occupations of skilled workers being sought under an EMA.

Jobs Board

37. Congress supports the introduction of a national online Jobs Board for major resources projects, both on-shore and off-shore. A Jobs Board should also be established in regions utilising RMAs. It should be a contractual requirement that EMA and RMA proponents and employers use such a Jobs Board and this should form part of a rigorous labour market testing process for EMAs and RMAs. A Jobs Board will help ensure that the Government, unions and the broader community can have confidence that Australian workers are being given first opportunity to fill Australian jobs.
38. The introduction of a Jobs Board should be in addition to a requirement that EMA and RMA proponents and employers use industry or occupational-specific custom and practice as part of their domestic recruitment efforts.
39. The ACTU will continue to work to ensure Labor implements its commitment to establishing a National Jobs Board for the resources sector by July 2012.

Off-shore coverage

40. Congress affirms the importance of ensuring all Australian jobs and industries are regulated under migration law. To this end, unions will seek a review of the Migration Act 1958 to ensure that no part of Australian territory is excluded from the effect of the Migration Act, and all workers including offshore marine construction workers and migrants are covered by one transparent and accountable system.

Training benchmarks

41. Access to employer-sponsored skilled migration should not be a reward for past failure by employers to train to meet their skills needs. A strong training record and an ongoing commitment to training Australians must be a non-negotiable pre-requisite for all employers wishing to sponsor overseas workers, whether on temporary or permanent residency visas.
42. Congress is concerned that at present there is no guarantee that training opportunities for Australian workers are being maintained by sponsoring employers. In the case of the Regional Sponsored Migration Scheme visa there are no training obligations at all on visa sponsors.
43. The training benchmarks that underpin the 457 visa program should be strengthened and include specific, quantifiable commitments to the employment and training of apprentices and trainees. These benchmarks should apply equally to EMAs and to permanent employer-sponsored visas, with a requirement that training be targeted at areas in skill shortage and a program for monitoring and enforcing those training requirements be established.

Sanctions for employment of illegal workers

44. The impact and incidence of illegal work – employers employing overseas workers without valid work rights – continues to grow, as confirmed by the 2011 Howells Report into employer sanctions legislation.
45. The ACTU supports the recommendations of the Howells Report to strengthen the existing regime of employer sanctions for illegal work in Australia, both as a deterrent effect to change employer behaviour and to ensure those employers who do the wrong thing and employ or refer illegal workers are in fact able to be prosecuted.
46. Unions will monitor the introduction of legislation to give effect to the Howells Report recommendations and where necessary make further representations to ensure the Government response to counteract illegal work is not delayed or diluted.

Migration agents

47. 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

48. Free trade agreements are directed at the regulation of goods and services. They should not regulate the movement of people. Inclusion of chapters within free trade agreements regulating natural persons is opposed in to. They undermine the capacity of national governments to reform their temporary migration policies as they see fit and treat people as nothing other than chattels and should be opposed.

Pacific Seasonal Worker Scheme

49. The ACTU Congress recognises the importance of remittances to Pacific Island communities and the role the Pacific Seasonal Worker Scheme can play in creating employment and skills training opportunities and income to Pacific Islander workers and their communities.
50. We support the transition of the pilot Pacific Seasonal Worker Scheme to a permanent program in horticulture. Congress notes the expansion of the coverage of program with a trial in the tourism sector. Congress notes that there is as yet no agreed definition of seasonality or tourism. Congresses also expresses concern at the trial of a program in a region with an above average unemployment rate.
51. It is essential that the principle of Australian workers having the primary right to Australian jobs is upheld in the Pacific Seasonal Worker Scheme, and there is no undercutting of Australian wages and employment conditions.

52. To ensure the rights of workers are upheld and the balance of costs between the employer and the worker maintains the economic benefits of participation to Pacific Island workers, Australian trade unions will continue to actively engage in Government tripartite consultation mechanisms and provide support to workers on arrival in Australia.

The role of government agencies

53. 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. An immigration inspectorate should be introduced into the Office of the Fair Work Ombudsman along with other whistle-blower protections.

Future priorities

54. 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) ensure that enterprise migration agreements covering major resource projects produce a dividend in the form of future employment and training opportunities for Australian workers;
 - g) advocate for the introduction of tripartite Registered Employment Authorities to oversee all employer-sponsored and temporary skilled migration programs;
 - h) press for reforms to enable temporary and permanent overseas workers to more easily change sponsors if their employment is unsatisfactory;

- i) campaign for a properly resourced monitoring and compliance system administered by the appropriate Commonwealth agencies;
- j) liaise with the ITUC and GUFs to ensure that the rights of migrant workers, temporary or permanent, are protected and enhanced by global agreements to which the ACTU and/or the federal Government are party.
- k) ongoing monitoring of the use by employers of 457 visas and other temporary work visas and lobby for reforms of these visa categories as necessary;
- l) the ACTU continuing to work to ensure Labor implements its commitment to establishing a National Jobs Board for the resources sector by July 2012; and
- m) 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.