TEMPORARY MIGRATION – CHANGING OUR SYSTEM

How did we get here?

1. Australia has a proud history of migration, which until the 1980's, was largely based on permanent skilled, refugee and family reunion migration. Since globalization picked up speed in the 1990s however, our migration policies have turned from permanent state-sponsored migration to that of temporary and employer driven migration, changing the relationship between workers and businesses. The balance of the system has been shifted in favour of employers using precarious workers to ensure greater profits. In effect, our current migration policy structures migration in according to the needs of business, narrowly defined, and not the national interest

2. What started off as an intra-company transferee mechanism has blown out to a system in which some 2.2 million million overseas temporary visa entrants to Australia currently have work rights.[1] This is more than a tenth of Australian's current workforce. According to the OECD, Australia is now home to the second largest temporary migrant workforce in the world, right behind the United States of America. This includes temporary skilled visa workers, working holiday and student visa workers, while the remainder are workers from New Zealand on a so-called special 444 visa who account for a half. There are also other categories of visas with work rights for which data doesn't exist. At a time when wages growth is at its lowest, people are desperate for more work and youth unemployment keeps rising, these figures reveal a dangerous potential effect of workers being used against each other to drive down wages and conditions even further. Recent changes in the labour market regarding the gig economy and the potential impact on employment from Work 4.0 provide an urgent need to reshape our migration system.

3. The fundamental principle underpinning any skilled temporary migration program must be that Australians - that is citizens and permanent residents, regardless of their background and country of origin – have the primary right to Australian jobs.

4. Another effect of our current migration model is abandonment by many employers of the responsibility to train workers, and young people in particular. For many employers workers are not worth investing in for the long term. The temporary migration program must not be a substitute for properly investing in and training the Australian workforce.

5. The impact of our changed migration system has added to the attack on workers' rights more generally, with power shifting to employers, resulting in wages being driven down and instilling fear in both local workers and temporary migrant workers about their job security. The Productivity Commission has found that whilst some migrants can benefit from visas, the profit of industries employing these workers is greater and the wage growth is slower than those in comparable industries who do not use them.

1 https://data.gov.au/dataset/temporary-entrants-visa-holders/resource/857ce1cd-b41b-406a-8be7-f7fbce46a5a2

6. Instead of being treated as workers with industrial rights, temporary visa workers are treated just as visa holders under migration laws. Both industrial and migration laws are intertwined and both need to be changed.

7. In addition, the use of labour mobility clauses in free trade agreements turns people into goods to be used as bargaining chips. This often leads to loss of jobs as local permanent workers are displaced by service contractors. It also means that Australian workers, and particularly young workers, are unable to find employment. Free Trade Agreements concluded between Australia and many other countries such as the TPP make workers' rights ambiguous, and raise the possibility that they will be governed by national laws in their home state.

8. Employers' claims that labour/skills shortages necessitate large scale temporary migration are often attempts at improving profits through wage theft. What was previously referred to as an increased demand for labour has been deliberately rebadged as a 'skills shortage'. Instead of increased demand leading to higher wages or more workers undertaking training and seeking to enter the labour market with sought–after skills, many employers and political leaders have promoted a fundamental change to migration settings as a solution to the 'skills shortage'.

9. Wright and Constantin (2015) surveyed employers using the 457 visa scheme and found that 86% state that they have experienced challenges recruiting workers locally. Despite identified recruiting difficulties, the survey found that fewer than 1 in one hundred employers surveyed had addressed 'skill shortages' by raising the salary being offered. Labour 'shortages' should first be addressed through a readjustment in the price of labour – increased wages. An inability to find local workers to work at a specified wage rate, coupled with an unwillingness to offer higher wages, does not necessarily imply a skill shortage - particularly where local workers would be willing and able to work if the wage rate was lifted. This differs from a skill shortage in which there are simply not enough people with a particular skill to meet demand.

10. The relatively recent availability of a large and vulnerable pool of temporary migrant workers has undoubtedly contributed to current record low levels of wages growth and a growing reluctance by employers to train local workers. Demand for temporary migrant workers is now shifting again from the resources sector to low wage industries such as agriculture, hospitality and health services which, in a wage fixing system centered on enterprise bargaining, will no doubt further contribute to the problem of wage stagnation.

11. Contrary to the notion that men are the primary movers in migration, women have made up a large proportion of temporary migrants who also have work rights in Australia. Female migrants make up half of the international student visa holders and working holiday visa holders coming to Australia. Female temporary migrants are also both primary (and secondary visa holders (in the TSS visa scheme.

12. While there are approximately 2.2 million temporary entrants with work rights, the overseas worker team at the Fair Work Ombudsman consists of only 17 full time inspectors to investigate cases of exploitation – over 80,000 visa workers per inspector. Inadequate enforcement and penalties act as an incentive for employers to exploit temporary workers when the benefit from doing so outweighs the cost of the penalty. or where the probability of being caught is sufficiently low.

13. Congress recognises there may be a role for temporary migration in some cases, but there must be a guarantee that every effort has first been made to fill a position locally with an Australian citizen or permanent resident. Employer-based labour market testing (LMT) requirements are currently so weak that they fail to prevent companies getting around them, not to mention simply advertising for 457 workers because they know they won't get caught.

14. The oft-stated suggestion that employers will always employ locally first is also not borne out by evidence., Findings by the Migration Council of Australia[2] revealed that despite hiring 457 visa workers, 15% of sponsoring employers said they didn't have difficulties finding workers, with 20% saying that the benefits of hiring 457 workers was 'increased loyalty 'and 'great control of employees'.

2 More than temporary: Australia's 457 visa program, Migration Council of Australia, 2013.

15. There have been a range of abuses uncovered which have clearly shown that the entire system is broken. From 7-11 and Domino's to agriculture, construction, food processing to Coles, Dominos and Caltex, it is clear that the abuses occur in a number of visa classes whether they be students, working holiday makers or visa workers in skilled occupations.

16. These abuses include:

    a) Underpayment of wages and superannuation, including half pay scams, unpaid training and being forced to pay back wages

    b) Abuse ranging from psychological to physical

    c) Threats of deportation if complaints are made or workers join unions

    d) Being forced to live in sub-standard conditions

17. A system predicated overwhelmingly on temporary work cannot create the benefits that migration has been praised for. Only a system of safe, regular and independent migration can. Temporary visa workers are more willing to accept lower wages and conditions as their right to stay in the country (and for some visa classes, their right to permanent residency) depends on their job and the whim of their employer. Labour exploitation and wage theft require systemic changes to industrial relations and migration rules that will provide jobs for local workers and end exploitation.

18. Migration intermediaries have a vested interest in inflating demand. Australia has created a massive industry with many migration agents outside of our jurisdiction who cannot be prosecuted for breaches. This mushrooming "migration industry"- a complex and transnational web of agents, lawyers, labour recruiters, accommodation brokers and loan sharks – is currently largely unregulated.

19. The growth of labour hire operators alongside the migration industry has led to companies seeking to sell temporary migrant workers to employers, creating a fake "Job Network" which preferences temporary workers over Australians.

20. Whilst there are some benefits to the seasonal labour program as it promotes economic development in Pacific nations, evidence shows that there are abuses occurring there as well.

21. In the current global context migration is changing. The education industry is very important to the Australian economy but it has also led to the corruption of our training system and exploitation of students and workers. The new so called "platform economy" is similarly creating a pool of exploited and exploitable workers, many of them migrants.

22. Whilst the Coalition Government have made changes to the TSS visa and franchisors, they have at the same time promoted the use of labour agreements and a new rising class of Short Stay Specialist visa (subclass 400).

23. Unions have been sounding the alarm on these issues for a long time. Reviews of migration occur; unions make submissions; the review panel makes recommendations with some of them favourable to unions' submissions and Government ignores them. We need a wholesale change to the way our current temporary migration system works.

What must our temporary migration system look like

24. Congress believes in and endorses the fundamental principle that Australian companies must not be allowed to run Australia's migration system. Companies must not be able to pursue profits at the expense of wages, jobs for locals, and conditions of temporary workers our policies must change. Congress calls on the Government to take the following measures to ensure all workers are protected.

Union membership

25. To be empowered to enforce their rights, temporary migrant workers must be provided with information about how to join trade unions and why collectively organising in unions is important. This is the only way we can ensure genuine equality between all workers.

26. Congress calls for the following changes:

    a) All temporary visa holders must be issued with a list of unions and contact numbers as part of their visa process.

    b) Unions must be facilitated to access temporary visa workers at the pre-departure and post-arrival stage.

    c) Unions must have the right to bring civil penalty proceedings in relation to breaches of the Migration Act 1958.

    d) Employers of temporary visa holders must be required to provide workers with relevant information about their rights including contact details of the relevant union and a copy of the relevant award or agreement.

    e) Unions must be provided with reasonable access to interpretation services and interpreters through the relevant agency.

    f) Resources must be provided to unions to support, advocate on behalf of and organise temporary visa workers through s outreach officers and other programs.

Temporary skilled shortage visas (TSS)

27. The TSS visa is divided into two types of visa:

    a) Short-term stream – for skilled workers in occupations included on the Short-term Skilled Occupation List (STSOL)1for a maximum of two years (or up to four years if an international trade obligation applies)

    b) Medium-term stream – for highly skilled overseas workers to fill medium-term critical skills in occupations included on the Medium and Long-term Strategic Skills List (MLTSSL)1 for up to four years, with eligibility to apply for permanent residence after three years.

    c) It is thus more important than ever to pursue a range of regulatory changes regarding these visas.

28. Congress endorses the following changes:

    a) The current Ministerial Advisory Council on Skilled Migration must be abolished and replaced by an independent tripartite body of employers, unions and Government with equal numbers and standing. The body must be supported by demographers, migration and labour specialists and will also require Outreach Officers and a functional secretariat, all of which will contribute to drawing up a list of genuine skilled shortages, to be renewed on six-monthly basis.

    b) Their work must be undertaken in a transparent fashion and underpinned by a data analysis of the current labour market vacancies, graduate figures, apprenticeship and trainee numbers, industry analysis, economic activity projections and industries with high incidence of labour exploitation and wage theft.

    c) The independent body will set the occupation list of genuine labour shortages and those intending to apply to bring workers into Australia will have to fulfil the labour market testing requirements.

    d) LMT will need to be improved to include:

- jobs being advertised for a minimum of 4 weeks and less than 4 months before the visa application
- bans on advertising targeting only overseas workers or workers with specific language skills (with relevant exceptions) and advertisements setting unwarranted and unrealistic expectations of skills and experience in order to exclude local workers
- employers delivering evidence against strict criteria that no qualified Australian worker was available within a reasonable timeframe.
- proof by employers that they have offered better wages, payment of relocation costs as well as training to potential candidates in case of labour shortages before applying to bring in TSS workers
- proof by employers that they have sought to employ those most disadvantaged by the labour market such as indigenous workers, older worker and long-term unemployed
- a public database of jobs advertised as well as data on what the results of that advertising were (ie. the number of applications received, the number of applicants hired, and reasons why unsuccessful applicants were not considered suitable).
- proof that a set number of existing employees are engaged in training (apprenticeships/ traineeships/scholarships etc.) for the occupation/s being sought.

e) Training and licensing obligations for skilled trades and other occupations must be maintained with skills testing required for particular industries and professions.

f) Workers who require an occupational license or registration must successfully complete the relevant skills and technical assessments or registration standards, if applicable, before being granted a visa

g) Upon approval, employers must be required to publicly register their employment of a TSS worker to enable them to be provided with information regarding their right to join a union and information about their wages and conditions.

h) Data must be gathered and provided to the public on an aggregate basis regarding who the TSS workers are working for, in what industries and the distribution of their base salaries by occupation

i) The Temporary Skilled Migration Threshold (TSMT) (which has been frozen since 2013 at $53,900) must be changed. These changes include:

- Increasing the threshold immediately to $$77,725 (to catch up for the years of indexation increases not provided by the current Government); Restoring the annual indexation of the TSMT based on Average Weekly Earnings or the Consumer Price Inflation index, whichever is the higher, from 1 July each year;
- Applying the TSMT as a minimum base rate of pay, with no regional or other concessions available;
- Giving consideration to whether the TSMIT should be increased further and set at the level of Average Weekly Earnings (approx. $89,122 p.a. as per May 2020 figures) ;
- The TSMT must be determined by the tripartite body referenced earlier.

29. Workers on temporary skilled shortage visas must be provided with at least 90 days to find another sponsor in the event of termination of their employer sponsorship. All sponsorship terminations must be notified to the tri-partite board.

30. Upon each review of an FTA, genuine LMT conditions must be inserted into the clauses. Labour mobility arrangements must not be negotiated in new free trade deals.

Short Stay Specialist Visa (Subclass 400)

31. The introduction of subclass 400 visa (Temporary Work (Short Stay Specialist) (400) by the current Government was designed to provide an avenue for people to perform short-term, highly specialised,

non-ongoing work, in limited circumstances, whereby they are to participate in an activity or work relating to Australia's interests. Applicants must be invited or supported by the employing organisation and, "have specialist skills, knowledge or experience that is needed but cannot be found in Australia" (emphasis added)[3]. These 'highly specialised skills' are defined by the Department as those specialised skills, knowledge or experience that can assist Australian business, and cannot be reasonably found in the Australian labour market.

32. In the Australian offshore oil and gas industry, operators are subverting the Australian visa system using the subterfuge that roles can be reclassified to a specialist category at the whim of the operator, not requiring evidence any evidence to do so. This provides employers with an ability to deliberately subvert lawful application of the 400-visa, thereby allowing them to avoid employing local labour on Australian standard wages and conditions in the offshore sector. Employers are hiring foreign workers and having them elected as bargaining representatives to non-union negotiated agreements, all the while maintaining a façade of good faith bargaining with the relevant unions. These workers are not advised of their rights to join a union and collectively bargain.

33. The job classifications contained in the non-union agreements being implemented are different to those in the union-industry negotiated offshore agreements. By way of example, where the non-union agreement has a "chef manager", the union-industry standard offshore agreements have a chief cook classification. By reclassifying the chief cook role to include the word manager, the subject company is able to "satisfy" the 400-visa application requirement that the role is 'highly specialised', as defined and captured under *Australian and New Zealand Standard Classification of Occupations (ANZSCO) Major Group 1*[4], and which appear on the list of skills and occupations deemed to have a shortage of qualified, local labour available to fill them.

34. Congress declares that this visa must be abolished. In the case of genuine necessity these applications can be covered by the TSS visas.

Maritime Crew Visa

35. The current maritime crew visa (MCV – Subclass 988 visa) is no longer fit for purpose and requires an overhaul. The reasons why the MCV is no longer fit for purpose are:

    a) It is now being utilised for purposes for which it was not originally designed, noting its original intention and purpose was as a temporary visa for non-national seafarers on international ships calling temporarily at Australian ports for cargo loading and discharge as part of a continuing international voyage;

    b) It is now approved for use by non-national seafarers on foreign registered ships authorised to undertake interstate voyages under a Temporary Licence issued under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act), which by definition is a ship that has ceased an international voyage and is operating in domestic coastal trading and is competing in a domestic industry;

    c) It is the only temporary visa with a long duration (valid for up to 3 years) that applies to domestic non-national workers that does not include any of the labour market tests applicable to visas granting work rights in a domestic industry set out in the Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018;

    d) It is open to abuse by shipowners/operators and ship charterers operating ships in intrastate coastal trade that do not opt into the CT Act (under s12) and are therefore not permitted to access the Customs exemption provision provided by s112 of the CT Act, which should mean that non-national seafarers on such vessels, which are presumably declared to be imported and entered for home consumption under the *Customs Act 1901* (Customs Act), have 5 days to (i) transfer to another ship; or (ii) leave the country; or otherwise become an illegal non-citizen; and

3 https://www.border.gov.au/Trav/Visa-1/400-

4 Australian Bureau of Statistics, ANZSCO, First Edition, Revision 1. 2016

e) It does not require the same standards of background checking as is applied to Australian workers, including seafarers, required to hold a Maritime Security Identification Card (MSIC) under the *Maritime Transport and Offshore Facilities Security Act 2003* for work in or entry to a maritime security zone.

36. All these factors interact to undermine employment opportunities for Australian seafarers in Australian domestic shipping.

37. Furthermore, the MCV and its administration no longer meets international best practice, exemplified by the Canadian system given effect by the Canadian Special Measures Policy for the Maritime Sector (SMPMS). Under this policy the Canadian Coasting Trade Act 1992 and Canada's Labour Market Impact Assessment (LMIA) requirements, which accompany its temporary visa system, work conjunctively to require applicants for a temporary licence to operate in Canadian coastal trade to undertake a labour market assessment to assess the availability of suitably qualified Canadian seafarers before a non-national seafarer is issued with a temporary work visa for employment on a foreign ship in Canadian coastal trade. Furthermore, the Canadian SMPMS obligates the Canadian visa issuing agency to obtain a Letter of Concurrence from the Canadian seafarers labour union attesting to the availability or otherwise of suitable national seafarers to undertake the work on the ship applying for a license, which is incorporated in the Labour Market Impact Assessment.

38. Congress call for the following changes to the Maritime Crew Visa system:

a) That the existing MCV – Subclass 988 visa be retained for seafarers on ships involved in a continuing international voyage undertaking short port calls within Australia, enabling multiple entries over a period of up to three years;

b) That the existing MCV be made more flexible so it also applies to foreign seafarers on foreign registered ships operating in the following circumstances within Australia, applicable for up to 60 days, once in any 3-year period:

- Ships undertaking repairs, maintenance or dry docking in Australia.
- Mother ships at anchorage in a roadstead in coastal waters awaiting barge loading.
- Ships involved in production and processing e.g. marine products.
- Ships held at an anchorage point or wharf for biosecurity reasons.
- Ships detained by the Australian Maritime Safety Authority.

c) That for all other circumstances non-national seafarers must hold a Temporary Skill Shortage (TSS) work visa (subclass 482) that includes a labour market test consistent with the Canadian system, provided seafarer occupations are on the Government's occupational skills shortage list.

d) That complementary amendments be made to the Customs Act and the CT Act as follows

- The Customs Act be amended to ensure that the-60-day maximum duration of the modified MCV as proposed works in harmony with the ship importation and home consumption elements of the Customs Act; and
- The CT Act be amended to ensure that shipowners/operators/charterers issued with a TL under the CT Act cannot circumvent the new visa requirements through accessing the Customs Act exemption provision in s112 of the CT Act.

International Students

39. The education industry is an important part of Australia's economy, but high rates of unemployment remain and youth unemployment in particular. Graduates are not finding work after coming out of university and can only find work in non-related occupations a year on from finishing their degrees. In addition, the damage done to the quality of our education system by private training providers in the VET system luring students

to study courses by promoting the work rights aspect of their visa has led to international students paying for courses that are not delivered or whose content is poor. International students are often forced to work excessive hours and subsequently threatened with reporting of their visa breach if they want to make a complaint.

40. Congress calls for the following changes:

    a) Modelled on the apprenticeship system, a contract between the student, the educational institution and the employer must be signed before the student starts their employment. This contract must compel the employer to release the worker for the purposes of their study and stop employers from forcing them to work more than the permitted 40 hours per fortnight during semester.

    b) The educational institution must ensure the contracts are registered with the tripartite body. The tripartite body will ensure that no employers who have breached labour laws are able to employ student visa workers by releasing publically a list of suspended employers.

    c) Educational institutions must provide working visa students with a list of union contacts per industry upon their commencement and set up migrant worker centres where they can access information through counsellors trained by unions.

    d) In order to provide a safer framework for exploited workers to go on the record about the abuse of their rights and wage theft, there must be a three strikes policy which gives them the assurance that they won't be deported for complaining. Employers would be suspended from being able to employ student visa workers after their first report.

    e) To prevent OHS abuses, sham contracting and wage theft, student visa workers must not be entitled to hold an Australian Business Number and must be engaged directly by an employer, not a labour hire provider.

    f) The graduate visa (subclass 485) must be reviewed as it can be used for up to 4 years (depending on the qualification) with no restrictions on occupational categories.

    g) International students should have access to certain aspects of the welfare safety net e.g. Student concessions such as student travel concessions.

    h) A wholesale review of both the university and the VET system and their role in the temporary visa system must be held.

Working holiday visas

41. The Working Holiday visa (subclass 417) and the Work and Holiday visa (Subclass 462) (WHVs) is meant to be a temporary visa for young people who want to holiday and work in Australia. The 6-month work period has become much longer and the ability of these visas to be prolonged is not assessed against the unemployment rates of young Australians, particularly in regional areas. The requirement for WHV workers to work for 88 days in regional areas in order to qualify for a second year visa forces them into unpaid and exploitative work.

42. Congress calls for the following changes:

    a) The second year working holiday visas (subclasses 417 and 462) must be abolished in order to stop the abuse of the 88 day regional work requirement and improve the labour market options for local young workers.

    b) In order to deal with labour shortages in the horticultural sector the award must be changed from piece work to hourly rates of pay. Employers must advertise and pay award rates in this sector

c) The Working Holiday Visa program must be capped by quotas set by the independent tripartite body.

d) The Department of Home Affairs must collect and publish data regarding the number of WHV holders, the duration of their employment, the list of employers they work for, their rates of pay, industries and occupations. Notification of employment by employers needs to be mandatory.

e) To prevent OHS abuses, sham contracting and wage theft, WHVs must not be entitled to hold an Australian Business Number and must be engaged directly by an employer, not a labour hire provider.

Seasonal labour program

43. Labour mobility is an integral part of the Australian development program for the Pacific, and it must be providing decent work and development opportunities for Pacific Island communities. However, there have been a number of cases of abuse which points to the fact that better regulation and enforcement needs to be applied.

44. Congress calls for the following changes:

a) Pacific Island workers must be made aware of their workplace rights and informed on how to access their rights through union briefings informing them of which union they are able to join before they depart.

b) The scheme must limit repercussions faced by workers when exercising their rights such as fears regarding loss of income from the early termination of a season, or exclusion from future seasons.

c) The seasonal labour program must be sectoral–based rather than employer-based, to allow workers to transfer their employment between employers within the same sector, rather than being tied to a single employer.

d) The in-country recruitment process must be transparent, and workers must be given a 'right of return' to ensure that workers are not penalised for exercising their workplace rights, being allowed to return for second and subsequent periods of seasonal work.

e) The Department of Home Affairs must collect and publish data regarding the number of seasonal workers, their rates of pay, industries and occupations.

f) The specific characteristics of care work in aged care and disability services make it unsuitable for short-term visas as users require ongoing care and high skill levels. In recognition of this, the seasonal worker program must not be extended to these sectors.

Labour agreements

45. Enterprise Migration Agreements (EMAs), Designated Area Migration Agreements (DAMA), Infrastructure Facilitation Agreements and other labour agreements are nothing more than attempts by employers to gain greater control of workers and deny them the right to collectively bargain for their wages and conditions with the help of their unions. These agreements must be abolished.

Migration agents

46. Australia rakes in millions of dollars annually in visa fees, yet many of the migration agents who are registered with the Office of the Migration Agents Registration Authority (OMARA) fail to provide the services they have been paid for. Whilst OMARA receives complaints they are often not examined until the temporary visa worker has left the country, therefore losing their ability claim back the money they paid, sometimes up to $40,000 dollars. Many of the migration agents through which temporary visa workers are brought to Australia are based overseas, outside of any legal jurisdiction.

47. Congress calls for the following changes:

    a) The Government needs to take a zero-tolerance approach to illegal and immoral practices of migration and recruitment agents (whether registered or unregistered).

    b) Regulations of the migration agent sector need to be made more stringent to ensure severe penalties currently covered by civil laws are covered by criminal law as well, as "name and shame" strategies have not worked.

    c) OMARA which currently sits within the Department of Home Affairs needs to be overhauled to ensure that they properly investigate all complaints within a reasonable time frame and forward serious complaints to the Fair Work Ombudsman or (in the case of serious breaches) appropriate courts for prosecution.

    d) All migration agents need to be licenced and pay the nominated licence fee.

    e) Fees from such licencing arrangements must be used to fund an adequate inspectorate to ensure migration agents are operating lawfully.

    f) Migration agents must be prohibited from being an associated entity of any labour hire providers.

    g) Overseas migration companies must have an established business in Australia in order to be registered and covered by Australian law.

    h) The tri-partite body must be given powers to remove licences, impose conditions and fine licence holders and seek compensation for temporary visa workers under the licensing scheme.

    i) Congress opposes the Coalition Government's plans to privatise visa assessment, processing and servicing work. This is a core Government function that should be delivered and managed by Government through properly funded public services.

Training

48. It is clear that many employers have abandoned their duty to train and skill Australian workers to ensure that skill shortages do not occur. We need to increase the cost of accessing TSS (457) visa workers relative to the cost of training Australian workers, especially young people in entry-level positions.

49. Congress calls for the following changes:

    a) There must be a requirement on sponsoring employers to be training and employing apprentices/ trainees/graduates in the same occupations where they are using TSS (visa workers.

    b) Where one or more TSS) visa workers are sponsored by the employer in trade and technical occupations, apprentices must represent at least 25% of the sponsor's trade workforce.

    c) Smaller employers with one or more TSS visa workers and who are not able to commit to directly training an apprentice must be required to train an apprentice through an industry group scheme on a ratio of one to one for the time they seek to engage a TSS visa worker.

    d) If employers are sponsoring TSS visa workers in professional and managerial occupations, recent Australian higher education graduates with less than 12 months' paid work experience must represent at least 15% of the sponsor's managerial and professional workforce.

    e) A requirement on sponsors of TSS visa workers to make payments into a dedicated training fund that is linked to broader training objectives A contribution of $4000, which is based on the standard incentive payment an employer would have received if they had employed an apprentice through to completion, is a recommended benchmark contribution amount.

f) The Department of Home Affairs must be responsible for ensuring information on the domestic training effort of sponsoring employers under the TSS (457) visa program is collected and made publicly available.

g) A wholesale reform of the VET sector must begin as a priority to ensure that the system is fit for purpose, able to deliver the high-quality training that Australians workers need and is not simply yet another exploitative temporary migration rort.

h) Employers must meet public reporting and monitoring requirements if they seek to engage additional temporary visa workers after a period which should have facilitated the training of local workers to fill those vacancies.

Penalties

50. Whilst some penalties have increased recently, it is clear through the trouble that the FWO is having in holding companies accountable (like 7-11, Caltex and Dominos) to the agreements they have signed with them that the message is not coming through.

51. Congress calls for the following changes:

    a) Harsher penalties for specific offences for employers relating to exploitation of temporary migrant workers must be introduced including suspension of their employment rights through disqualifying migrant employers found to be in breach of these provisions, and enforcement of these increased penalties.

    b) Suspension of licenses for education service providers that are found to not be providing the educational services they have been contracted to and students are paying for.

    c) The higher penalties for breaches of pay-slip and record-keeping obligations provided by the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 must be further extended to:

        – change the current provisions of reversing the onus of proof on employers regarding breaches of pay slip and record keeping obligations to change the 'reasonable excuse' provision to 'all circumstances' so they cannot escape their legal obligations.

        – extending the provisions enacted by the Act dealing with responsible franchisor entities to entities who can be shown to be 'controlling' or 'influencing' entities within their supply chains, in parallel with the PCBU provisions under health and safety law.

    d) A national licensing scheme for labour-hire agencies with ASIC required to suspend those found to have breached the scheme from being company directors.

Access to justice for temporary migrant workers

52. The primary weapon in access to justice for temporary migrant workers is freedom of association. Unions play a key role in monitoring and enforcing workers' rights and in preventing modern exploitation in Australia. Unions are embedded in Australian industries and we have a deep understanding of the problems faced by vulnerable workers. And yet, as representatives of workers, unions are currently facing high barriers to upholding vulnerable workers' rights. [1] Worker voice is an important aspect of the UN Guiding Principles on Business and Human Rights in relation to providing grievance mechanisms and access to remedy. [2]

53. No worker, regardless of where they come from, can be denied their rights and equality before the law. Similarly, every worker and their family has the right to decent work, which includes social protection.

54. Congress calls for the following changes:

    a) A 'firewall' must be put in place between the Fair Work Ombudsman and the Department of Home Affairs that prevents the provision of information from the Ombudsman to the Department, except to facilitate the prosecution of employers for exploitation of their employees.

    b) Temporary migrant workers must have access to the same welfare services as Australian permanent residents.

    c) Services must in particular focus on women gaining access to language services, job readiness programs, health services and paid parental leave.

    d) Whistle-blower protections must be included in the Migration Act to protect workers and co-workers making complaints, including an amnesty for those who complain to be able to stay.

    e) The Fair Work Act 2009 must be changed to apply to all workers, including temporary migrant workers who have breached their visas or worked without a valid visa.

    f) All temporary migrant workers must have access to the Fair Entitlements Guarantee program.

    g) There must be measures for workers at risk of removal from Australia for working without a visa or in breach of visa conditions enabling them to enforce their workplace rights and recover unpaid entitlements before being forced to depart as the likelihood of them receiving the funds is low.

Procurement

55. One of the best ways for employers to get the message is by denying rogue companies access to Government contracts.

56. Congress calls for the following changes:

    a) In Government procurement contracts companies must be required to account for the full value provided to the Australian community through the use of Australian residents on government funded work and use hiring practices which put local workers first.

    b) Government should require the following clauses in deeds with companies it contracts with:

        - An entity must comply with its obligations under the Migration Act 1958 and its subordinate legislation;
        - An entity must ensure that no person who is not an Australian citizen or Australian permanent resident (within the meaning of the Migration Act 1958) is employed to undertake work unless:
            - the position is first advertised in Australia;
            - the advertising was targeted in such a way that a significant proportion of suitably qualified Australian citizens and Australian permanent residents would be likely to be informed about the position;
            - any skills or experience requirements set out in the advertising were appropriate to the position;
            - the employer demonstrates that no Australian citizen or Australian permanent resident is suitable for the job;
        - Workers who are Australian residents must have preference in training opportunities relative to temporary foreign workers;
        - In the event of redundancies required during the life of the contract, in occupational classifications where both Australian workers and temporary visa workers are employed by the entity, temporary

visa workers will be made redundant first, given that temporary visa workers are, by definition, intended to supplement the Australian workforce.

c) Current Government procurement procedures such as the Code for the Tendering and Performance of Building Work must be abolished as they seek to allow unfettered 'management prerogative' including in management's use, treatment and oversight of temporary foreign labour and their employment arrangements, given that temporary foreign workers are intended to supplement the Australian workforce.

d) All temporary visa workers on Government funded projects must be visited by the relevant union in order to inform them of their rights.

Free trade agreements

57. The current approach to trade treats workers as commodities. This must stop. Labour mobility must not be used as a bargaining chip in trade agreements – these policies must be set by immigration agencies and Ministers in light of broader questions of justice and national interest. The broad definition of "contractual service providers" in labour mobility chapters are not designed to facilitate genuine trade in services, but to undermine local wages and conditions by providing greater freedom for employers to import labour on less favourable conditions, without the need to undertake Labour Market Testing.

58. Congress calls for the following changes:

    a) FTAs must not include provision of temporary or other workers. Labour rights chapters must detail the rights of workers under the agreement in accordance with ILO Conventions and relevant national laws, not give licence to employers to import or export workers like commodities.

    b) If commitments on the temporary movement of people exist in current agreements, safeguards must exist to ensure that strict LMT criteria have been applied.

    c) Skills testing requirements for industries and professions must be performed.

    d) Limitations on LMT must be removed from current FTAs and should not be included in future FTAs.

    e) ISDS should be removed, and in cases where it is part of any agreement, labour laws should be exempt from the ISDS provisions pending their removal.

59. Any arrangement for labour mobility at all, including Working Holiday arrangements should only be entered into if Australian citizens are provided reciprocal access and treatment by the terms of the agreement.

Modern Slavery

60. Australia has taken steps to combat the scourge of modern slavery in recent times. The Modern Slavery Act, 2018 (Cth) came into effect on 1 January 2019. The Commonwealth Act requires that businesses with $100million in annual consolidated revenue to submit an annual Modern Slavery Statement. The report requires that the business identify and address their modern slavery risks, and assist in maintaining responsible and transparent supply chains.

61. This has led to a push by Unions to enter into accords with large Australian businesses to promote lawful employment and the ethical treatment of workers throughout the Australian horticultural supply chain.

62. While the Commonwealth Act is an important first step to combat modern slavery and exploitative employment practices throughout supply chains, the Modern Slavery Act, NSW (the NSW Act) has a number of important provisions not found in the Commonwealth Act. The NSW Act has not been proclaimed even though it was passed by both houses of parliament in 21 June 2018 purportedly because Commonwealth Act came into effect.

63. In relation to Modern Slavery Statements as it pertains to franchising, there is a clear interdependence between the franchisor and the franchisee. It is in shared interest of both the franchisor and franchisee to consider the impact on their brand and activities and so report on the steps taken to ensure the franchise as a whole is free from slavery. The franchisor, however, is better placed, rather than individual franchisee to submit the modern slavery statement. This task could be made easier if the Commonwealth Act required a franchisee to provide all relevant information need for the franchisor to prepare the modern slavery statement.

64. Congress calls on the following changes to the Commonwealth Act:

    a) Threshold for reporting to be lowered to businesses with consolidated revenue of $50m or more.

    b) Penalties for non-compliance of mandatory reporting requirements.

    c) Appointment of an independent Anti-Slavery Commissioner who has broad remit to advocate and promote action to combat modern slavery, work with government, NGOs, unions, educational institutions and business to combat, raise community awareness, provide assistance and support to victims of slavery

    d) csupport for victims including compensation

    e) Franchisees to provide all relevant information to the Franchisor to enable the Franchisor to meet reporting requirements.