

The Senate

Legal and Constitutional Affairs
References Committee

Effectiveness of the current temporary skilled
visa system in targeting genuine skills shortages

April 2019

© Commonwealth of Australia 2019

ISBN 978-1-76010-958-5

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

This document was produced by the Senate Legal and Constitutional Affairs Committee secretariat and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

Members of the committee

Members

Senator Louise Pratt (ALP, WA) (Chair)

Senator the Hon Ian Macdonald (LNP, QLD) (Deputy Chair)

Senator Kimberley Kitching (ALP, VIC)

Senator Nick McKim (AG, TAS)

Senator Jim Molan (LP, NSW)

Senator Murray Watt (ALP, QLD)

Participating Members

Senator the Hon Concetta Fierravanti-Wells (LP, NSW)

Senator Slade Brockman (LP, WA)

Secretariat

Mr CJ Sautelle, Acting Committee Secretary

Dr Sean Turner, Acting Committee Secretary

Ms Ann Palmer, Committee Secretary

Dr Andrew Gaczol, Principal Research Officer

Ms Natasha Rusjakovski, Principal Research Officer

Dr Ros Hewett, Senior Research Officer

Ms Leonie Lam, Research Officer

Ms Michelle Macarthur-King, Administrative Officer

Suite S1.61

Telephone: (02) 6277 3560

Parliament House

Fax: (02) 6277 5794

CANBERRA ACT 2600

Email: legcon.sen@aph.gov.au

Table of contents

Members of the committee	iii
Abbreviations	ix
Recommendations	xi
Chapter 1	1
Introduction	1
Conduct of the Inquiry.....	1
Structure of the report.....	1
Chapter 2	3
Overview of Australia's temporary skilled visa system	3
Current temporary skilled visa system	3
Recent changes to the skilled visa system.....	12
General issues raised about the current system	16
Committee view.....	26
Chapter 3	29
Processes for determining skills shortages, occupation lists and skills assessments	29
Placement of occupations on the skilled migration occupation lists.....	29
Submitter and witness views on the occupation lists and associated issues	34
Australian and New Zealand Standard Classification of Occupations	40
Skills assessments regime.....	43
Committee view.....	49

Chapter 4.....	53
Labour market testing requirements and the use of labour agreements.....	53
Overview of labour market testing requirements	53
Arguments in support of maintaining or extending labour market testing	55
Arguments in favour of reducing labour market testing requirements	59
Waivers of labour market testing requirements because of international trade agreements	63
Use of labour agreements in the temporary skilled visa system	65
Committee view.....	72
Chapter 5.....	75
Investing in local training to address skills shortages.....	75
The Skilling Australians Fund levy	75
National Partnership Agreement on the Skilling Australians Fund	77
Stakeholder views on the Skilling Australians Fund levy.....	79
Ensuring that SAF funds contribute towards local skills needs	83
Other proposals for ensuring that training outcomes are achieved	85
Committee view.....	87
Chapter 6.....	93
Temporary skilled worker compliance and enforcement arrangements.....	93
Introduction	93
The extent of skilled visa worker exploitation and awareness of workplace rights	93
Case studies	96
Compliance measures and protections for workers, enforcement arrangements and sanctions frameworks	97
Recommendations of the Migrant Workers' Taskforce.....	105
Committee view.....	107

Dissenting Report of Government Committee Members.....111

Appendix 1 - Submissions, additional information, answers to questions on notice and tabled documents.....121

Appendix 2 - Public hearings and witnesses.....125

Appendix 3 - Recommendations contained in the Report of the Migrant Workers' Taskforce, March 2019.....129

Abbreviations

457	Temporary Work (Skilled) (subclass 457) visa
ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AMIEU	Australasian Meat Industry Employees' Union
ANMF	Australian Nursing and Midwifery Federation
ANZSCO	Australian and New Zealand Standard Classification of Occupations
APL	Australian Pork Limited
ASCO	Australian Standard Classification of Occupations
AWU	Australian Workers' Union
CFMEU	Construction, Forestry, Maritime, Mining and Energy Union
Cth	Commonwealth
DAMA	Designated Area Migration Agreement
DJSB	Department of Jobs and Small Business
EMA	Enterprise Migration Agreement
ENS	Employer Nomination Scheme
ETU	Electrical Trades Union
GTS	Global Talent Scheme
HIA	Housing Industry Association
IELTS	International English Language Testing System
LMT	Labour market testing
MACSM	Ministerial Advisory Council on Skilled Migration
MCA	Minerals Council of Australia
MLTSSL	Medium to Long Term Strategic Skills List
NFF	National Farmers' Federation
NPSAF	National Partnership Agreement on the Skilling Australians Fund
NTEU	National Tertiary Education Union
PILA	Pork Industry Labour Agreement
R&CA	Restaurant & Catering Australia

ROL	Regional Occupation List
RSMS	Regional Sponsored Migration Scheme
SAF	Skilling Australians Fund
STSOL	Short Term Skilled Occupation List
TAA	Tourism Accommodation Australia
TPP11	Trans-Pacific Partnership
TSMIT	Temporary Skilled Migration Income Threshold
TSS	Temporary Skill Shortage (subclass 482) visa
VET	Vocational education and training
VEVO	Visa Entitlement Verification Online system

Recommendations

Recommendation 1

2.95 The committee recommends that the Australian Government continue to monitor the trajectory of visa applications and grants under the Temporary Skills Shortage (Subclass 482) visa over the next six months, with a view to making any necessary adjustments to the overall settings for this visa subclass in 2020.

Recommendation 2

2.100 The committee recommends that the Australian Government increase the Temporary Skilled Migration Income Threshold (TSMIT) to a minimum of at least \$62,000, and mandate that the rate of the TSMIT be indexed annually in line with the average full-time wage.

Recommendation 3

2.105 The committee recommends that the Department of Home Affairs review and update its policies regarding health assessments of temporary visa holders, to ensure that visa applications will not be rejected on health grounds in cases where there is no possibility of health and social services costs accruing to the Commonwealth or state and territory governments.

Recommendation 4

3.83 The committee recommends that the Australian Government publish, in future updates to the skilled migration occupation lists, its reasons for including new occupations, moving occupations between the different lists, or removing occupations altogether that were included in previous iterations of the lists.

Recommendation 5

3.89 The committee recommends that the Australian Bureau of Statistics prioritise its review of the ANZSCO framework.

Recommendation 6

3.91 The committee recommends that the current skills assessment regime for the skilled visa system be strengthened by:

- ensuring all testing is performed by an appropriate industry body and not by immigration officials;
- guaranteeing that workers who currently require an occupational license must successfully complete a skills and technical assessment undertaken by a Registered Training Organisation approved by Trades Recognition Australia before being granted a visa;
- introducing a risk based approach to assess and verify that workers are appropriately skilled for occupations that do not require an occupational licence; and

- **introducing a minimum sampling rate of visas issued in order to verify that migrant workers are actually performing the work the employer has sponsored them to perform.**

Recommendation 7

3.96 The committee recommends that the Australian Government consider the establishment of a new independent tripartite authority to provide advice and recommendations to government on skilled migration issues.

Recommendation 8

4.85 The committee recommends that the Australian Government introduce more stringent evidentiary requirements for labour market testing to ensure that the intent of labour market testing arrangements is achieved and Australian employment opportunities are protected.

Recommendation 9

4.88 The committee recommends that the Australian Government resolve not to enter into any future free trade agreements that would involve labour market testing waivers.

Recommendation 10

4.92 The committee recommends that the Australian Government undertake a review of the use and effectiveness of labour agreements under Australia's skilled migration program, and implement any necessary changes to ensure that:

- **labour agreements are only entered into where there is publicly demonstrated evidence of a genuine skills shortage that cannot be addressed by the Australian workforce;**
- **all relevant stakeholders are genuinely consulted during the process of finalising labour agreements and provided with appropriate feedback in relation to concerns raised; and**
- **the Department of Home Affairs' reasons for entering into a labour agreement (or a renewal of any labour agreement) are made publicly available.**

Recommendation 11

5.62 The committee recommends that the Australian Government guarantee adequate, additional funding if the income from Skilling Australians Fund levies does not meet the needs of industry and the vocational education sector to provide high-quality training to apprentices and trainees.

Recommendation 12

5.72 The committee recommends that the Australian Government commit to increasing overall funding levels for TAFE and vocational education and support a comprehensive and thorough commission of inquiry into Australia's post-secondary education system.

Recommendation 13

5.74 The committee recommends that the Australian Government consider ways in which to encourage better information sharing between industry, vocational education and training providers, and potential students in order to encourage student uptake and local employment in industries experiencing skills shortages.

Recommendation 14

5.79 The committee recommends that the Department of Education and Training be required to present a report to Parliament bi-annually on the progress of the National Partnership Agreement on the Skilling Australians Fund and the extent to which it is achieving the outcome of addressing skills shortages in the Australian labour market.

Recommendation 15

5.81 The committee recommends that the Australian Government work with the Australian Bureau of Statistics and the National Centre for Vocational Education and Research to investigate and establish a research instrument to enable analysis of employer investment in the development and training of their workforces.

Recommendation 16

6.68 The committee recommends that the Australian Government implement all recommendations from the Report of the Migrant Workers' Taskforce as soon as practicable.

Recommendation 17

6.69 The committee recommends that the Australian Government increase funding for Taskforce Cadena—or a similar taskforce—to ensure that the Taskforce is adequately resourced.

Recommendation 18

6.70 The committee recommends that the Australian Government require that employers pay wages for temporary visa holders into an Australian bank account.

Recommendation 19

6.71 The committee recommends that the Australian Government propose amendments to the relevant law to make it unlawful for temporary visa workers, including persons on student visas and working holiday visas, to apply for or to hold, an Australian Business Number (ABN).

Recommendation 20

6.72 The committee recommends that the Australian Government consider amending the *Fair Work Act 2009* and the *Migration Act 1958* to grant unions standing, where appropriate, to commence civil actions for breaches of those Acts in relation to visa work conditions.

Recommendation 21

6.73 The committee recommends that the Australian Government ensure that unions have standing to complain to the Fair Work Ombudsman or the Department of Home Affairs about concerns relating to the exploitation of temporary visa workers, even if that worker is not a union member.

Chapter 1

Introduction

Conduct of the Inquiry

1.1 On 18 October 2018 the Senate referred the following matter to the Legal and Constitutional Affairs References Committee for inquiry and report by the first sitting day of March 2019:

The effectiveness of the current temporary skilled visa system in targeting genuine skills shortages, with particular reference to:

- (a) the interaction between the temporary skilled visa system and the system in place for training Australian workers, including how a skills shortage is determined;
- (b) the current skills assessment regime, including but not limited to, the correct application of ANZSCO codes and skills testing requirements;
- (c) the relationship between workers on skilled visas and other types of visas with work rights, including the rationale and impact of the 400 visa;
- (d) the effectiveness of the current labour market testing arrangements;
- (e) the adequacy of current skilled visa enforcement arrangements, with particular regard to wages and conditions and access to information about rights and protections;
- (f) the use and effectiveness of labour agreements; and
- (g) related matters.¹

1.2 The committee called for written submissions to the inquiry by 14 December 2018, and received 50 written submissions from organisations and individuals.

1.3 The committee held three public hearings for the inquiry: in Mackay, on 5 March 2019; in Sydney, on 6 March 2019; and in Perth on 7 March 2019.

1.4 The committee thanks all submitters and witnesses who contributed to the inquiry.

Structure of the report

1.5 This report comprises six chapters. Subsequent chapters cover the following issues:

- Chapter 2 provides a brief overview of Australia's current temporary skilled visa system, and discusses the impact of recent changes made to the system;

1 Journals of the Senate, No. 125, 18 October 2018, pp. 3999–4000.

- Chapter 3 outlines how the occupation eligibility settings for the temporary skilled visa system are determined, including the process for determining skills shortages;
- Chapter 4 examines the effectiveness of current labour market testing requirements and the use of labour agreements;
- Chapter 5 discusses the Skilling Australians Fund and local training initiatives to address skills shortages; and
- Chapter 6 considers the visa compliance and enforcement framework for temporary skilled workers in Australia.

Chapter 2

Overview of Australia's temporary skilled visa system

2.1 This chapter provides a brief overview of Australia's current temporary skilled visa system, including the various visa types that the system incorporates, requirements of employers and requirements of visa holders. The chapter outlines some of the broad issues raised in evidence to the inquiry concerning the current system, and concludes with the committee's view and recommendations.

2.2 Further detail on particular aspects of the current system is outlined in later chapters of this report.

Current temporary skilled visa system

2.3 The current temporary skilled visa system consists primarily of four different visa types:

- Temporary Work (Short Stay Specialist) (subclass 400) visa.
- Temporary Work (International Relations) (subclass 403) visa.
- Temporary Activity (subclass 408) visa.
- Temporary Skill Shortage (TSS) visa (subclass 482), which replaced the Temporary Work (Skilled) (subclass 457) visa in March 2018.¹

2.4 Several other visas with work rights are open to temporary skilled migrants, with conditions. For example, the Temporary Graduate visa (Subclass 485) accepts recent international graduates of Australian institutions who have qualifications and skills relevant to an eligible skilled occupation. The Graduate Work stream allows stays of up to 18 months, and the Post-Study Work stream, for international students who have recently graduated with an Australian degree, allows stays for between two and four years.²

2.5 The Skilled Regional (Provisional) visa (subclass 489): Invited pathway allows skilled workers from outside Australia to live and work in a specified region of

1 Joint submission from the Department of Home Affairs, Department of Jobs and Small Business, and Department of Education and Training (Joint Departmental Submission), *Submission 40*, pp. 8, 15–17; Department of Jobs and Small Business, *Consultation Paper – Methodology: Migration Occupation Lists – Update and Methodology*, September 2017, p. 1, https://docs.jobs.gov.au/system/files/doc/other/1710_methodology_approach_final.pdf (accessed 26 February 2019); Department of Home Affairs, *Lists of eligible skilled occupations*, <https://archive.homeaffairs.gov.au/trav/work/work/skills-assessment-and-assessing-authorities/skilled-occupations-lists> (accessed 25 February 2019).

2 Department of Home Affairs, *Temporary Graduate visa: Subclass 485*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-graduate-485> (accessed 29 February 2019).

Australia, provided they are nominated by an Australian state or territory or an eligible relative.³

2.6 Other visa holders are permitted to work in Australia, such as international students and working holiday makers. However, these visas do not focus on skilled employment in areas of shortage.⁴

2.7 The skilled visa system is jointly administered by the Department of Home Affairs, the Department of Jobs and Small Business (DJSB), and the Department of Education and Training. Together, the three departments 'work as a collective', in areas such as 'determining skills shortages, assessing and testing skills, recognising trades, funding and providing training to Australians, assessing [labour market testing] and through the provision of... visa options and streams'.⁵

2.8 The Department of Home Affairs, Australian Border Force and the Fair Work Ombudsman are responsible for monitoring and enforcing workplace rights and conditions (see Chapter 6 for further detail).⁶

2.9 The Ministerial Advisory Council on Skilled Migration, which consists of industry, unions and government representatives, advises the Minister for Citizenship and Multicultural Affairs on Australia's temporary and permanent skilled migration programs. This advice includes the size of the programs, which occupations have skills shortages that cannot be met by the domestic labour force, and policies to ensure that Australia workers are given priority in the labour market.⁷

Number of temporary skilled visa holders in Australia

2.10 As at 30 June 2018, around 15 per cent of all temporary visa holders in Australia who had work rights were temporary skilled visa holders. The total figure of temporary visa holders with work rights includes temporary migrants who do not enter Australia under skilled migrant programs, such as international students and working holiday visa holders (see Figure 2.1).⁸

3 Department of Home Affairs, *Skilled Regional (Provisional) visa: Subclass 489*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-regional-provisional-489> (accessed 13 March 2019).

4 Migration Council Australia, *Submission 7*, p. 8.

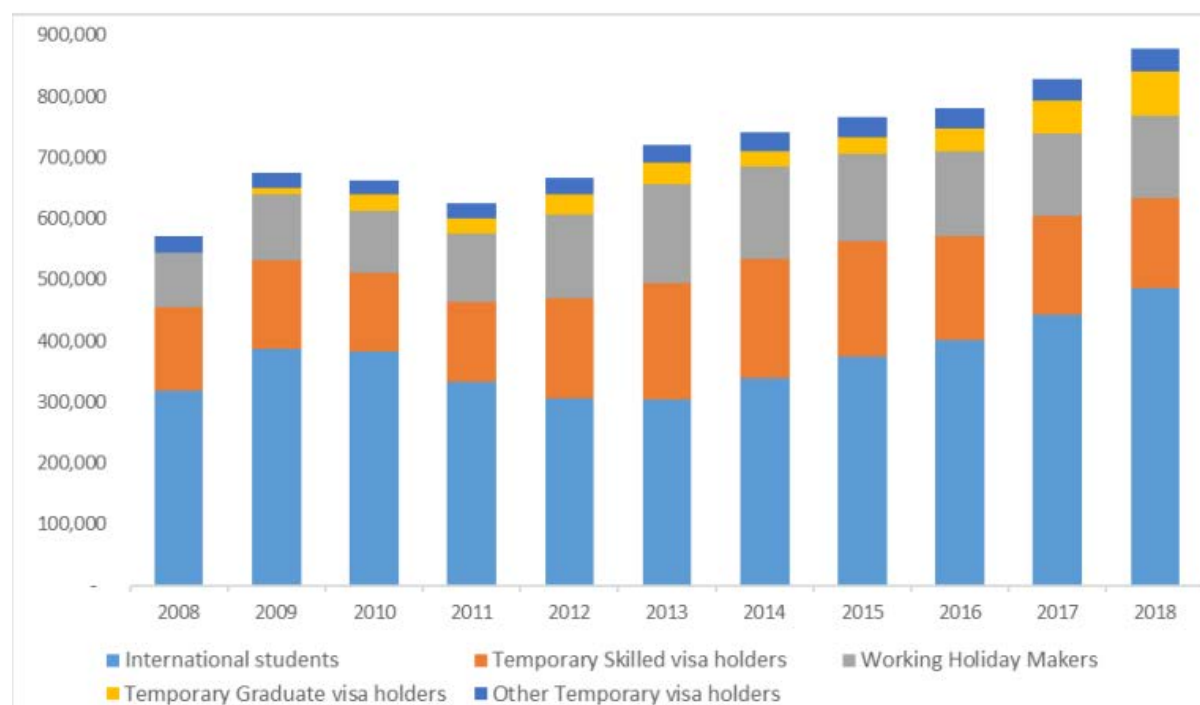
5 Joint Departmental Submission, *Submission 40*, p. 7.

6 Joint Departmental Submission, *Submission 40*, p. 7.

7 Australian Government Directory, *Ministerial Advisory Council on Skilled Migration*, <https://www.directory.gov.au/portfolios/home-affairs/department-home-affairs/ministerial-advisory-council-skilled-migration> (accessed 18 March 2019).

8 Professor Allan Fels and Professor David Cousins, *Report of the Migrant Workers' Taskforce*, March 2019, p. 19.

Figure 2.1: Visa composition of temporary visa holders in Australia with work rights, 30 June 2008–2018⁹



Note: Includes secondary visa holders. 'Other temporary visa holders' includes 29 visa subclasses such as Temporary Work (Short Stay Activity) and Temporary Work (Long Stay Activity) visas for visiting academics, entertainers, sportspeople, religious workers, and others.

2.11 As of February 2019 (see Figure 2.2 for more detail), the Department of Home Affairs had granted:

- 21 614 TSS visas;
- 28 613 Temporary Work (Short Stay Specialist) (subclass 400) visas; and
- 36 169 Temporary Activity (subclass 408) visas for 2018–19.

2.12 The previous 457 visas continued to be processed until 18 March 2018.¹⁰

⁹ Professor Allan Fels and Professor David Cousins, *Report of the Migrant Workers' Taskforce*, March 2019, p. 21.

¹⁰ Department of Home Affairs, Answers to written questions on notice, 8 March 2019 (received 25 March 2019), p. 10.

Figure 2.2: Number of Temporary work visa primary grants from FY2016–17 to 28 February 2019¹¹

Visa Subclass	2016-17	2017-18	2018-19 at 28 Feb 2019
Temporary Skill Shortage visa (TSS) (subclass)		2,595	21,614
Temporary Work (Skilled) (subclass 457)	46,480	31,851	7,025
Temporary Work (Short Stay Specialist)	46,888	43,585	28,613
Temporary Work (International Relations)	4,914	9,553	8,355
Temporary Activity (subclass 408)	19,772	60,889	36,169

2.13 The Department of Home Affairs, the DJSB and the Department of Education and Training stated in their joint submission (Joint Departmental Submission) that 'on average across all industries and occupations, the number of primary TSS/subclass 457 visa holders in Australia represent less than one per cent of employed persons'.¹²

Temporary Work (Short Stay Specialist) (subclass 400) visa

2.14 The subclass 400 visa has existed since March 2013. It provides short-term, non-ongoing work rights for visa holders who have highly specialised skills, knowledge or experience. Visa holders are not permitted to engage in other, unrelated work activities. The expected period of stay is three months or less, but the visa allows for up to six months in exceptional circumstances.¹³

2.15 The subclass 400 visa does not require formal sponsorship. However, a 'proposer' (a registered Australian business) must provide the applicant with a letter of support and/or offer of temporary employment, which outlines the details of the position, its length, the applicant's role or duties, and why the applicant is needed in Australia.¹⁴

2.16 Labour market testing is not required for the 400 visa type, but the Department of Home Affairs requests that proposers provide information to clarify that there will be no negative impact on employment and training opportunities for Australians. Factors taken into account may include:

- whether the work is highly skilled;
- whether the applicant is being employed with the same remuneration and under the same conditions as an Australian would be employed;

11 Department of Home Affairs, Answers to written questions on notice, 8 March 2019 (received 25 March 2019), p. 10.

12 Joint Departmental Submission, *Submission 40*, p. 11.

13 Joint Departmental Submission, *Submission 40*, pp. 15–16.

14 Joint Departmental Submission, *Submission 40*, p. 16.

-
- how many Australians are being employed on the project and/or by the business;
 - whether the employer has attempted to hire an Australian for the role, and arranged for an Australian to be trained to do the work over a longer period; and
 - evidence or concerns that the employer wishes to engage overseas workers to reduce costs by circumventing local labour standards and salaries.¹⁵

Temporary Work (International Relations) (subclass 403) visa

2.17 The subclass 403 visa allows a person to temporarily come to Australia if they meet the requirements of one of the six visa streams:

- Government Agreement stream, if there is a bilateral agreement in place between the Australian Government and another country;
- Foreign Government Agency stream, which is restricted to individuals in specific activity types, such as representatives of a foreign government agency;
- Diplomatic Worker stream, which allows individuals to engage in temporary full-time domestic work in the household of someone who holds a Diplomatic (Temporary) visa (subclass 995);
- Privileges and Immunities stream, which allows international representatives to stay in Australia if they have privileges or immunities under relevant legislation;
- Seasonal Worker Program stream, which is for workers engaging in the Seasonal Worker Program; and
- Pacific Labour Scheme stream, for participants in the Pacific Labour Scheme program.¹⁶

2.18 Costs and the period granted depend on the visa stream under which an applicant applies.

Temporary Activity (subclass 408) visa

2.19 The subclass 408 visa is for individuals who come to Australia to take place in an approved special program, such as youth exchange, visiting academics, major events such as the Commonwealth Games, cultural enrichment programs, entertainers,

15 Joint Departmental Submission, *Submission 40*, p. 16.

16 Joint Departmental Submission, *Submission 40*, p. 17; Department of Home Affairs, *Temporary Work (International Relations) visa: Subclass 403*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-work-403> (accessed 27 February 2019).

sports people and religious workers. The visa allows a stay of between three months to two years, depending on the activity undertaken.¹⁷

Temporary Work (Skilled) (subclass 457) visa

2.20 The Temporary Work (Skilled) visa (subclass 457)¹⁸ was introduced in August 1996, following recommendations by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists that a simplified visa regime for business people replace the previous system.¹⁹

2.21 The subclass 457 visa program went through several iterations. This was due to concerns about the exploitation of 457 visa workers by unscrupulous employers. Initially, the skill requirements for the 457 visa were required to reflect the Australian Bureau of Statistics' classification for mostly managerial, professional and trade occupations.²⁰ To qualify for the 457 visa program, sponsors had to demonstrate a record of training local workers and indicate how overseas workers would benefit Australia. Labour market testing was also required for occupations that required minimal skills or skilled occupations that were considered not essential to the sponsor's business.²¹

2.22 A number of reviews, including the 2008 Deegan review and the 2014 Azarias review, proposed changes to the 457 system. In response to criticisms that the 457 visa requirements were easy to side-step, the government made amendments to simplify the program and strengthen its integrity to prevent foreign workers from exploitation by employers and protect labour market conditions for local workers.²²

2.23 On 18 April 2017, the Australian Government announced further reforms to the 457 visa program and the permanent employer sponsored Employer Nomination Scheme (subclass 186) and Regional Sponsored Migration Scheme (subclass 187) visa programs. As a result, the 457 visa was abolished and was replaced with the Temporary Skills Shortage Visa (TSS visa).²³

17 Joint Departmental Submission, *Submission 40*, p. 17; Department of Home Affairs, *Temporary Activity visa: Subclass 408*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-activity-408> (accessed 27 February 2019).

18 Also previously known as the Temporary Business Entry (Class UC) Business Long Stay (Subclass 457) visa. See Law Council of Australia, *Submission 36*, p. 21.

19 Law Council of Australia, *Submission 36*, p. 21.

20 Australian Standard Classification of Occupations (ASCO) levels 1–4. For semi-skilled occupations (ASCO levels 5–7), concessional sponsorship arrangements were available for particular regional or low population areas. See Law Council of Australia, *Submission 36*, p. 21.

21 Law Council of Australia, *Submission 36*, p. 21.

22 Law Council of Australia, *Submission 36*, pp. 21–23.

23 The Hon. Malcolm Turnbull, MP, Prime Minister, 'Putting Australian Workers First', 18 April 2017, <https://www.malcolmturnbull.com.au/media/putting-australian-workers-first> (accessed 25 February 2019); Law Council of Australia, *Submission 36*, p. 31.

Temporary Skill Shortage (TSS) visa (subclass 482)

2.24 The new TSS visa, which replaced the 457 visa from March 2018, includes tighter English language requirements than the 457 visa for applicants, mandatory criminal checks and the requirement that candidates have at least two years' work experience in a relevant occupation. It also involves compulsory labour market testing, which employers must prove they have undertaken prior to employing someone under a TSS visa (see Chapter 4), as well as a market salary rate assessment.²⁴

2.25 When announcing the introduction of the TSS visa, the then Prime Minister, the Hon. Malcolm Turnbull, stated that it would be:

...restricted to critical skills shortages [to]... ensure Australian workers are given the absolute first priority for jobs, while businesses will be able to temporarily access the critical skills they need to grow if skilled Australians workers are not available.²⁵

2.26 The TSS visa has three streams. Visas issued under the Short term stream last for up to two years.²⁶ The Medium term stream has stricter English language requirements and provides visas for up to four years. Both of these streams are linked to specific lists of eligible occupations.²⁷ A third stream, the labour agreement stream, 'is for skilled workers nominated by an employer with a Labour Agreement' with the Australian Government.²⁸

2.27 Table 2.1 outlines the key differences between the three streams. It should be noted that some occupations that require registration, licensing or membership in Australia may require a higher level of English than other occupations. Skills assessments are also required for some occupations.

24 The Hon. Malcolm Turnbull, MP, Prime Minister, 'Putting Australian Workers First', 18 April 2017, <https://www.malcolmturnbull.com.au/media/putting-australian-workers-first> (accessed 25 February 2019).

25 The Hon. Malcolm Turnbull, MP, Prime Minister, 'Putting Australian Workers First', 18 April 2017, <https://www.malcolmturnbull.com.au/media/putting-australian-workers-first> (accessed 25 February 2019).

26 Visa holders may stay for up to four years if an International Trade Obligation applies. See Department of Home Affairs, *Temporary Skill Shortage visa: Subclass 482*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482> (accessed 25 February 2019).

27 These are referred to, respectively, as the Short Term Skilled Occupation List (STSOL) and the Medium to Long Term Strategic Skills List (MLTSSL).

28 The Hon. Malcolm Turnbull, MP, Prime Minister, 'Putting Australian Workers First', 18 April 2017, <https://www.malcolmturnbull.com.au/media/putting-australian-workers-first> (accessed 25 February 2019). Labour agreements are discussed further in Chapter 4.

Table 2.1: Temporary Skill Shortage (TSS) visa streams

	Max. Length	Cost	Applicant requirements	Occupation list
Short term	2 years	From \$1,175	IELTS ²⁹ score of 5.0 with at least 4.5 in each test component At least 2 years' work experience in relevant occupation	Short-term Skilled Occupations List
Medium term	4 years	From \$2,455	IELTS score of 5.0 with at least 5 in each test component At least 2 years' work experience in relevant occupation	Medium and Long-term Strategic Skills List (MLTSSL); or Regional Occupation List
Labour agreement	4 years	From \$2,455	Level of English specified in the labour agreement	Employer must have a labour agreement with the Australian Government

2.28 Holders of TSS visas may only work in the occupation for which their visa was approved, and only work for their approved sponsor.³⁰ Visa holders under the short term stream are only able to renew their visas onshore once, while those under the medium term stream may be eligible after three years for onshore visa renewal multiple times and for permanent residency.³¹

Requirements of employers

2.29 Employers wishing to sponsor a skilled worker for a TSS visa must apply to become a standard business sponsor, at a cost of \$420. Approved sponsors nominating an overseas worker for a position in their organisation are subject to a nomination fee of \$330.³² Employers are required to:

- provide a written contract of employment, unless the occupation is exempt;
- provide evidence of labour market testing where required;
- notify the Department of Home Affairs if the visa holder ceases employment;

29 International English Language Testing System (IELTS).

30 Department of Home Affairs, *Check visa details and conditions*, <https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/see-your-visa-conditions?product=482-65#> (accessed 25 February 2019).

31 Joint Departmental Submission, *Submission 40*, p. 6.

32 Department of Home Affairs, *Temporary Skill Shortage visa (subclass 482)*, <https://archive.homeaffairs.gov.au/trav/visa-1/482-> (accessed 25 February 2019).

- ensure the visa holder only participates in the occupation for which the employer has nominated them;
- lodge a new application if the employer wishes to engage a visa holder in a different occupation;
- not recover, transfer or charge costs related to the recruitment of the person sponsored, sponsorship or nomination charges, or migration agent costs; and
- pay reasonable and necessary travel costs for the sponsored person and their sponsored family members to leave Australia.³³

2.30 Sponsors employing visa holders under the short and medium term streams must also meet specified salary requirements. Sponsors are required to determine the salary that is, or would be, paid to an Australian performing the same role in the same location (known as the Annual Market Salary Rate).³⁴ This market salary rate must include a cash salary component that is equal to or greater than the Temporary Skilled Migration Income Threshold (TSMIT), which is currently set at \$53,900.³⁵

2.31 Previously, employers of TSS/457 visa holders were also required to 'contribute to the training of Australians' by:

- spending at least two per cent of their payroll in payments to an industry training fund operating in the same or related industry; or
- spend at least one per cent of their payroll on training to Australian citizens or permanent residents employed in the business.³⁶

2.32 From August 2018, these training costs were replaced by the requirement for employers nominating overseas skilled workers under the TSS visa to contribute to the Skilling Australians Fund levy.³⁷ Issues about the Skilling Australians Fund are outlined further in Chapter 5.

33 Joint Departmental Submission, *Submission 40*, p. 13; Department of Home Affairs, *Temporary Skill Shortage (TSS) visa – Sponsorship obligations, monitoring and sanctions*, <https://archive.homeaffairs.gov.au/visas/supporting/Pages/482/sponsorship-obligations-monitoring-sanctions.aspx> (accessed 25 February 2019).

34 Law Council of Australia, *Submission 36*, p. 24.

35 Joint Departmental Submission, *Submission 40: Attachment 1*, pp. 1, 24; Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018, cl. 6.

36 Department of Home Affairs, *Temporary Skill Shortage (TSS) visa – Sponsorship obligations, monitoring and sanctions*, <https://archive.homeaffairs.gov.au/visas/supporting/Pages/482/sponsorship-obligations-monitoring-sanctions.aspx> (accessed 25 February 2019).

37 The Hon. Scott Morrison, MP, Treasurer of the Commonwealth of Australia, *Budget Speech 2017–18*, 9 May 2017, <https://www.budget.gov.au/2017-18/content/speech/html/speech.htm> (accessed 25 February 2019); Department of Home Affairs, *Employer Sponsored Skilled visas – Skilling Australians Fund (SAF) levy*, <https://archive.homeaffairs.gov.au/trav/work/empl/skilling-australia-fund> (accessed 27 February 2019).

Labour market testing

2.33 Employers seeking to nominate a worker for a TSS visa or under a Global Talent Scheme visa are required to undertake labour market testing (LMT) to demonstrate that no suitably qualified and experienced Australian is readily available to fill the nominated position.³⁸ Exemptions to the LMT requirements apply in some specific circumstances, such as where LMT is precluded under Free Trade Agreements to which Australia is a party.³⁹

2.34 To meet the labour market testing requirement, standard business sponsors must provide evidence when submitting the online nomination application 'to demonstrate that they have tested the local labour market within the four months prior to nominating a skilled overseas worker for a TSS visa, over at least four weeks'.⁴⁰

2.35 Additional requirements for labour market testing arrangements are outlined further in Chapter 4.

Skills assessments

2.36 Particular skills assessing authorities carry out skills assessments of overseas workers. The assessments carried out by these approved bodies then inform the decisions the Department of Home Affairs makes on skilled migration.⁴¹ These skills assessments may be informed by the Australian and New Zealand Standard Classification of Occupations (ANZSCO) framework, which classifies occupations and jobs in the Australian labour market.⁴²

2.37 Chapter 3 outlines skills assessment processes in greater detail.

Recent changes to the skilled visa system

2.38 The skilled visa system has been subject to a number of significant changes over the last two years. These are outlined in Table 2.2.

2.39 On 20 March 2019, the Australian Government proposed further changes to the skilled visa system. The changes include:

- providing international students who have completed their study at a regional university access to an additional year in Australia on a post-study work visa;
- the introduction of two new regional visas for skilled workers, with 23,000 places, under which skilled migrants will:
 - be priority processed;

38 Department of Home Affairs, *Nominating a position: Labour market testing*, <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-market-testing> (accessed 15 March 2019).

39 Joint Departmental Submission, *Submission 40*, p. 21.

40 Joint Departmental Submission, *Submission 40*, p. 21.

41 Joint Departmental Submission, *Submission 40*, p. 12.

42 Joint Departmental Submission, *Submission 40*, p. 13.

- have access to a larger pool of jobs on the occupation lists than skilled migrants living in major cities; and
- be able to access permanent residency after three years if they have lived and worked in regional Australia; and
- an increase in the number of employer sponsored skilled visa places, from 35,528 in 2017–18 to 39,000 places in 2019–20.⁴³

2.40 These latest proposed changes were announced subsequent to this inquiry receiving evidence, and have not yet been implemented; as such, this report does not address them substantively.

Table 2.2: Summary of recent changes to the temporary skilled visa system

Date	Change	Area
April 2017	Australian Government announces that the 457 visa will be abolished and the new TSS visa will be introduced.	Skilled visa system
April 2017	Creation of the new Short Term Skills Occupation List, and Medium and Long Term Strategic Skills List, to underpin the short and medium-term streams of the temporary skilled visa system.	Skilled Occupation Lists
March 2018	Visa changes announced in April 2017 come into force, with 457 visas no longer available to new applicants, replaced by the TSS visa. Further changes announced to the Skilled Migration Occupation Lists.	Skilled visa system
August 2018	Employers nominating overseas skilled workers are now required to pay a levy to the Skilling Australians Fund.	Skilling Australians Fund
August 2018	Employers are required to conduct labour market testing in the four months immediately prior to lodgement, for a minimum of four weeks, with the advertisement outlining required skills or experience.	Labour market testing
August 2018	Department of Home Affairs is able to verify the tax file numbers of visa applicants, visa holders and former visa holders to audit whether they are declaring income or being paid appropriately.	Enforcement
March 2019	Australian Government publishes changes to the skilled occupation lists, following a review.	Skilled occupation lists

43 The Hon. Scott Morrison, MP, Prime Minister of the Commonwealth of Australia, 'A Plan for Australia's Future Population', *Media release*, 20 March 2019.

TSS visa statistics and impact of recent changes

2.41 The vast majority of 457 and TSS visa lodgements since 2016 have been for positions as Managers, Professionals, and Technicians and Trades Workers, although numbers for these positions have recently reduced (see Figure 2.3).⁴⁴ In the 2017–18 financial year, 23 per cent of successful applicants for TSS or 457 visas were Indian citizens, 17 per cent were UK citizens, 7.3 per cent were citizens of the Philippines, 5.1 per cent were US citizens, 4.9 per cent were Chinese citizens, and 4.3 per cent were citizens of the Republic of Ireland.⁴⁵

Figure 2.3: 457/TSS visa applications lodged in 2017–18 to 30 June 2018 by nominated occupation⁴⁶

Nominated Occupation	2016-17 to 30/06/17	2017-18 to 30 /06/18	% Change from 2016-17	2017-18 as % of Total
1 Managers	9,770	5,360	-45.2%	13.7%
2 Professionals	28,570	22,860	-20.0%	58.3%
3 Technicians and Trades Workers	13,630	9,130	-33.0%	23.3%
4 Community and Personal Service Workers	1,100	660	-39.4%	1.7%
5 Clerical and Administrative Workers	530	330	-38.7%	0.8%
6 Sales Workers	350	170	-50.1%	0.4%
7 Machinery Operators and Drivers	110	40	-66.7%	0.1%
8 Labourers	220	100	-52.1%	0.3%
Skilled Meat Worker	420	240	-43.4%	0.6%
Not Specified	130	340	168.0%	0.9%
Total	54,820	39,230	-28.4%	100.0%

2.42 The top three sponsor industries in 2017–18 for TSS and residual 457 visas were:

- Other Services (17.2 per cent of the total visa program);
- Professional, Scientific and Technical (14.6 per cent); and
- Health Care and Social Assistance (13.3 per cent).⁴⁷

2.43 The top four occupations for applications granted during the same period were Developer Programmer (4.8 per cent), ICT Business Analyst (4.0 per cent), University Lecturer (3.9 per cent) and Cook (3.9 per cent).⁴⁸

44 Joint Departmental Submission, *Submission 40*, p. 17.

45 Joint Departmental Submission, *Submission 40*, p. 20.

46 Joint Departmental Submission, *Submission 40*, p. 17.

47 Department of Home Affairs, *BR008: Temporary Resident (Skilled) Report*, 30 June 2018, pp. 1–2, <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-rpt-summary-30062018.pdf> (accessed 26 February 2019).

2.44 In the 2017–18 program year, 39 800 temporary skilled visa holders were granted permanent residence or a provisional visa. This represented a decrease of 21.4 per cent compared with the same period for the previous program year.⁴⁹

Overall impact of the TSS visa and other recent changes

2.45 The Joint Departmental Submission argued that the 'TSS visa is proving to be more effective than the previous [457] visa, in targeting genuine skills shortages'.⁵⁰ It further contented that the use of TSS/457 visas 'has fallen in recent years in occupations where DJSB research and analysis shows skill shortages are no longer evident'.⁵¹

2.46 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division at the Department of Home Affairs, emphasised that the purpose of the reforms to the temporary skilled visa system 'was to provide Australian workers with first priority for jobs while allowing businesses to access the skills they need to grow when Australian workers are not available'.⁵² Mr Johnson commented in particular that the creation of the short-term stream within the TSS visa subclass has made it significantly better targeted towards meeting genuine skills shortages:

I think also the structure of the TSS visa, vis-a-vis the 457 visa...and the way that it creates different occupation lists—the two-year occupation list, which is about an acute short-term need, means we've now got a product that allows us to bring in a person for two years with one right of renewal and then they leave. That's meeting very short term needs. The product is much more targeted now to the general issue [of addressing genuine skills shortages].⁵³

2.47 Mr Michael Willard, Assistant Secretary, Global Mobility Branch at the Department of Home Affairs, told the committee that since the changes introduced in April 2017, one broad trend has been a decrease in the number of skilled visas granted in lower skilled occupations, with the stricter requirements having 'a big impact at that lower skill end of the market'.⁵⁴

48 Department of Home Affairs, *BR008: Temporary Resident (Skilled) Report*, 30 June 2018, p. 2, <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-rpt-summary-30062018.pdf> (accessed 26 February 2019).

49 Department of Home Affairs, *BR008: Temporary Resident (Skilled) Report*, 30 June 2018, p. 3, <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-rpt-summary-30062018.pdf> (accessed 26 February 2019).

50 Joint Departmental Submission, *Submission 40*, pp. 8–9.

51 Joint Departmental Submission, *Submission 40*, p. 11.

52 *Proof Committee Hansard*, 6 March 2019, p. 39.

53 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, p. 47.

54 Mr Michael Willard, Assistant Secretary, Global Mobility Branch, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, p. 46.

2.48 When asked whether the introduction of the TSS visa had materially lowered the overall number of temporary skilled visas being granted, departmental officials noted that it is difficult at this stage to determine what impact the new TSS visa has had on overall numbers, given the limited time that has passed since its introduction. It was noted, however, that there have been no 'spikes' in applications for other temporary visa classes since the introduction of the TSS visa.⁵⁵

General issues raised about the current system

2.49 General concerns raised about the current temporary skilled migration system in evidence provided to the inquiry included the following:

- the level of the Temporary Skilled Migration Income Threshold;
- length of visa streams and lack of permanency;
- limited pathways for international graduates of Australian courses;
- use of other visas to avoid the requirements of the TSS visa;
- visa processing times not matching industry needs;
- costs involved in sponsoring or applying for a temporary skilled visa;
- lack of a visa for intra-corporate transfers; and
- health assessments for skilled migrants or their family members with disability.

Level of the Temporary Skilled Migration Income Threshold (TSMIT)

2.50 Several submitters and witnesses raised significant concerns that the level of the TSMIT, currently set at \$53,900 per annum, is so low that it is not preventing Australian wages from being undercut by employers using the TSS visa system to hire overseas workers at cheaper rates than they can reasonably pay Australians.⁵⁶

2.51 Mr Zachary Duncalfe, National Legal Officer at the Australian Workers' Union (AWU), told the committee that the TSMIT 'is incredibly low', and that 'in some circumstances, it would be cheaper for an employer to import a foreign worker than to train an apprentice'.⁵⁷

2.52 The Australian Council of Trade Unions (ACTU) explained that when the TSMIT was introduced in 2009, its level was determined by reference to the

55 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division, Department of Home Affairs, Mr Michael Willard, Assistant Secretary, Global Mobility Branch, Department of Home Affairs, and Mr Peter Richards, Assistant Secretary, Skilled and Family Visa Program Branch, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, pp. 46–47.

56 Australian Council of Trade Unions (ACTU), *Submission 11*, pp. 4, 5, 17–20; Australian Workers' Union, *Submission 48*, pp. 6–7; Electrical Trades Union of Australia, *Submission 49*, pp. 4–5; Mr Zachary Duncalfe, National Legal Officer, Australian Workers' Union, *Proof Committee Hansard*, 6 March 2019, p. 2.

57 *Proof Committee Hansard*, 6 March 2019, p. 2.

average weekly earnings of Australians, with the intention that the TSMIT would be pegged to this marker 'because the Australian Government considered it important that TSMIT keep pace with wage growth across the Australian labour market'.⁵⁸

2.53 The ACTU noted that between 2009 and 2013, the TSMIT was subject to annual indexation; however, since 2013, when the TSMIT reached its current level of \$53,900, that indexation has ceased and the TSMIT has remained frozen, resulting in a decline in the salary floor in real terms each year since 2013 as wage inflation occurs.⁵⁹

2.54 The ACTU submitted that there is now a gap of more than \$26,000 between the salary floor for temporary skilled migrant workers and annual average salaries for Australian workers, meaning that the TSS visa 'can increasingly be used to employ temporary migrant workers in occupations that attract a far lower salary than that earned by the average Australian worker'.⁶⁰ The ACTU argued further that for some specific occupations, the current level of the TSMIT creates an incentive for employers to keep hiring overseas workers on TSS visas rather than investing in training local employees.⁶¹

2.55 Accordingly, the ACTU recommended that the TSMIT should be raised immediately 'to a minimum of at least \$62,000 with a view to lifting this rate higher to reflect genuine market based skilled wages'.⁶²

2.56 The AWU argued similarly that the TSMIT should be 'at the very least lifted to a rate [that] reflects the average weekly earnings of Australians'.⁶³ It argued further that a tripartite body with equal representation from government, employee representatives, and employer representatives should be established and given responsibility for matters including: setting industry standard remuneration for the temporary skilled visa system; and undertaking a complete review of the TSMIT.⁶⁴

2.57 The Construction Forestry Maritime Mining and Energy Union expressed support for the proposal that the Market Salary Rate levels for TSS applicants 'should be set in a tripartite manner and by agreement of the industrial parties'.⁶⁵

58 *Submission 11*, p. 17.

59 *Submission 11*, p. 18.

60 *Submission 11*, p. 18.

61 *Submission 11*, pp. 19–20.

62 Australian Council of Trade Unions, *Submission 11*, p. 5.

63 Australian Workers' Union, *Submission 48*, p. 12.

64 Australian Workers' Union, *Submission 48*, p. 12. See also: Construction Forestry Maritime Mining and Energy Union, *Submission 38*, p. 11.

65 *Submission 38*, p. 11.

Submitter concerns that the TSMIT is too high in certain circumstances

2.58 Some other submitters noted that the current level of the TSMIT is above the relevant award rate for some occupations, and argued that the TSMIT is too high in certain circumstances.⁶⁶ For example, Business SA claimed that requiring regional employers to pay the TSMIT instead of a market salary rate 'sets a wage floor which is above market salary for many skilled occupations required in South Australia'.⁶⁷ The Australian Chamber of Commerce and Industry argued that the TSMIT as an income floor should be set 10 per cent lower for roles undertaken in regional areas (outside the capital city metropolitan areas of all states and territories), to reflect lower market pay rates and cost of living in these areas.⁶⁸

Concerns about length of temporary skilled visa streams and lack of permanency

2.59 Submitters and witnesses raised various concerns about the length of stay available under the TSS and other temporary skilled visa classes, and the lack of options to convert temporary skilled visa roles into permanent migration outcomes.

Loss of talented skilled workers to the Australian workforce

2.60 Some submitters posited that Australia may be losing highly skilled professionals who choose to take up offers from institutions in other countries because these countries offer longer visa terms.⁶⁹ Mr Daniel Gschwind, Chief Executive of the Queensland Tourism Industry Council, argued that in some instances, restricted permanent residency pathways 'are negatively impacting on the competitiveness of Australia when compared to countries, such as Canada, that provide greater opportunities in that regard'.⁷⁰

2.61 Ms Jenny Lambert from the Australian Chamber of Commerce and Industry contended that the 'option of a pathway to permanency ensures the best and brightest talent is available and attracted to come to Australia'.⁷¹

66 For example: Business SA, *Submission 16*, pp. 12–13; Australian Chamber of Commerce and Industry, *Submission 12*, p. 15; Australian Meat Industry Council, *Submission 21*, p. 8; RDA Orana, *Submission 31*, p. 1; Mr Glenn Cole, Director, Australian Skilled Migration, *Proof Committee Hansard*, 5 March 2019, p. 11, Cross Cultural Communications and Management, *Submission 44*, p. 7.

67 *Submission 16*, p. 13.

68 Australian Chamber of Commerce and Industry, *Submission 12*, p. 16.

69 Science & Technology Australia, *Submission 20*, p. 2; Group of Eight, *Submission 14*, p. 4; Universities Australia, *Submission 27*, pp. 3–4, 5. See also Migration Council Australia, *Submission 7*, p. 6; Australian Chamber of Commerce and Industry, *Submission 12*, p. 12; Dr Carina Ford, Deputy Chair, Migration Law Committee, Law Council of Australia, *Proof Committee Hansard*, 7 March 2019, p. 24.

70 Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 37.

71 Ms Jenny Lambert, Director, Employment, Education and Training, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 6 March 2019, p. 34.

2.62 Mr John Hourigan, the National President and Director of the Migration Institute of Australia, agreed that limited visa terms are a disincentive for people to choose to temporarily migrate to Australia:

Say they can come out for four years. So they uproot the family for four years only to uproot them again four years later to go back home, by which time they've got to then re-establish themselves back in their home country... So that's a big ask and a real disincentive for people to come out to Australia. We as migration agents hear this all the time as [to] why people just are not interested in coming out.⁷²

2.63 The committee heard that the age limit of 45 at the time of application for permanent residency was also discouraging senior professionals from taking up shorter skilled visas that could later lead to permanent residency.⁷³ The Australasian Institute of Mining and Metallurgy explained that this age limit 'disincentivises older, experienced and senior management mining professionals from bringing their expertise to Australia, placing the nation at a competitive disadvantage'.⁷⁴

Attracting workers to regional areas

2.64 The Federation of Ethnic Communities Council of Australia submitted that pathways to permanency are essential to attract migrants to rural and regional areas.⁷⁵ Ms Adrienne Rourke, the General Manager of the Resource Industry Network in the Mackay region, argued in favour of visa holders being able to stay longer in local communities to boost the regional economy:

The 400 visa [Temporary Work (Short Stay Specialist)]—the one that's only for about six months—is good, but I guess we want to see the people here for four years, because they're the ones actually living in our community. They're going to be renting here, spending their wages here, buying cars here and buying furniture here in our local community, and they're engaged in our local community. And that's what we would prefer, rather than people flying in and out for work.⁷⁶

Need to favour permanent migration pathways in the skilled visa system

2.65 The Migration Council Australia outlined possible risks it considered inherent in a migration program predicated on temporary visas:

[N]ot enabling a pathway to permanent residence poses significant risks of producing a cohort of skilled workers living on the margins of Australian

72 *Proof Committee Hansard*, 6 March 2019, p. 21.

73 Minerals Council of Australia, *Submission 3*, pp. 3, 5; Universities Australia, *Submission 27*, p. 4; Consult Australia, *Submission 28*, pp. 4–5, 6, 15; Law Council of Australia, *Submission 36*, p. 19; Joint University, *Submission 46*, p. 13; Dr Gavin Lind, General Manager, Workforce and Innovation, Minerals Council of Australia, *Proof Committee Hansard*, 7 March 2019, p. 11.

74 The Australasian Institute of Mining and Metallurgy, *Submission 30*, p. 3.

75 Federation of Ethnic Communities Council of Australia, *Submission 37*, p. 3.

76 *Proof Committee Hansard*, 5 March 2019, p. 2.

society who contribute to the economy and pay taxes but do not have a commitment to Australian society as they are effectively barred from contemplating a natural full integration. This does not align with Australia's immigration values and could run the risk of imposing pressures on the economy if suitable workers cannot be found.⁷⁷

2.66 Mr Trevor Gauld, National Policy Officer from the Electrical Trades Union (ETU), contended that '[a]lmost unilaterally, temporary migration outcomes have not involved good experiences or collaborative experiences with employers'.⁷⁸

2.67 The ACTU and other submitters outlined the benefits of a migration system that preferences permanent, rather than temporary, migration:

With permanent residency, migrants have a secure visa status. This makes them less susceptible (though not immune) to exploitation and less likely to generate negative impacts on other Australian workers in terms of wages, employment conditions and job and training opportunities.⁷⁹

2.68 Mr Damian Kyloh from the Australian Council of Trade Unions warned that industry needs should not be determining Australia's migration intake:

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.⁸⁰

2.69 Numerous submitters and witnesses from across different industries, migrant advocacy groups, and employee representatives, were in favour of the Australian Government introducing increased pathways to permanency through Australia's skilled migration program.⁸¹ The ACTU recommended:

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.⁸²

77 *Submission 7*, pp. 6–7.

78 *Proof Committee Hansard*, pp. 31–32.

79 *Submission 11*, p. 13. See also Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, p. [15]; Victorian Trades Hall Council, *Submission 22*, p. [5]; Shop Distributive and Allied Employees' Association, *Submission 2*, p. 2.

80 Mr Damian Kyloh, Associate Director of Economic and Social Policy, Australian Council of Trade Unions, *Proof Committee Hansard*, 7 March 2019, p. 5. See also Australian Council of Trade Unions, *Submission 11*, p. 1.

81 See, for example: Minerals Council of Australia, *Submission 3*, p. 5; Migration Council Australia, *Submission 7*, pp. 6–7; Housing Industry Australia, *Submission 10*, pp. 4, 7; Victorian Trades Hall Council, *Submission 22*, p. 5; Tourism & Transport Forum, *Submission 41*, p. 1; Fragomen, *Submission 50*, p. 6.

82 *Submission 11*, p. 5.

Pathways for graduates into TSS visas

2.70 Several submitters and witnesses were concerned that the skilled visa system does not easily allow international graduates of some Australian courses to gain subsequent visas.⁸³ Applicants for TSS visas must have at least two years' work experience to be eligible, but the Temporary Graduate visa – Graduate work stream is only granted for 18 months. This does not usually apply to international students who have a degree from an Australian institution and hold a Temporary Graduate visa – Post-Study Work stream, which is usually granted for 2–4 years.⁸⁴

2.71 Mr Gschwind from the Queensland Tourism Industry Council, provided an example of this being problematic in practice for one industry:

There are additional challenges with the current migration program for chefs. The minimum two-year full-time work experience requirement means that a chef who has studied... in Australia can get a graduate 485 visa and work for an employer for a year in a regional area but cannot meet the two-year work experience requirement on their 485 visa, which is granted for 18 months... Industry has found it's almost impossible to meet the two-year minimum under the new system.⁸⁵

Use of other visas to avoid requirements of TSS visas

2.72 Some evidence highlighted that while the TSS visa program has stringent requirements, employers may be using other visas to legally employ migrants while avoiding the costs, processing times and stricter conditions imposed on sponsors of TSS visa holders.⁸⁶ For example, Mr Gauld from the ETU argued that:

[I]n particular, the new subclass 400 visas appear to allow employers to simply say: '...this work [is] so highly specialised that Australian people can't do it...' It plays out in the workplaces when these workers are brought over, and it's apparent that what they're doing is routine electrical work which most apprentices would learn in their third or fourth year of their

83 Ms Carol Giuseppi, Chief Executive Officer, Tourism Accommodation Australia, *Proof Committee Hansard*, 6 March 2019, p. 29; Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Industry Association, *Proof Committee Hansard*, 6 March 2019, p. 28; Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 37; Restaurant & Catering Australia, *Submission 32*, p. 6; Minerals Council of Australia, *Submission 3*, p. 5.

84 Department of Home Affairs, *Subclass 485: Temporary Graduate visa*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-graduate-485> (accessed 15 March 2019); Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Industry Association, *Proof Committee Hansard*, 6 March 2019, pp. 29–30.

85 Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 37.

86 Construction Forestry Maritime Mining and Energy Union, *Submission 38*, p. 9.

apprenticeship and they are not highly specialised technical specialists at all; they are literally cheap labour.⁸⁷

2.73 Mr Gauld further noted that working holiday visas do not 'require employers to demonstrate that they've done local labour market testing prior to employing those workers'.⁸⁸

2.74 RDA Orana expressed the view that employers were using subclass 417 working holiday visa holders to fill what were actually permanent positions because of a 'lack of recognition of an actual skill shortage in an identifiable region'. This had resulted in a high rotation of workers and was 'leading to pressure' on the longer Pacific Islander Scheme stream in the 403 visa program.⁸⁹

2.75 Similarly, Payne's Farm Contracting argued that because of a lack of recognition of the need for horticultural workers in Australia's current skilled temporary migration program, farmers were 'being forced to take up programs such as the Pacific Islander Worker Scheme to service the Government's own agenda, not necessarily because it suits the needs of farmers themselves'.⁹⁰

2.76 Business SA proposed that 'the Federal Government should be careful not to make one visa subclass falsely more attractive than another, either by way of fees, processing times or visa conditions'.⁹¹

Visa processing times

2.77 The committee heard significant concerns about the length of time required to sponsor a TSS visa, from initial LMT to arrival and employment of the visa holder.⁹² Mr Gschwind from the Queensland Tourism Industry Council argued that compared

87 Mr Trevor Gauld, National Policy Officer, Electrical Trades Union, *Proof Committee Hansard*, p. 30.

88 Mr Trevor Gauld, National Policy Officer, Electrical Trades Union, *Proof Committee Hansard*, pp. 28, 34.

89 RDA Orana, *Submission 31*, pp. 3, 4–5.

90 Payne's Farm Contracting, *Submission 47*, p. 2.

91 Business SA, *Submission 16*, p. 11.

92 For example, Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 41; Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Industry Association, *Proof Committee Hansard*, 6 March 2019, p. 28; Ms Sarah Miotto, Spannerman Autocare, *Proof Committee Hansard*, 5 March 2019, p. 4; Motor Trade Association of South Australia, *Submission 24*, pp. 7, 17–18; Business SA, *Submission 16*, p. 11; Australian Chamber of Commerce and Industry, *Submission 12*, pp. 13–14; Tourism Accommodation Australia, *Submission 42*, pp. 15–16; Science & Technology Australia, *Submission 20*, pp. 3, 4; Restaurant and Catering Australia, *Submission 32*, p. 20; Migration Institute of Australia, *Submission 33*, p. 7; Cross Cultural Communications and Management, *Submission 44*, pp. 5, 6–7.

to the previous 457 visas, applications for TSS visas are 'extremely lengthy now. It takes much longer than previously[.]'⁹³

2.78 Consult Australia also drew attention to 'lengthy and inconsistent visa processing application times', but noted that there had been 'significant improvements' since October 2018 in visa processing from the Department of Home Affairs.⁹⁴

2.79 Similarly, Mr Glenn Cole, Director of Australian Skilled Migration, was of the opinion that recent visa processing times had been relatively quick:

Over the last 10 years I've seen visas take as long as 15 months to be approved. Right at the moment, they're actually being processed quite quickly. On the internet it says up to 44 days, but it's not uncommon to have somebody approved in a week... [T]he actual processing time currently of the TSS visa is as fast as it's been for a very long time.⁹⁵

2.80 Another concern raised was lack of communication between the Department of Home Affairs and businesses who have applied to sponsor temporary migrants. Mr Cole outlined this in further detail:

One of the frustrations that businesses feel is that there's no communication available [with] the Department of [Home Affairs] regarding their status updates of their workers. I understand why they've done this, because people are inquiring and inquiring, but in real terms, when you're talking about small business and it's real people, it's a very stressful time when you've got no indication of a reason or a time frame. So it can be really stressful on businesses to not know and not have any access to any information.⁹⁶

Visa costs

2.81 The committee heard that the costs involved in applying for a visa—both by visa applicants and a sponsoring employer—are in some instances prohibitive, particularly for small businesses.⁹⁷ Mr Gschwind from the Queensland Tourism

93 Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 41.

94 Consult Australia, *Submission 28*, p. 4.

95 Mr Glenn Cole, Director, Australian Skilled Migration, *Proof Committee Hansard*, 5 March 2019, pp. 11, 13. See also Tourism Accommodation Australia, *Submission 42*, p. 14.

96 Mr Glenn Cole, Director, Australian Skilled Migration, *Proof Committee Hansard*, 5 March 2019, p. 13.

97 Mr John Hourigan, National President and MIA Director, Migration Institute of Australia, *Proof Committee Hansard*, 6 March 2019, p. 19. See also, for example, Housing Industry Association, *Submission 10*, p. 6; Australian Chamber of Commerce and Industry, *Submission 2*, pp. 13–14; National Farmers' Federation, *Submission 13*, pp. 16–17; Business SA, *Submission 16*, p. 8; Motor Trade Association of South Australia, *Submission 24*, pp. 6–7, 15; RDA Orana, *Submission 31*, p. 3; Tourism & Transport Forum, *Submission 41*, p. 3; Tourism Accommodation Australia, *Submission 42*, p. 14; Australian Pork Limited, *Submission 43*, p. 14; Cross Cultural Communications and Management, *Submission 44*, p. 12; Dr Gavin Lind, General Manager, Workforce and Innovation, Minerals Council of Australia, *Proof Committee Hansard*, 7 March 2019, p. 15.

Industry Council stated that sponsors may pay 'tens of thousands of dollars in lawyers, fees and visa applications, only to have the visa declined. This is an incredible stress on a small business'.⁹⁸

2.82 Ms Juliana Payne, Chief Executive Officer of the Restaurant and Catering Industry Association, gave the following example of the impact of costs on a small business:

A restaurant in Perth, WA... with a single owner-operator and a small profit margin of two per cent—wanted to get one foreign national as a chef to enhance their offering and their creativity. All the other staff are Australian citizens. The restaurant applied for the sponsored visa. Due to the high cost, the business owner didn't pay himself wages for six weeks so that he could afford to pay the training levy and the visa fees... In the meantime, the businesses are in limbo while we wait for those processes to be finalised.⁹⁹

2.83 Tourism Accommodation Australia pointed to research it had carried out indicating that Australian 'visa fees are among the least competitive...when compared to...other destinations'.¹⁰⁰ Some evidence also questioned why sponsors were not refunded certain costs associated with visa applications if an application was unsuccessful.¹⁰¹

2.84 However, Mr Richard Johnson from the Department of Home Affairs argued that costs involved in applying for a TSS visa are about 'striking a balance' between meeting business needs and ensuring businesses are attempting to find Australian workers first.¹⁰²

2.85 Mr Greg Rose from Community Solutions noted that the current system provides benefits for employers who try employ Australians rather than skilled migrants:

It is quite a costly exercise to employ a migrant to come over and be in Australia for whatever period of time. I think it is far cheaper and there are a lot more government incentives to employers to be able to skill up somebody who already lives here.¹⁰³

98 Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 38.

99 *Proof Committee Hansard*, 6 March 2019, p. 28.

100 Tourism Accommodation Australia, *Submission 42*, p. 15.

101 See, for example: Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Industry Association, *Proof Committee Hansard*, 6 March 2019, p. 28; Business SA, *Submission 16*, p. 7. Chapter 5 discusses the refund provisions for the Skilling Australians Fund levy in more detail.

102 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, p. 42.

103 *Proof Committee Hansard*, 5 March 2019, p. 44.

2.86 Dr Carina Ford, the Deputy Chair of the Migration Law Committee at the Law Council of Australia, suggested that 'consideration be given to conducting research into the economic impact' of changes to the temporary skilled visa system, particularly whether these changes had affected the ability of businesses to grow.¹⁰⁴

Intra-corporate transfers

2.87 A number of submitters and witnesses expressed support for an intra-corporate transfer visa for transnational companies. In particular, attention was drawn to intra-corporate visas in other jurisdictions, such as the United States, Singapore and Canada.¹⁰⁵ The Law Council of Australia proposed 'an approach that would see visa pathways to facilitate intra-corporate transfers decoupled from Australia's general work visa program' because, it argued, LMT, skills assessments, a training levy and attempts to limit skilled migrant access to occupations based on labour market forecasts are not relevant.¹⁰⁶

Health assessments for skilled migrants with disability

2.88 Dr Jan Gothard, a Health and Disability Specialist from Estrin Saul Lawyers and Migration Specialists, outlined concerns that applicants for skilled visas were assessed as failing to meet health requirements if they or a sponsored family member had a particular health condition or disability. She stated that this has occurred because of an assessment that medical costs to treat the disability could exceed \$40,000 to Commonwealth and state/territory governments.¹⁰⁷

2.89 Mr Chris Spentzaris, a member of the Migration Law Committee at the Law Council of Australia, also noted skilled visa applications where a 'very senior, capable expert who we've wanted in Australia ... [had] been refused because a family member has a disability and potentially could be a cost to the Australian community'.¹⁰⁸

2.90 Dr Gothard argued that the assessment that a visa applicant with a health condition or disability could cause costs to accrue to taxpayers is based on costs that would accrue to a generic Australian citizen or permanent resident with the same health condition or disability, but who would be entitled to access all Australian community and health services. She stated that current policy requires Commonwealth Medical Officers to make this assessment, despite temporary visa applicants not being eligible to access Medicare, the National Disability Insurance Scheme or other government-funded health and social services.¹⁰⁹

104 *Proof Committee Hansard*, 7 March 2019, p. 24.

105 For example, Ms Carol Giuseppi, Chief Executive Officer, Tourism Accommodation Australia, *Proof Committee Hansard*, 6 March 2019, pp. 26, 32; CSL Limited, *Submission 18*, p. 2; Cochlear, *Submission 19*, p. 3; Tourism Accommodation Australia, *Submission 42*, p. 12.

106 Law Council of Australia, *Submission 36*, p. 18. See also: Fragomen, *Submission 50*, pp. 5–6.

107 *Proof Committee Hansard*, 7 March 2019, p. 17. See also Estrin & Saul Lawyers and Migration Specialists, *Submission 5*.

108 *Proof Committee Hansard*, 7 March 2019, p. 26.

109 *Proof Committee Hansard*, 7 March 2019, p. 17.

2.91 In response to the question of whether these temporary visa holders would subsequently apply for a permanent visa, which would then lead to them becoming eligible for public services, Dr Gothard stated that they would be subject to a further, perhaps even more rigorous, health assessment as part of the subsequent application, which would then consider whether costs would accrue. She suggested that the current solution, in which all members of a family are granted a skilled visa except the family member with disability, was not 'a good solution'.¹¹⁰

Committee view

2.92 This inquiry received at times conflicting evidence about the effectiveness of the current temporary skilled visa system, with stakeholders from different sectors putting forward a range of perspectives on the recent changes to the system.

General impact of the introduction of the TSS visa and other recent reforms

2.93 Given that the TSS visa has only been in place since March 2018, with a further suite of reforms commencing in August 2018, it is still too soon to state with certainty how these changes will impact on the overall number of temporary skilled work visas being sought and granted. As such, the committee suggests that the Australian Government continue to monitor the effects of the changes to the temporary visa system over the next six months, with a view to making any necessary adjustments to the overall settings for this visa subclass in 2020.

2.94 The committee notes concerns from a range of submitters and witnesses that the current temporary skilled visa system does not allow for appropriate pathways to permanent residency. The committee agrees that ongoing government consideration of the system should include a re-evaluation of the current weighting of Australia's skilled migration program, with greater emphasis given to the permanent, independent stream as the mainstay of the skilled migration program.

Recommendation 1

2.95 The committee recommends that the Australian Government continue to monitor the trajectory of visa applications and grants under the Temporary Skills Shortage (Subclass 482) visa over the next six months, with a view to making any necessary adjustments to the overall settings for this visa subclass in 2020.

2.96 With this overarching view in mind, the committee does still consider that some specific aspects of the temporary skilled visa system can be improved in the short term. These issues are dealt with in subsequent recommendations in this chapter and the remaining chapters of this report.

Temporary Skilled Migration Income Threshold

2.97 The committee notes the significant concerns raised during the inquiry about the level of the Temporary Skilled Migration Income Threshold (TSMIT), which is currently set at \$53,900 per annum and has been frozen at that level since 2013.

110 *Proof Committee Hansard*, 7 March 2019, pp. 19, 21.

2.98 The TSMIT was designed to protect Australian wages from being undercut and to ensure that employers are sponsoring skilled workers to meet genuine shortages, rather than as a mechanism to bring in overseas workers as cheap replacement labour. In the committee's view, the indexation freeze implemented in recent years has undermined the operation of the TSMIT and must be overturned.

2.99 The committee considers that the TSMIT must be increased in line with average full time earnings of Australian workers, and subject to annual indexation in line with the Wage Price Index.

Recommendation 2

2.100 The committee recommends that the Australian Government increase the Temporary Skilled Migration Income Threshold (TSMIT) to a minimum of at least \$62,000, and mandate that the rate of the TSMIT be indexed annually in line with the average full-time wage.

2.101 The committee notes that the Market Salary Rate framework will continue to operate as a core component of the temporary skilled visa system in cases where wages are set above the minimum TSMIT. The committee considers that, in order to ensure that decisions around the market salary rate for various occupations and locations are being made fairly, a tripartite body should be established to make recommendations in this area.

2.102 The establishment of such a tripartite body to advise government on issues including the Market Salary Rate framework is discussed further in Chapter 3.

Health assessments for temporary skilled migrants with a disability

2.103 The committee is concerned that the Department of Home Affairs may be rejecting temporary skilled visas on the basis that an applicant or a family member with a health condition or disability would cause undue health and social services costs to accrue to the Commonwealth and state or territory governments. Evidence to the inquiry suggested that these costs could not possibly accrue, given that temporary visa holders are unable to access these government-funded services. Should temporary visa holders apply for permanent residency, they would be required to pass another health assessment to determine whether these costs would accrue if the person were granted permanent residency, making health assessments an unnecessary barrier to obtaining a temporary visa.

2.104 As a result, the committee considers that the Department of Home Affairs must review and update its policies in this area to ensure that temporary visa applications will not be rejected on health grounds in cases where there is no possibility of health and social services costs accruing to government.

Recommendation 3

2.105 The committee recommends that the Department of Home Affairs review and update its policies regarding health assessments of temporary visa holders, to ensure that visa applications will not be rejected on health grounds in cases where there is no possibility of health and social services costs accruing to the Commonwealth or state and territory governments.

Chapter 3

Processes for determining skills shortages, occupation lists and skills assessments

3.1 This chapter discusses issues relating to how the occupation eligibility settings for the temporary skilled visa system are determined, focusing primarily on the Temporary Skills Shortage (TSS) visa subclass. These issues include:

- how occupations are placed on the three Skilled Migration Occupation Lists (and how these lists are reviewed);
- the research and analysis undertaken by the Department of Jobs and Small Business (DJSB) on which occupations are experiencing skills shortages; and
- the role and functionality of the Australian and New Zealand Standard Classification of Occupations (ANZSCO), which underpins the skilled migration lists.

3.2 This chapter also examines the skills assessment procedures that form part of the TSS visa application process for certain occupations. This involves Australian skills assessing authorities carrying out skills assessments of overseas workers in order to determine their suitability to work in Australia in their nominated occupation.

Placement of occupations on the skilled migration occupation lists

3.3 As noted in Chapter 2, employers can only nominate workers for a TSS visa for occupations that are listed in an eligible Skilled Migration Occupation List. The three relevant occupation lists were described in the joint submission from the Department of Home Affairs, DJSB, and Department of Education and Training (Joint Departmental Submission) as follows:

- Short-term Skilled Occupation List (STSOL): occupations required to fill critical, short-term skills gaps (linked to the short term stream of the TSS visa subclass).
- Medium and Long-term Strategic Skills List (MLTSSL): occupations of high value to the Australian economy and aligned to the Government's longer term training and workforce strategies (linked to the medium term stream of the TSS visa subclass).
- Regional Occupation List (ROL): occupations to support regional skills needs (also linked to the medium term stream of the TSS visa subclass).¹

3.4 As of March 2019, there are:

- 215 occupations listed on the STSOL for the TSS visa;

1 Joint Departmental Submission, *Submission 40*, p. 9. Skilled migration occupation lists (with some variations) also apply to other visa classes including the Training visa (subclass 407) and the Temporary Graduate visa (subclass 485).

- 216 occupations listed on the MLTSSL for the TSS visa; and
- 77 occupations listed on the ROL for the TSS visa.²

3.5 Examples of occupations on the short term list and medium to long-term list (as of March 2019) are included in Table 3.1.

Table 3.1: Examples of occupations included in the skilled occupation lists³

Short Term Skilled Occupation List	Medium and Long Term Strategic Skills List
Mechanical engineering and metallurgical technicians	Chemical, materials, civil, geotechnical, electrical, industrial, mechanical, mining and petroleum engineers
Production managers (forestry, manufacturing and mining)	Architects, surveyors and cartographers
Sales, marketing, advertising, corporate services, finance and human resources managers	Accountants (general) and taxation accountants
Manufacturers	Boat builders and repairers and shipwrights
Primary, middle school, art, dance and music teachers	Early childhood, secondary and special needs teachers
School principals	Faculty heads and university lecturers
Café, restaurant, hotel, accommodation and hospitality managers	General practitioners, cardiologists, neurologists, paediatricians and surgeons
Enrolled nurses and nurse educators, researchers and managers	Midwives and registered nurses
Finance, insurance and stockbroking dealers	Barristers and solicitors
Advertising and market specialists	Motor, diesel motor, motorcycle and small engine mechanics
Newspaper editors and print and television journalists	Bricklayers, carpenters, plumbers and electricians
Bakers, pastrycooks, butchers and cooks	Chefs

2 Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019 (Cth), cl. 68.

3 Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019 (Cth), cl. 6 and 7.

3.6 The Regional Occupation List includes, for example, aeroplane and helicopter pilots, ship's masters, agricultural technicians, cattle and livestock farmers, and financial institution branch managers.⁴

Recent updates to the skilled migration occupation lists

3.7 DJSB is responsible for advising the Australian Government on which occupations should be included in the skilled migration occupation lists. However, the final decision on the composition of the occupation lists rests with the Minister for Immigration, Citizenship and Multicultural Affairs.⁵

3.8 DJSB submitted that it 'regularly reviews the occupation lists to ensure they reflect and address Australia's labour market needs'.⁶ Updates to the skilled occupation lists based on DJSB advice occurred in July 2017, January 2018, March 2018 and March 2019.⁷

3.9 The most recent revision to the lists, announced on 11 March 2019, involved the addition of eighteen occupations to the Regional Occupation List, including livestock, beef, dairy, sheep, aquaculture and crop farmers, among other agricultural roles, in order 'to further support regional and rural businesses, particularly farms'.⁸ Sixteen of these occupations were moved onto the ROL from the STSOL, meaning that new TSS visa applicants in these occupations will be able to live and work in Australia for up to four years (rather than two years under the short term stream).⁹

3.10 Other changes contained in the March 2019 revisions included the addition of eight new occupations on the MLTSSL (six of which were previously included in the STSOL for the TSS visa).¹⁰

Process for updating the skilled migration occupation lists

3.11 The DJSB website provides an overview of the process undertaken with each review of the occupation lists, shown at Figure 3.1. DJSB advises that stakeholders

4 Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019 (Cth), cl. 8.

5 Joint Departmental Submission, *Submission 40*, p. 8.

6 Joint Departmental Submission, *Submission 40*, p. 8.

7 Joint Departmental Submission, *Submission 40*, p. 10; Department of Jobs and Small Business, *Skilled Migration Occupation Lists*, <https://www.jobs.gov.au/SkilledMigrationList> (accessed 15 March 2019).

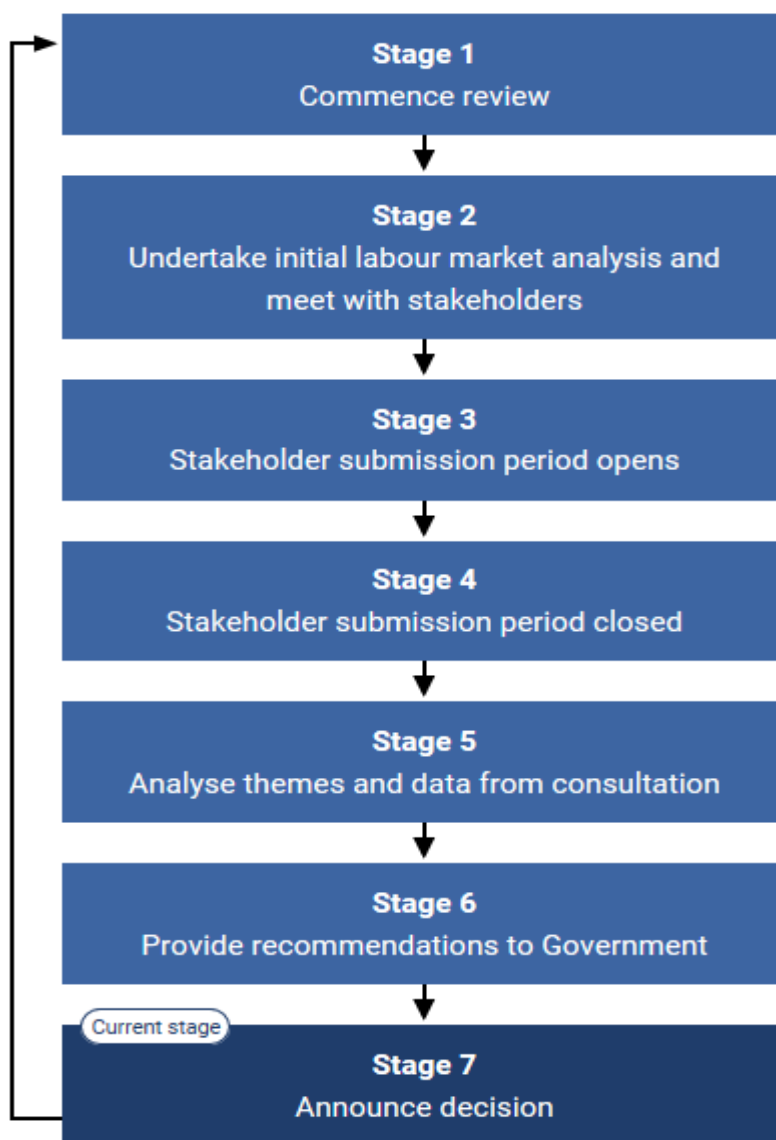
8 The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, 'Regional Australia to benefit from skilled occupation list update', *Media Release*, 11 March 2019 (accessed 18 March 2019).

9 Seek Visa Migration Agents, *New Occupations Announced for Australian Visas*, <https://www.seekvisa.com.au/new-occupations-for-australian-visas/> (accessed 18 March 2019).

10 The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, 'Regional Australia to benefit from skilled occupation list update', *Media Release*, 11 March 2019 (accessed 18 March 2019); Seek Visa Migration Agents, *Medium Term List for TSS Visa*, <https://www.seekvisa.com.au/medium-term-list-for-tss-visa/> (accessed 18 March 2019).

can contact the Department at any time, and formal consultation occurs 'in the months leading up to when each review is scheduled to conclude'. For example, for the January 2018 update the DJSB opened consultation in November 2017.¹¹

Figure 3.1: Overview of the process for reviewing the Skilled Migration Occupation Lists¹²



11 See Department of Jobs and Small Business, *Frequently Asked Questions*, <https://www.jobs.gov.au/skilled-migration-occupation-lists-frequently-asked-questions> (accessed 29 March 2019); and *Consultation on Skilled Migration Occupation Lists*, <https://www.jobs.gov.au/consultation-skilled-migration-occupation-lists> (accessed 29 March 2019).

12 Department of Jobs and Small Business, *Skilled Migration Occupation Lists*, <https://www.jobs.gov.au/SkilledMigrationList> (accessed 15 March 2019). As the figure indicates through the 'Current stage' icon, revisions to the lists have just been announced in March 2019.

3.12 In September 2017, DJSB released a consultation paper on the methodology it uses to review the occupation lists. This consultation paper indicated that DJSB would undertake labour market analysis for all Australian and New Zealand Classification of Occupations (ANZSCO) Skill Level 1 to 3 occupations, comprising around 650 skilled occupations, every six months (see below for a discussion of the ANZSCO framework).¹³ Datasets DJSB uses to conduct this analysis include, for example, data taken from across various government departments and agencies on:

- skilled migrant employment outcomes,
- graduate and apprentice outcomes,
- employment growth predictions,
- Australian skill shortages; and
- base salaries data.¹⁴

3.13 DJSB acknowledged some limitations in its methodology, arising partly because of 'the need to use data at the national level, as data at the state, territory or regional level is either not available or not as statistically robust'.¹⁵ DJSB noted that future versions of the paper will outline a new methodology for the Regional Occupation List 'that uses data relevant to analysis on regional labour market needs'.¹⁶

3.14 Mr Peter Cully, Group Manager, Small Business and Economic Strategy Group at DJSB, commented further on the methodology and consultation process followed by the department:

[The process is] as comprehensive as it can be with the data that we have available. We're always looking at new sources of data emerging. A lot of the time we will have submissions and other views put forward by stakeholders, but there's not necessarily evidence or a dataset behind those. So it's as comprehensive as it can be. We're certainly very committed to consultation as a way to talk to stakeholders, to get their views and to explain the process through them. So we've used a range of different stakeholder engagement methods through the process: submissions to our website but also a range of face-to-face meetings at industry level or with individual stakeholders, depending on the circumstances.¹⁷

13 Department of Jobs and Small Business, *Consultation Paper – Methodology: Migration Occupation Lists – Update and Methodology*, September 2017, p. 1, https://docs.jobs.gov.au/system/files/doc/other/1710_methodology_approach_final.pdf (accessed 26 February 2019).

14 Joint Departmental Submission, *Submission 40*, pp. 8–9.

15 Department of Jobs and Small Business, *Consultation Paper – Methodology: Migration Occupation Lists – Update and Methodology*, September 2017, p. 4, https://docs.jobs.gov.au/system/files/doc/other/1710_methodology_approach_final.pdf (accessed 26 February 2019).

16 Department of Jobs and Small Business, Answers to questions on notice, 8 March 2019 (received 25 March 2019), p. 8.

17 *Proof Committee Hansard*, 6 March 2019, p. 41.

Skills shortages research by the Department of Jobs and Small Business

3.15 DJSB is responsible for carrying out ongoing research on which skilled occupations have shortages.¹⁸ Its skill shortage research program covers more than 80 skilled occupations on an annual basis, and focuses on occupations with long lead times for training (generally requiring at least three years of post-school education and training).¹⁹

3.16 The Joint Departmental Submission stated that this research 'provides objective assessments of a subset of skilled occupations to meet various needs, and identifies those in shortage at a particular point in time'.²⁰ DJSB draws on multiple datasets when determining skills shortages, including quantitative and qualitative data taken from the *Survey of Employers Who have Recently Advertised*.²¹

3.17 The skills shortages findings made by DJSB feed into its process for determining which occupations are recommended to be placed on the Skilled Migration Occupation Lists. The Joint Departmental Submission explained further how these two processes interact:

While the skill shortage research is one factor in the skilled migration occupation lists methodology, it is not determinative. Any differences between these occupation lists reflects their different methodologies; different purpose and different time-frames (that is, the DJSB skill shortage lists reflect the current labour market, while the skilled migration occupation lists consider future labour market needs).²²

Submitter and witness views on the occupation lists and associated issues

3.18 Submitters and witnesses to the inquiry raised a series of issues relating to the processes associated with the skilled occupation lists. These included:

- concerns that the occupation lists do not reflect genuine skills shortages;
- uncertainty for industry because of occupations being regularly added, removed or transferred between the skilled occupation lists;
- complexity of the occupation lists;
- lack of transparency around how final decisions on changes to the occupations lists are made; and
- potential shortcomings in consultation processes and the skills shortages research methodology.

18 Joint Departmental Submission, *Submission 40*, p. 9.

19 Department of Jobs and Small Business, *Skills Shortages*, <https://www.jobs.gov.au/skillshortages> (accessed 17 March 2019); Joint Departmental Submission, *Submission 40*, p. 9

20 Joint Departmental Submission, *Submission 40*, p. 9.

21 Joint Departmental Submission, *Submission 40*, p. 9.

22 Joint Departmental Submission, *Submission 40*, p. 10.

Concerns that the occupation lists do not reflect genuine skills shortages

3.19 The Australian Council of Trade Unions (ACTU) argued that the occupations on the MLTSSL 'do not accurately reflect the genuine labour shortages in Australia'. The ACTU suggested that according to DJSB's historical list of skills shortages, of the top five occupations granted visas in the MLTSSL stream—accountants, software engineers, registered nurses, developer programmers and cooks— 'not one... was in shortage over the four years to 2017'. It further contended that software engineer had 'never been in shortage in the 31 year history of the series'.²³

3.20 Mr Damian Kyloh, Associate Director of Economic and Social Policy at the ACTU, told the committee:

The occupations on the TSS visa list include roof tilers, carpenters, joiners, chefs, cooks, midwives, nurses and real estate agents. The empirical evidence, and the evidence from our side and our affiliates, is that there aren't genuine skills shortages in all those professions.²⁴

3.21 The Australian Nursing and Midwifery Federation (ANMF) noted that a significant number of Australian nursing and midwifery graduates currently have difficulty securing a job after completing their studies, and argued that the 'employment of large numbers of offshore nurses' is a contributing factor in the unemployment and underemployment of these graduates:

Many graduates and early career nurses and midwives struggle to find employment in their chosen professions, and are often rejected by employers who utilise temporary migrant labour. This is inconsistent with the key temporary skilled migration policy objective that offshore workers should not be engaged if there is a domestic worker willing and able to take up the role.

The ANMF considers the failure of our system to provide work for new graduates at a time when employers continue to access large numbers of nurses and midwives on temporary work visa arrangements demonstrates a disconnect between the current temporary visa system and the available supply of new graduates. The ANMF accordingly queries the extent to which the temporary visa system takes into account nursing graduate data.²⁵

Uncertainty resulting from changes to the occupation lists

3.22 Various organisations complained that the current system of skilled migration lists is unnecessarily complex, and that the number of changes to the lists in recent years has resulted in significant uncertainty for employers and visa holders.

3.23 The Committee for Melbourne commented that the potential for changes every six months to the occupation lists is 'creating greater uncertainty for business, as well as for skilled foreign individuals who have expressed a desire to live and work in

23 *Submission 11*, p. 20.

24 *Proof Committee Hansard*, 7 March 2019, p. 8.

25 *Submission 6*, pp. 8–9.

Australia'.²⁶ This sentiment was echoed by the Minerals Council of Australia and several other submitters.²⁷

3.24 Uncertainty around the timing of revisions to the lists was also of concern. A number of submitters expressed frustration that the most recent revision to the skilled occupation lists had been delayed, with no revision between March 2018 and March 2019, despite the government's commitment to review the lists bi-annually.²⁸

Arguments for a more gradual approach to changing the skills lists

3.25 Noting that a large number of occupations had been removed from the lists in recent years, the Law Council of Australia recommended that consideration of whether to restrict access to occupations on the migration lists should include assessing whether this is better managed through the imposition of a caveat rather than placement on the STSOL or removal from the occupation lists altogether.²⁹

3.26 The Law Council recommended further that 12 months' notice should be given prior to an occupation being removed. This would allow a six month period for submissions and consideration, and a further six months for visa holders and employers to plan and make alternative arrangements.³⁰

Complexity of the occupation lists

3.27 Dr Carina Ford of the Law Council of Australia observed that the sheer size of the occupations list, coupled with the various caveats that apply to certain occupations, make it difficult to navigate.³¹

3.28 Ms Adrienne O'Rourke, General Manager of the Resources Industry Network, explained at the committee's public hearing in Mackay how difficult it is to find and interpret information on the skills lists:

I have gone round in circles on the Home Affairs website trying to find information about the identified list of skills that you can apply under. If you're a small business, it just must be such a struggle. You're having to now pay consultants to do this. There's probably no chance of you being able to do this yourself.³²

26 *Submission 35*, p. 2.

27 Minerals Council of Australia, *Submission 3*, p. 5; Australasian Institute of Mining and Metallurgy, *Submission 30*, pp. 2–3; Fragomen, *Submission 50*, p. 4.

28 Housing Industry Association, *Submission 10*, p. 8; Australian Chamber of Commerce and Industry, *Submission 12*, pp. 10–11; Restaurant & Catering Australia, *Submission 32*, p. 16; Tourism & Transport Forum, *Submission 41*, p. 2.

29 *Submission 36*, p. 8.

30 *Submission 36*, p. 8.

31 Dr Carina Ford, Deputy Chair, Migration Law Committee, Law Council of Australia, *Proof Committee Hansard*, 7 March 2019, p. 23.

32 *Proof Committee Hansard*, 5 March 2019, p. 5.

3.29 Some stakeholders argued that the lists should be consolidated into a single skilled migration occupation list. For example, Restaurant & Catering Australia submitted:

[T]he dissection of the skilled occupation lists into the STSOL and MLTSSL is an overly convoluted, confusing and complex system for employers to navigate which may also have the effect of worsening already-crippling skills shortages. R&CA argues that this dichotomy has been flawed from the outset and the two lists should be consolidated. The separation between each of these lists adds an unnecessary layer of complication to the current skilled visa framework, creating further difficulty for employers in terms of their ability to navigate the current system.³³

3.30 Mr John Hourigan, National President of the Migration Institute of Australia, gave evidence that 'the number of occupation lists is confusing' and advocated that 'the occupation list be reduced to a single list which clearly identifies the visa subclasses which apply to each occupation'.³⁴

Comments on specific changes to the occupation lists in recent years

3.31 Some submitters argued that recent movements of occupations on the lists have had a negative impact on some industries. For example:

- representatives from the independent schools sector stated that the recent movement of the 'School Principal' and other school-related occupations from the MLTSSL to the STSOL had an immediate and adverse impact on independent schools;³⁵
- Ports Australia argued that the removal of specialist maritime roles from the occupation lists in 2017 is likely to lead to a void of specialist mariners with the necessary skills and experience to fill key roles in Australian Ports and other maritime sectors;³⁶ and
- Restaurant & Catering Australia submitted that pre-existing skills shortages in the occupations of cook and café or restaurant manager have been exacerbated following those occupations' removal from the MLTSSL in 2018.³⁷

3.32 The committee also received various recommendations from submitters and witnesses in relation to specific occupations and their placement (or non-placement) on the occupation lists.³⁸

33 *Submission 32*, p. 17. See also: Housing Industry Association, *Submission 10*, p. 4.

34 *Proof Committee Hansard*, 6 March 2019, p. 20.

35 Association of Heads of Independent Schools of Australia, *Submission 8*, p. 3; Independent Schools Council of Australia, *Submission 26*, p. 2.

36 Ports Australia, *Submission 23*, p. 2.

37 *Submission 32*, p. 16.

Views on the adequacy of the skills shortages research methodology

3.33 The committee heard some concerns about the methodology underpinning DJSB's skills shortages research, which feeds into decision making processes around the occupation lists.

3.34 Dr Gavin Lind, General Manager, Workforce and innovation at the Minerals Council of Australia (MCA) commented that consultation around DJSB's skills shortages methodology was lacking:

MCA is concerned that the data being used to determine skills shortages is incomplete and out of date. It is also disappointing to note that MCA... was not consulted or briefed for the skills shortage research methodology. Any methodology that is applied needs to ensure that all the relevant industry voices are captured and considered to secure and promote accurate findings and ensure that the system is targeting genuine skill shortages. For example, had MCA been consulted for the 2018 skills shortage report, up-to-date figures and projections would have been provided, ensuring that the current labour market rating for mining engineers was determined through the application of relevant and accurate data.³⁹

3.35 Science & Technology Australia commented that the methodology used to establish a skills shortage has been effective when examining professions in which a clear and uniform skills set is required, but does not accurately account for the precision skills required by the research sector—a sector where niche, and often scarce, skills are the norm.⁴⁰ It also argued that measuring skills shortages on an annual basis 'provides a limited and one-dimensional view of the workforce and cannot accurately capture the number of skilled researchers that may be required for specialised work at different times of the year, at different stages of the research cycle'.⁴¹

3.36 Housing Industry Association (HIA) argued that DJSB's requirement that industry representatives provide robust modelling to underpin claims of skills shortages is unreasonable:

Government liaison and consultation with industry is vital to successful outcomes, especially in relation to the divergences in skilled labour requirements across industries and also geographical regions and localities.

38 See, for example: Australian Meat Industry Council, *Submission 21*, pp. 5–6 (arguing that the occupations Butcher and Smallgoods Maker should be moved from the STSOL to the MLTSSL); Australasian Institute of Mining and Metallurgy, *Submission 30*, p. 1 (arguing that the occupation Mining Engineer should be listed); Independent Schools Council of Australia, *Submission 26*, p. 4 (arguing that various school-related occupations should be restored to the MLTSSL); Restaurant & Catering Australia, *Submission 32*, p. 17 (arguing that all key hospitality sector occupations be restored to the MLTSSL); Tourism & Transport Forum, *Submission 41*, p. 2 (recommending that various occupations in those industries be moved from the STSOL to the MLTSSL).

39 *Proof Committee Hansard*, 7 March 2019, p. 12.

40 *Submission 20*, p. 3.

41 Science & Technology Australia, *Submission 20*, pp. 3–4.

Detailed anecdotal evidence from industry is very powerful because it stems from the people on the ground so the information is timely and accurate. Providing robust modelling as well, which industry has been asked to do for many years now, is difficult and costly to achieve and should be the purview of the department, in consultation with industry.

Putting the onus on industry to provide robust modelling of their skilled labour requirements, as has occurred to varying degrees over many years, is not a viable or sensible approach.⁴²

3.37 HIA recommended that DJSB be appropriately resourced to undertake quantitative modelling of skilled labour demand, and provide a more disaggregated analysis and assessment of skilled labour requirements for temporary skilled migrants.⁴³

Processes for making decisions about composition of the occupation lists

3.38 The committee heard significant concerns about the lack of transparency surrounding the final ministerial decision making process for adding and removing occupations on the lists. For example, Australian Pork Ltd argued:

The Department of Jobs and Small Business (DJSB) methodology underpinning the system of determining skills shortages appears robust at first glance. It provides lists of relevant datasets and a description of the general principles by which a skills shortage will be determined. It gives the pretence of transparency but conceals the application of the methodology and its detailed results. For example, there is reference to a point system, but no specifics on how many points are awarded for each dataset, or details of points thresholds for entry onto one or other of the TSS lists.

Changes in skills shortage categorisation for occupations, including for horse-racing and for CEOs, have been made suddenly and in apparent response to lobbying efforts or through special deals, rather than by adherence to the DJSB methodology and points system⁴⁴

3.39 The Migration Institute of Australia submitted similarly:

The process for determining what occupations are in shortage and should be included in migration skilled occupation lists, is...not well understood or transparent. Various industry and profession consultations are known to occur, but anomalies exist in the outcomes of such consultations. For example, certain professional and industry associations and trade unions appear to have been able to protect those professionals or workers they represent, by preventing these occupations being added to the skilled occupation lists, by limiting the numbers permitted to apply or by having more rigorous labour market testing requirements imposed.⁴⁵

42 *Submission 10*, pp. 7–8. See also: Australian Chamber of Commerce and Industry, *Submission 12*, p. 11.

43 *Submission 10*, p. 8.

44 *Submission 43*, p. 9.

45 *Submission 33*, pp. 4–5.

3.40 Restaurant & Catering Australia (R&CA) argued that the government should be required to publicly release detailed reasoning for final decisions made to change occupations included on the lists:

Frustratingly, there has been little justification...provided as to [the] composition of the STSOL and MLTSSL and the inclusion of each listed occupation, other than that these occupations are critical to the future skills needs of the Australian economy and workforce. R&CA implores the Commonwealth Government to provide proper reasoning and accompanying data explaining the decisions for why certain occupations are either included or excluded from the two lists for purposes of transparency.⁴⁶

3.41 RDA Far South Coast expressed concern at the lack of regional input during reviews of the skilled occupation lists:

Further compounding the inadequacies of the current lists, is the manner in which they are determined. No direct regional consultation currently occurs with city-based consultants studying on-line job ads to gauge regional needs. As many regional employers use recruitment methods other than these, the skills lists are intrinsically flawed. There is an obvious, yet unrealised, need for direct regional input into the skills requirements. Regions vary greatly and unfortunately, consultation is not occurring at the grassroots level. [Regional Certifying Bodies] are ideally placed to provide this input as most conduct regional skills audits through direct engagement with both regional employers and training bodies.⁴⁷

3.42 The Electrical Trades Union of Australia (ETU) argued that previously, the STSOL, MLTSSL and regional skills lists were 'established and reviewed following extensive consultation with representatives of Government, business, workers and education providers which ensured that only genuine shortages made it onto the register of eligible occupations'. The ETU suggested that the dismantling of tripartite consultative bodies which previously provided advice on skills shortages had led to significant issues with the skills lists, to the point that the eligible occupations lists 'have now become a complete farce'.⁴⁸

Australian and New Zealand Standard Classification of Occupations

3.43 The Australian and New Zealand Standard Classification of Occupations (ANZSCO) framework is 'a skill-based system used to classify occupations and jobs in the Australian and New Zealand labour markets'. It was developed by the Australian Bureau of Statistics, Statistics New Zealand and the then Australian Department of Employment and Workplace Relations, and first released in 2006.⁴⁹

46 *Submission 32*, p. 16.

47 *Submission 34*, p. 3.

48 *Submission 49*, p. 10.

49 Joint Departmental Submission, *Submission 40*, p. 13.

The ANZSCO was the subject of a significant review in 2009, with a further review occurring in 2013.⁵⁰

3.44 ANZSCO is used for various purposes, including providing the definitional categories for occupations on the skilled migration lists. The ANZSCO framework outlines job titles, a description of the job, qualifications indicative for the skill level of an occupation, and typical tasks involved. For example, the following information is included for chefs:

- The ANZSCO unit group code of 3513 (Chefs), with a specific ANZSCO code 351311 for the occupation of chef.
- A description of what a chef does—that is, plans and organises the preparation and cooking of food in dining and catering establishments.
- The occupation's skill level and qualification level expected for someone employed as a chef (skill level 2, with an Associate Degree, Advanced Diploma or Diploma, or at least three years of relevant experience).
- A list of typical tasks of a chef, include planning menus, estimating food and labour costs, monitoring quality of dishes at all stages of preparation, demonstrating techniques and advising on cooking procedures, and explaining and enforcing hygiene regulations.⁵¹

3.45 The Department of Home Affairs uses ANZSCO requirements for occupations when assessing the skills and experience of skilled visa applicants.⁵²

Issues with the ANZSCO framework

3.46 Significant concerns were expressed by a range of stakeholders about perceived shortcomings in the ANZSCO framework, including that the framework has not kept pace with modern workforce trends and is in urgent need of revision.⁵³ The Migration Institute of Australia argued in its submission:

The skilled occupation lists, skills assessment regimes and the Department's skilled application processes are all inescapably tied to the minutiae of the ANZSCO occupational descriptors. However, the current five year intervals between ANZSCO updates, reduces its ability to capture rapidly developing

50 Australian Bureau of Statistics, *Answers to written questions on notice received on 20 March 2019*, p. 1.

51 Australian Bureau of Statistics and Statistics New Zealand, *ANZSCO – Australian and New Zealand Standard Classification of Occupations*, first edition, September 2006, ABS cat. no. 1220.0, p. 426.

52 Joint Departmental Submission, *Submission 40*, p. 13.

53 See, for example: Australian Chamber of Commerce and industry, *Submission 12*, p. 13; Queensland Tourism Industry Council, *Submission 25*, p. 2; Business SA, *Submission 16*, p. 9; National Farmers Federation, *Submission 13*, pp. 12–13; Restaurant & Catering Australia, *Submission 32*, pp. 19–20; Motor Trades Association of Australia; *Submission 39*, pp. 4–5; Ms Adrienne Rourke, General Manager, Resource Industry Network, *Proof Committee Hansard*, 5 March 2019, p. 2; Tourism Accommodation Australia, *Submission 42*, p. 11; Fragomen, *Submission 50*, pp. 2–3.

occupational changes and impairs its effectiveness as a tool for identifying changing occupational trends and developing skills shortages.⁵⁴

3.47 The Australian Chamber of Commerce and Industry called for an urgent and comprehensive review of the ANZSCO:

Despite major changes to the economy and jobs including new jobs driven by technology as well as changes to the level of skill needed in certain jobs, ANZSCO has only been reviewed and revised twice...since its introduction in 2006... A major review of ANZSCO is long overdue. Occupations in ANZSCO are out of date in that skill levels are not reflective of the current work performed and for many industries it is woefully inadequate in assessing the skill needs in the context of new occupations.⁵⁵

3.48 Universities Australia used an example from its sector to highlight the shortcomings of the current ANZSCO framework:

Universities Australia is...concerned about other university-based occupations which do not feature on the [ANZSCO] but are of vital importance to the long-term success of Australia's universities. Of particular importance are university advancement and philanthropy professionals where the recruitment of foreign expertise is vital in fostering the development of philanthropy capability in Australian universities. The lack of a specific category for such an important profession highlights the current disconnect between the ANZSCO and the ever-evolving university sector. Assigning a new occupation to the ANZSCO is a complicated administrative process with long time lines. Furthermore, submitting an occupation for inclusion on the ANZSCO may not result in a positive outcome after many months of consideration, nor does a final inclusion on the ANZSCO immediately result in the occupation being listed on the Skilled Occupation List. It raises the issue of whether an alternate approach to classifying occupations is required which is more responsive to the changing nature of the workplace.⁵⁶

Views of government agencies

3.49 The Joint Departmental Submission argued that the ANZSCO framework is 'flexible in capturing the vast majority of occupations' and 'covers many alternative and emerging job titles' besides those that appear in the legislative instruments that give effect to the skilled occupation lists.⁵⁷

54 *Submission 33*, p. 4.

55 *Submission 12*, p. 13. See also: Queensland Tourism Industry Council, *Submission 25*, p. 2; Business SA, *Submission 16*, p. 9;

56 *Submission 27*, p. 4. See also: Group of Eight, *Submission 14*, p. 3; Joint University Submission, *Submission 46*, pp. 10–12.

57 Joint Departmental Submission, *Submission 40*, p. 13.

3.50 The Australian Bureau of Statistics (ABS) commented that classifications such as the ANZSCO 'should be reviewed ten yearly to remain relevant', and noted that reviews to the ANZSCO occurred in 2009 and 2013.⁵⁸

3.51 The ABS explained that in 2017–18 it consulted widely and confirmed broad stakeholder support for a review of the ANZSCO; however, the review did not proceed due to a lack of funding and the need to prioritise the ABS' core statistics program.⁵⁹

3.52 The ABS noted further that in the absence of a full ANZSCO review, the ABS and Statistics New Zealand have recently agreed to jointly undertake maintenance work of the ANZSCO skill levels:

This work will support relevant agencies to apply ANZSCO to administer skilled migration policies and continue to make sure that people receiving skilled migration visas have the right level of skills for the right occupation.

The maintenance of the ANZSCO skill levels is limited to updating the skill level definitions of existing occupations within ANZSCO. It will not result in the addition, deletion or movement of any categories or codes within ANZSCO. This makes the work to maintain the skill levels a less resource intensive undertaking [than] a review.⁶⁰

Skills assessments regime

3.53 Particular skills assessing authorities carry out assessments of temporary skilled visa applicants to ensure that their skills meet the requirements of occupations in Australia. The Department of Education and Training manages the skilled migration assessing authorities.⁶¹ The assessments carried out by these approved bodies then inform the decisions the Department of Home Affairs makes on skilled migration.⁶² Where required, visa applicants for TSS visas must provide a completed skills assessment when applying, or evidence that a skills assessment has commenced.⁶³

3.54 For example, Trades Recognition Australia, a skills assessment service provider within the Department of Education and Training, provides skills assessments for people with trade skills for the purpose of migration. It engages

58 Australian Bureau of Statistics, *Answers to written questions on notice received on 20 March 2019*, p. 1.

59 Australian Bureau of Statistics, *Answers to written questions on notice received on 20 March 2019*, p. 1.

60 Australian Bureau of Statistics, *Answers to written questions on notice received on 20 March 2019*, p. 1.

61 Ms Fiona Lynch-Magor, Acting Group Manager, Skills Market Group, Department of Education and Training, *Proof Committee Hansard*, 6 March 2019, p. 40.

62 Joint Departmental Submission, *Submission 40*, p. 12.

63 Joint Departmental Submission, *Submission 40*, p. 13; Legislative Instrument IMMI 18/039: Mandatory Skills Assessment – Subclass 482 Visa Instrument 2018.

approved organisations to carry out parts of the TSS Skills Assessment Program on its behalf.⁶⁴

3.55 State and territory governments, through Overseas Qualifications Units, also conduct assessments of overseas qualifications for general purposes.⁶⁵

3.56 Occupations for the skilled migration program more broadly that have mandatory skills assessments are outlined in delegated legislation, along with the relevant ANZSCO codes for these occupations.⁶⁶ The relevant skills assessment authorities that have been designated for particular occupations are outlined in a legislative instrument.⁶⁷ The requirement to undergo a skills assessment for some occupations differs depending on an applicant's country of origin.⁶⁸

3.57 Skills assessments may take place in Australia, based on the relevance of an applicant's qualifications, training and work experience, or offshore, with the assessing authority travelling to conduct an interview and/or a practical skills assessment with the applicant.⁶⁹

3.58 Key concerns that submitters and witnesses outlined about the current skills assessment regime included the following:

- the stringency of the current skills assessment regime;
- the length of the skills assessment process;
- overreliance on ANZSCO codes in skills assessments;
- limited recognition of previous employment experience; and
- different skills assessment requirements based on nationality.

Stringency of skills assessment regime

3.59 The committee received conflicting evidence about the skills assessment regime, with a number of submitters and witnesses arguing that stricter requirements are needed, and some others arguing that the system is already too onerous.

64 Joint Departmental Submission, *Submission 40*, p. 12.

65 Joint Departmental Submission, *Submission 40*, p. 12.

66 Joint Departmental Submission, *Submission 40*, p. 13; Legislative Instrument IMMI 18/051: Specification of Occupations and Assessing Authorities Instrument 2018.

67 Joint Departmental Submission, *Submission 40*, p. 13; Legislative Instrument IMMI 18/039: Mandatory Skills Assessment – Subclass 482 Visa Instrument 2018.

68 Cross Cultural Communications and Management, *Submission 44*, p. 14; Legislative Instrument IMMI 18/039: Mandatory Skills Assessment – Subclass 482 Visa Instrument 2018.

69 Cross Cultural Communications and Management, *Submission 44*, p. 14.

General concerns that the skills assessment regime is too onerous

3.60 The Migration Institute of Australia argued that the skills assessing regime is 'extremely difficult to navigate, slow and costly for consumers'.⁷⁰ It proposed that requirements for skills assessment be reduced to those necessary to protect consumers and the public.⁷¹ Similarly, a Joint University submission suggested that the requirement for skills assessments was 'onerous, expensive and unnecessary' for the university sector, contending that universities were best placed to determine whether an individual has the necessary skills and work experience.⁷²

3.61 Business SA questioned why skills assessments are a requirement for visa applicants even if the applicant has completed their vocational or tertiary education in Australia.⁷³

Concerns about inadequacies in the skills assessment regime

3.62 In contrast, other submitters were of the opinion that the skills assessment regime needs to be strengthened. The Australian Council of Trade Unions (ACTU) expressed concerns that when it had raised the issue of maintaining occupational licencing standards with the Australian Government, such as in the context of free trade agreements, the response had been that visa applicants would 'be required to demonstrate to the [Department of Home Affairs] that they possess the requisite skills and experience' to work in Australia. As a result, the ACTU suggested, decisions on skills assessments 'are being vetted by the [Department of Home Affairs] with little more than a paperwork inspection'. They contended:

This is leading to situations where there is no guarantee that temporary workers will have the same level of skills, health and safety knowledge and qualifications as are required for local workers, potentially endangering themselves, other workers and the public.⁷⁴

3.63 The ETU echoed these concerns, suggesting that in such circumstances the Department of Home Affairs and employers had carried out no genuine assessments of applicants' skills and qualifications.⁷⁵

3.64 The Construction, Forestry, Maritime, Mining and Energy Union (CFMEU) also raised concerns about international trade agreements removing 'mandatory skills assessments for overseas workers in a range of trades'.⁷⁶

70 Migration Institute of Australia, *Submission 33*, p. 7; Mr John Hourigan, National President and MIA Director, Migration Institute of Australia, *Proof Committee Hansard*, 6 March 2019, p. 25.

71 Migration Institute of Australia, *Submission 33*, p. 8.

72 Joint University, *Submission 46*, p. 11.

73 *Submission 16*, p. 9.

74 Australian Council of Trade Unions, *Submission 11*, p. 15. See also Electrical Trades Union of Australia, *Submission 49*, pp. 10–11.

75 *Submission 49*, p. 11.

3.65 The ACTU proposed that skills assessment processes 'must be significantly strengthened' by:

- ensuring all testing is performed by an appropriate industry body and not by immigration officials;
- guaranteeing that workers who currently require an occupational license must successfully complete a skills and technical assessment undertaken by a Registered Training Organisation approved by Trades Recognition Australia before being granted a visa;
- introducing a risk based approach to assess and verify workers are appropriately skilled in occupations that do not require an occupational licence; and
- introducing a minimum sampling rate of visas issued in order to verify that migrant workers are actually performing the work the employer has sponsored them to perform.⁷⁷

3.66 Specialist management consultancy firm Cross Cultural Communication and Management called for increased strengthening of the skills assessment regime, proposing that all trade occupations should have mandatory skills assessments, and that assessing authorities be permitted to conduct skills assessments in whichever countries they consider to be appropriate for commercial reasons.⁷⁸

3.67 Other evidence also supported increased requirements for skills assessments in particular industries. For example, the Australian Association of Social Workers stated that skills assessments are not required of every visa applicant:

...only some TSS visa applicants must undergo a mandatory skills assessment as part of the visa application process. For the occupation of social worker, a qualification skills assessment is not required of the prospective employee. For example, the position of Advanced Child Protection Worker does not require this, despite widespread professional recognition that a social work qualification is the most appropriate minimum standard.⁷⁹

76 *Submission 38*, p. 7. See also: Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, p. 7.

77 *Submission 11*, p. 7.

78 *Submission 44*, pp. 14–15.

79 Australian Association of Social Workers, *Submission 29*, p. 3.

Length of skills assessment process

3.68 Some evidence raised concerns about how long it takes for a skills assessment to be completed, particularly in the context of other, sometimes lengthy application requirements.⁸⁰ For example, the Migration Institute of Australia stated:

It is not uncommon for skills assessing authorities to require a large quantity of evidence and to take in excess of 3 months to assess an applicant's skills. When added to the extended temporary skills visa processing times by the Department, in effect it may take six months to on-board a suitable visa holder.⁸¹

3.69 Business SA argued that 'skills testing adds delays to the visa application process... [T]he skills assessment process is stringent and exhausting'.⁸²

Overreliance on ANZSCO codes when conducting skills assessments

3.70 Several issues were raised regarding the intersection between the ANZSCO codes for occupations on the skilled occupation lists, and the processes for undertaking skills assessments for those occupations.

3.71 RDA Far South Coast contended that the skills required for particular occupations in some existing ANZSCO codes were either 'not identified at all or...inadequately listed'.⁸³ The Migration Institute of Australia submitted that without 'a descriptor that lists the common skills and tasks associated with these occupations, there is no skills assessment process and often no skills assessing authority'. As a result, the Migration Institute argued, some occupations on the skills lists were effectively 'unusable for employers seeking to sponsor skilled workers'.⁸⁴

3.72 The Migration Institute also expressed concern that skills assessing authorities may be 'rigidly' applying ANZSCO descriptors when assessing an applicant's skills, despite caveats in the introduction to the ANZSCO framework that the descriptions should be used as a guide and not prescriptively.⁸⁵

80 Motor Trade Association of South Australia, *Submission 24*, p. 17; Migration Institute of Australia, *Submission 33*, p. 7; Cross Cultural Communications and Management, *Submission 44*, p. 12, fn 7; Mr Glenn Cole, Director, Australian Skilled Migration, *Proof Committee Hansard*, 5 March 2019, p. 11; Mr John Hourigan, National President and MIA Director, Migration Institute of Australia, *Proof Committee Hansard*, 6 March 2019, p. 25.

81 Migration Institute of Australia, *Submission 33*, p. 7.

82 *Submission 16*, p. 9.

83 *Submission 34*, p. 3.

84 *Submission 33*, p. 6.

85 *Submission 33*, p. 7.

3.73 The Law Council suggested that there may be instances where the duties of a position cross several different ANZSCO codes, meaning that they do not fit the skills assessment requirements of any occupation:

For example, a sales and marketing manager... who is... on a salary of over \$250,000 is in a senior management role in a large multinational company, who reports directly to the Chief Marketing Officer. The ANZSCO requirement is that the manager must hold a bachelor degree or five years of relevant work experience. However, the requirement of Australian Institute of Management (the assessing body for managers) to obtain the relevant skill assessment is that the manager's role must report directly to the CEO and that the role has three subordinate management level positions. Despite the fact that the business is not structured in this way, a skills assessment would be refused.⁸⁶

Limited recognition of previous employment experience

3.74 The Migration Institute of Australia submitted that some assessing authorities do not recognise employment experience in lieu of formal qualifications. This had led, it suggested, to a skills assessment system that concentrated on formal qualifications, 'when in many cases what employers are looking for is workers who are skilled on the job, not on paper'. The Migration Institute noted that recognition of prior learning had to some extent led to progress in the recognition of prior skills and experience, but 'these processes can take in excess of twelve months to complete, before the formal skills assessment process can even be commenced'.⁸⁷

3.75 The Law Council of Australia also raised the issue of skills assessments not recognising applicants who may have decades of work experience but no qualifications, particularly if they are aged over 45.⁸⁸ Dr Carina Ford, the Deputy Chair of the Migration Law Committee at the Law Council of Australia, argued that 'for TSS applicants a skill assessment should not be required where an applicant has demonstrated a substantial number of years of work experience in their occupation'.⁸⁹

Different skills assessment requirements based on nationality

3.76 Cross Cultural Communications and Management explained that the approach taken to skills assessments can vary depending on the country of origin of the applicant, and proposed that skills assessments by assessing authorities should be required of all vocational trades, regardless of the applicant's nationality. It submitted that 'employers would prefer that all skilled workers for the occupation, irrespective of source country, are treated equally and are required to undergo skills assessments'. This, it suggested, would provide 'employers a degree of comfort' about the skills of their candidate.⁹⁰

86 Law Council of Australia, *Submission 36*, p. 9.

87 *Submission 33*, pp. 7–8.

88 *Submission 36*, p. 9.

89 *Proof Committee Hansard*, 7 March 2019, pp. 23–24.

90 *Submission 44*, p. 14.

Committee view

3.77 The issues raised in this chapter address various components in the machinery of the temporary skilled visa system, including:

- the methodology used by the government to determine the presence of skills shortages;
- the process for revising the composition of the skilled migration occupation lists;
- the structure and relevance of the Australian and New Zealand Standard Classification of Occupations (ANZSCO); and
- processes for assessing the skills of overseas workers applying for temporary skilled visas.

Process for implementing changes to the skilled occupation lists

3.78 The committee is concerned by evidence received during the inquiry that various occupations included in the skilled migration occupation lists do not, in fact, appear to be suffering from a shortage of appropriately skilled Australian citizens and permanent residents.

3.79 Given that the stated purpose of the TSS visa is to fill critical skills shortages and ensure that Australian workers are given the first priority for jobs, the primary basis for occupations being included on the occupation lists must be empirical evidence demonstrating a genuine labour market shortage that cannot be resolved through increasing wages or training Australian workers.

3.80 Similarly, if the TSS visa is intended to provide businesses with temporary access to the critical skills they need to grow if skilled Australian workers are not available, it should follow that decisions made on the composition of the lists should reassure all stakeholders that their input and concerns have been taken into account. This includes both the union sector, which is often best placed to provide on-the-ground evidence on whether a reported skills shortage is genuine or not, and industry, which will suffer adversely if it is unable to fill critical vacancies. At present, this does not appear to be the case.

3.81 There is a near total lack of transparency around how final decisions are made on changes to the skilled occupation lists. The advice provided by the Department of Jobs and Small Business following stakeholder consultations to the Minister for Immigration, Citizenship and Multicultural Affairs is not published, and there is very little visibility on how that advice is turned into the final decisions announced by the Minister. Recent changes to the skilled migration occupation lists have been announced with very limited detail as to why certain occupations have been included (or not included), leading to doubt across different sectors that the decisions are anything but arbitrary or subject to ministerial or departmental whims. These concerns could be addressed if the reasons for the inclusion of particular occupations were published.

3.82 As such, the committee considers that future updates to the skilled occupation lists should outline the reasons for including new or removing particular occupations,

or for moving occupations between the Short Term Skilled Occupation List, the Medium and Long Term Strategic Skills List, and the Regional Occupation List.

Recommendation 4

3.83 The committee recommends that the Australian Government publish, in future updates to the skilled migration occupation lists, its reasons for including new occupations, moving occupations between the different lists, or removing occupations altogether that were included in previous iterations of the lists.

3.84 The committee also heard that there is considerable uncertainty about when updates to the occupation lists will be published. For example, updates occurred in July 2017, January 2018, March 2018 and March 2019, with the most recent update occurring almost 12 months since the Department of Jobs and Small Business first commenced a review.⁹¹

3.85 The committee considers that this lack of consistency in relation to the timing of updates has led to uncertainty and further impacted stakeholder confidence in the robustness of the process. The Australian Government should recommit to a regular timeframe for when updates will be released, and publish this information to provide certainty and clarity.

3.86 The committee further recognises the concerns raised in evidence that the occupation lists are overly complex and confusing for anyone but migration agents. The committee proposes that the Australian Government should take these concerns into account when making any future changes to the occupation lists.

The Australian and New Zealand Standard Classification of Occupations (ANZSCO)

3.87 It is not clear to the committee why the Australian Government is relying on an ANZSCO framework that stakeholders have universally described as outdated. The most recent review to the ANZSCO list occurred six years ago. The Australian Bureau of Statistics (ABS) explained to the committee that it had been unable to proceed with a review following consultation in 2017–18 on the need for a review because of funding priorities. The ABS further outlined that its maintenance of the lists will be restricted to updating skill level definitions of existing occupations. However, new occupations regularly emerge and the tasks and ways in which jobs are undertaken are subject to constant change.

3.88 Given the importance of the ANZSCO framework to aspects of the temporary skilled migration system, including skills assessments and the occupations included in the skilled migration occupation lists, the committee considers that a review to the ANZSCO framework is long overdue. 'Maintenance' of the ANZSCO framework is not sufficient to ensure that the temporary skilled migration program is responding to genuine skills shortages or that skills assessments are based on job duties that remain relevant. The Australian Government should sufficiently fund the Australian Bureau of Statistics so that it is able to conduct a review of the ANZSCO framework.

91 Australian Chamber of Commerce and Industry, *Submission 12*, p. 10.

Recommendation 5

3.89 The committee recommends that the Australian Bureau of Statistics prioritise its review of the ANZSCO framework.

Skills assessments processes

3.90 The committee notes the concerns of various submitters and witnesses about deficiencies in the current skills assessment process. In particular, the committee is concerned that in some instances the requirements for a skills assessment may be limited to no more than a paperwork check by the Department of Home Affairs. The committee considers that training and licensing obligations must be maintained for all skilled trades, with skills testing required for other industries and professions as necessary. Measures to strengthen the skills assessment regime are required in order to ensure that Australians can have confidence in the work being undertaken by temporary skilled visa holders.

Recommendation 6

3.91 The committee recommends that the current skills assessment regime for the skilled visa system be strengthened by:

- **ensuring all testing is performed by an appropriate industry body and not by immigration officials;**
- **guaranteeing that workers who currently require an occupational license must successfully complete a skills and technical assessment undertaken by a Registered Training Organisation approved by Trades Recognition Australia before being granted a visa;**
- **introducing a risk based approach to assess and verify that workers are appropriately skilled for occupations that do not require an occupational licence; and**
- **introducing a minimum sampling rate of visas issued in order to verify that migrant workers are actually performing the work the employer has sponsored them to perform.**

Need for an independent authority on skilled migration issues

3.92 More fundamentally, the committee considers that the processes for determining skills shortages, reviewing skilled migration occupation lists, and guiding other aspects of the temporary skilled visa system could be improved by the establishment of an independent authority to provide advice and recommendations to the Australian Government on skilled migration issues. This independent authority could be constituted as a tripartite body with equal representation from government, union and employer groups.

3.93 Such a tripartite body was recommended by the Azarias Review in 2014. The review identified the need to provide a more robust evidence-based approach to improving the transparency and responsiveness of the skilled occupation list, and

suggested that a new tripartite ministerial advisory council supported by a dedicated labour market analysis resource could fulfil this function.⁹²

3.94 The committee considers that the functions of a proposed independent authority on skilled migration could include:

- ensuring skilled migration programs provide a benefit to Australia and reflect local labour market needs;
- regularly reviewing a single skills shortage list to add or remove occupations in response to changes in Australia's skills, job market and regional employment conditions;
- providing advice to the Australian Government about current skills shortages and skill bottle-necks, and identifying circumstances preventing local workers from meeting Australia's skills needs;
- projecting Australia's future skills shortage and making recommendations about how to prevent these skills shortages from occurring; and
- reviewing the level of the Temporary Skilled Migrant Income Threshold on an ongoing basis and making recommendations on the Market Salary Rate Framework (see Chapter 2).

3.95 As noted above, the proposed independent authority would need to be supported by a dedicated independent labour market analysis resource. The authority could also play a role in liaising with state and local governments to ensure that regional skills shortages and training initiatives are aligned.

Recommendation 7

3.96 The committee recommends that the Australian Government consider the establishment of a new independent tripartite authority to provide advice and recommendations to government on skilled migration issues.

92 John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014, pp. 49-51.

Chapter 4

Labour market testing requirements and the use of labour agreements

4.1 The committee heard a range of views about the effectiveness of the current labour market testing arrangements that are required in most instances when employers seek to employ overseas workers on a Temporary Skills Shortage (TSS) visa. The committee also received considerable evidence about the use of the labour agreement stream of the TSS visa.

4.2 This chapter discusses this evidence and examines whether these measures are achieving their intended outcomes.

Overview of labour market testing requirements

4.3 Employers seeking to nominate a worker for a TSS visa are required to undertake labour market testing (LMT) to demonstrate that no suitably qualified and experienced Australian is readily available to fill the nominated position.

4.4 The joint submission from the Department of Home Affairs, Department of Jobs and Small Business, and Department of Education and Training (Joint Departmental Submission) explained that, to meet the labour market testing requirement, standard business sponsors must provide evidence when submitting the online nomination application 'to demonstrate that they have tested the local labour market within the four months prior to nominating a skilled overseas worker for a TSS visa, over at least four weeks'.¹ Additional requirements include that:

- advertisements must be in English and specify skill and/or experience requirements;
- the position salary must also be specified in the advertisement for positions with salaries less than AUD \$94,600; and
- LMT must include at least two advertisements using the methods of a national recruitment website, national print media/radio or business website of accredited sponsors.

4.5 A number of these requirements came into effect in August 2018, as a result of successful amendments moved by the Opposition during the passage of the *Migration Amendment (Skilling Australians Fund) Act 2018* through the parliament.²

1 Joint Departmental Submission, *Submission 40*, p. 21.

2 These included the requirements that LMT advertising must: occur within four months prior to nomination; occur for a minimum of four weeks; be targeted in such a way that a significant proportion of relevant Australians would be likely to be informed about the position; and set out any skills or experience requirements that are appropriate to the position. See: Opposition Amendment Sheet 8372, Migration Amendment (Skilling Australians Fund) Bill 2018, at https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5999 (accessed 29 March 2019).

4.6 Recruitment practices undertaken by sponsors must also satisfy Australian workplace, equal opportunity and non-discrimination laws:

That is, job vacancies including those lodged on company websites and with labour hire firms, should be available to Australian jobs seekers and should not target applications from persons holding particular visa types or from specific foreign countries.³

4.7 The current LMT settings for the TSS visa are outlined in Table 4.1.

Table 4.1 Labour Market Testing Settings for the TSS visa⁴

Duration of LMT	<ul style="list-style-type: none"> • Minimum of four weeks • Applications must be accepted for four weeks
Period of LMT	<ul style="list-style-type: none"> • Four months immediately prior to lodgement • Four months since redundancies
Method of advertising	<ul style="list-style-type: none"> • At least two advertisements required • Recruitment website with national reach (including LinkedIn recruitment platform) • Business website of accredited sponsors • Print media/radio with national reach
Information required in the advertisement	<ul style="list-style-type: none"> • Position title/description • Salary/salary range (if lower than \$96,400) • Company/recruitment agency (company name need not be disclosed if using a recruitment agency) • Skills or experience requirements • Must be in English
Evidence requirements	<ul style="list-style-type: none"> • Copy of advertisements • For positions subject to alternative requirements—a submission explaining why an Australian worker is not available
Positions subject to alternative requirements	<ul style="list-style-type: none"> • Where a new nomination is required for an existing visa holder because of a change in business structure or pay • Internationally recognised record of exceptional achievement in a profession or field, e.g. sport, academia and research, top-talent chef • Intra-corporate transferees • Positions with annual earnings of \$250,000 or more • Key medical occupations
Exemption to LMT requirement	<ul style="list-style-type: none"> • Exemption where international trade obligation applies

3 Joint Departmental Submission, *Submission 40*, p. 21.

4 Joint Departmental Submission, *Submission 40*, Attachment 2.

4.8 As noted above, these current settings are a result of changes implemented in August 2018, designed to strengthen LMT obligations. The Joint Departmental Submission stated that the LMT settings 'are informed by the approach taken by Canada, the United States, the United Kingdom and New Zealand and feedback from stakeholders'. It noted further that the LMT settings 'seek to strike a balance between prioritising Australian workers and recognising industry recruitment practices'.⁵

4.9 The Department of Home Affairs noted that between 1 July 2018 and 28 February 2019, 1952 TSS visa nominations were refused for not meeting the LMT criteria. This represented 39.5 per cent of total nomination refusals in that period, and five per cent of total TSS nomination lodgements in that period.⁶

4.10 Exemptions to the LMT requirements apply in some specific circumstances, namely:

- where LMT would be inconsistent with Australia's international trade obligations under the World Trade Organisation General Agreement on Trade in Services;
- where LMT is precluded under Free Trade Agreements to which Australia is a party; and
- where a TSS visa is applied for under a Minister of Religion Labour Agreement.⁷

4.11 Submitters and witnesses expressed a considerable range of views on the effectiveness of the strengthened labour market testing requirements introduced in August 2018.

Arguments in support of maintaining or extending labour market testing

4.12 Various organisations expressed strong support for the ongoing use of labour market testing arrangements to ensure the integrity of the temporary skilled visa program. For example, the Australian Council of Trade Unions stated:

In our submission, a legal requirement for labour market testing to occur is a logical extension of the principle that the priority should always be to employ Australians first. Without genuine labour market testing, it is entirely unclear how the Government and the community, not to mention affected workers, can be assured that Australian workers are in fact being given priority.

Whether it is young people looking for their first job or older workers looking get back into the workforce or change careers, they deserve an assurance that they will have priority access to local jobs before they can use temporary workers from overseas. That is why the labour market testing requirements currently in place under the TSS visa program are so

5 Joint Departmental Submission, *Submission 40*, p. 21.

6 Department of Home Affairs, Answers to questions on notice, 8 March 2019 (received 25 March 2019).

7 Joint Departmental Submission, *Submission 40*, p. 21.

important to ensure that employers have a legal obligation to employ Australians first.⁸

4.13 To ensure a genuine skills shortage exists and that TSS workers are not viewed as a cheap alternative workforce to Australian workers, proponents of LMT argued that labour market testing provides some assurance that employers have made 'all reasonable efforts to find a suitably qualified Australian for the position' prior to accessing workers from overseas.⁹

4.14 Stakeholders calling for a further strengthening of labour market testing argued that in some circumstances employers are circumventing the intent of LMT requirements, including by:

- offering unreasonably poor wages and conditions in local advertising in order to access cheaper labour through temporary skilled migrants;
- setting unrealistic and unwarranted skills and experience requirements for vacant positions, with the effect of excluding otherwise suitable Australian applicants;
- failing to develop their own local workforce and then using LMT advertising merely as a 'tick box' exercise, with no real intention of hiring Australian workers; and
- employers not considering applications received by Australian workers during the LMT process.¹⁰

Ensuring that there has been a genuine attempt to source local labour

4.15 The committee heard that the LMT system should be structured to ensure that employers are making genuine attempts to source local labour before resorting to seeking workers on temporary skilled visas.

4.16 The Australasian Meat Industry Employees Union (AMIEU) expressed concern that employers are undertaking labour market testing disingenuously, by offering unreasonably poor wages and conditions in local advertisements in order to access cheaper labour through temporary skilled migrants.¹¹ For example, employers might inflate their employment standards for local applicants to an artificially high level so they can assert they have attempted but failed to find local labour and there is

8 Australian Council of Trade Unions, *Submission 11*, p. 14.

9 Australian Council of Trade Unions, *Submission 11*, p. 14.

10 Australian Council of Trade Unions, *Submission 11*, p. 4; Australasian Meat Industry Employees Union, *Submission 17*, pp. 3-4; Mr Ian McLauchlan, Assistant Secretary, Queensland Branch, Australasian Meat Industry Employees Union, *Proof Committee Hansard*, pp. 23-24.

11 The Australasian Meat Industry Employees Union, *Submission 17*, p. 3; Australian Council of Trade Unions, *Submission 11*, pp. 4 and 20-21.

no independent process to assess whether such rejections were based on genuine concerns.¹² The AMIEU submitted further:

It is not enough to say that there are constant adverts for workers in local agencies or media... Employers should be able to demonstrate to an audit process that the reasons for rejecting applicants [were] based on genuine concerns.¹³

Case studies where genuine attempts to source local labour have been made

4.17 The committee heard several case studies of where, in the same industry in a regional area, some businesses had made genuine attempts to source and train local labour and were successfully utilising a local workforce, while other businesses in the same region were relying on temporary skilled visa workers.

4.18 Mr Ian McLauchlan, Assistant Secretary of the AMIEU's Queensland branch, told the committee at its Mackay public hearing that in the meat industry in regional Queensland, some companies have invested sufficiently in local advertising and training to source a domestic labour supply, while other companies who do not make this investment are reliant on temporary skilled workers.¹⁴ Mr McLauchlan gave several case studies, including the following:

In late 2016-17, at a little plant up near Mareeba locals could not get a job. We did a campaign up there and went to the media. We had a meeting on plant and got 225 local applicants that wanted to work, so that blew up the argument that the company was saying that they couldn't get locals. We have now got locals employed in that plant that are spending their money in the local community, and I think there are at the moment about 10 visa workers on that plant.¹⁵

4.19 Similarly, Mr Jason Lund, Mackay Organiser for the Australian Manufacturing Workers' Union, told the committee of a regional company who, in consultation with the union, had decided to upskill local employees rather than advertising for temporary visa workers to fill those roles.¹⁶

Advertising with appropriate wages and conditions

4.20 The AMIEU argued that wages and conditions should form part of the LMT advertising process, to ensure that advertisements reflect the fair market value of labour when assessing whether a genuine attempt to obtain labour was made. This would mean that advertisements offering default award wages, or offering inflexible or unfriendly work conditions (such as work shifts longer than eight hours per day or

12 The Australasian Meat Industry Employees Union, *Submission 17*, p. 3.

13 *Submission 17*, p. 3.

14 *Proof Committee Hansard*, 5 March 2019, p. 18.

15 *Proof Committee Hansard*, 5 March 2019, p. 18.

16 *Proof Committee Hansard*, 5 March 2019, p. 32.

constant weekend shifts), could be rejected as a genuine attempt to fill skill shortages if the local market would otherwise demand better wages and conditions.¹⁷

4.21 Mr Damian Kyloh, Associate Director of Economic and Social Policy for the ACTU, argued that in many instances employers should be addressing recruitment difficulties by offering increased wages and conditions rather than resorting to the skilled visa system. Mr Kyloh cited a study undertaken by academics at the University of Sydney Business School, which surveyed employers using the temporary skilled visa system:

They have actually gone and asked employers who use the TSS visa system: what are your options for and what are your preferences for filling those recruitment difficulties? Less than one per cent said they would actually increase wages to deal with the problem and only 11 per cent said they were prepared to train existing staff. So there is strong empirical evidence which, I think, goes to the fundamental problem of our visa system—that employers are not training existing staff or raising wages to fill where they have recruitment difficulties. The evidence also speaks to the difference between a recruitment difficulty and a genuine skills shortage. Employers, at the moment, where they have a small recruitment difficulty, are going first to the visa system rather than training workers and raising wages. The empirical evidence and the theory behind this says there is really only a genuine skills shortage once you raise wages and then you can still not source the labour. That is not what is happening at the moment, so I think that empirical evidence is really important.¹⁸

Recommended changes to general LMT requirements

4.22 The ACTU and other submitters made specific recommendations about how the LMT regime could be strengthened. The ACTU recommended that 'more rigorous evidentiary requirements for labour market testing be incorporated into legislation and associated program guidelines' in order to ensure that the intent of the legislation is achieved and Australian employment opportunities are protected.¹⁹ This could include:

- a mandatory requirement for all jobs to be genuinely advertised as part of labour market testing obligations;
- a crackdown on job advertisements that set unrealistic and unwarranted skills and experience requirements for vacant positions, with the effect of excluding otherwise suitable Australian applicants;
- a ban on job advertisements that target only overseas workers or specified visa class workers to the exclusion of Australian citizens and permanent residents;

17 The Australasian Meat Industry Employees Union, *Submission 17*, pp. 3–4.

18 Mr Damian Kyloh, Associate Director of Economic and Social Policy, ACTU, *Proof Committee Hansard*, 7 March 2019, p. 5.

19 ACTU, *Submission 11*, p. 29.

- making information and data on the TSS occupations list and the operation of LMT provisions publicly accessible on at least a quarterly basis.²⁰

Arguments in favour of reducing labour market testing requirements

4.23 Contrastingly, some submitters and witnesses argued that labour market testing requirements should either be abolished entirely, or curtailed in order to address practical concerns. Concerns raised by these stakeholders included that the current labour market testing requirements:

- create unnecessary red tape for businesses;
- are ineffective in achieving the stated outcome of protecting Australian jobs; and
- are impractical due to the prescriptive restrictions on timeframes for undertaking labour market testing and the way in which it must be conducted.

4.24 The Law Council of Australia described the current LMT requirements as cumbersome, inflexible, and creating a negative impact in certain circumstances.²¹

Concerns that labour market testing creates unnecessary red tape for business

4.25 Various submitters raised concerns about the administrative burden placed on businesses from LMT. The Australian Chamber of Commerce and Industry (ACCI) expressed its support for either abolishing LMT for TSS visas, or easing it for high-wage occupations and renewals, and described LMT as an additional layer on top of the 'enormous application costs and ballooning delays' that businesses must navigate. It argued that LMT severely restricts businesses' ability to respond flexibly to their workforce needs.²²

4.26 The ACCI commented further that the debate about LMT 'has become an ideological battle that ignores the evidence', arguing that it 'adds little value' and significantly increases the red tape burden.²³

4.27 Dr Gavin Lind, General Manager, Workforce and Innovation, Minerals Council of Australia, told the committee:

Given the high cost of sponsorship, the additional burden of the Skilling Australians Fund levy, resourcing imposts and restrictions on industry in seeking skilled migrants to step into hard-to-fill critical positions, the use of temporary skilled migrants is seen as a last resort to respond to meeting industry skills needs. When industry seeks to employ skilled migrants, that action is undertaken with confidence that all other options have been

20 Construction, Forestry Maritime Mining and Energy Union, *Submission 38*, p. [2]; Australian Council of Trade Unions, *Submission 11*, pp. 29–30.

21 Law Council of Australia, *Submission 36*, p. 11.

22 Australian Chamber of Commerce and Industry, *Submission 12*, pp. 13–14. See also Tourism Accommodation Australia, *Submission 42*, p. 14; Restaurant and Catering, *Submission 32*, pp. 20–21; Australian Meat Industry Council, *Submission 21*, p. 7.

23 Chamber of Commerce and Industry, *Submission 12*, p. 40.

exhausted. Labour market testing continues to be an unnecessary and ineffective administrative requirement that will become more acute during periods of high demand for skills and really should be abolished.²⁴

Proposals to waive labour market testing requirements in certain circumstances

4.28 The Minerals Council submitted that if LMT requirements are not abolished entirely, they should be limited to specific industries or concern:

Given the fact that use of the temporary skills visa system clearly responds to economic cycle in our industry, combined with the lack of reported abuses in our sector, there is a clear case for lifting labour market testing requirements in relation to occupations common in our industry. It would be far more appropriate for Government to "manage by exception" in terms of applying labour market testing to "problem" sectors or occupations or dealing with abuses via other means.²⁵

4.29 Restaurant & Catering Australia expressed a similar view, recommending that LMT requirements should be waived for TSS visas 'where there is clear and demonstrated shortage across an occupation [or] industry over an extended period of time, such as exists in the hospitality sector'.²⁶

Labour market testing for occupations on the medium to long term skills list

4.30 Tourism Accommodation Australia (TAA) argued that labour market testing should not be required for occupations that are listed on the Medium and Long Term Skills Shortage List (MLTSSL), as they are occupations for which there is already a well-documented skills shortage:

Given that the composition of occupations on the MLTSSL is based on empirical data demonstrating both prevailing and long-term skills shortages, TAA believes labour market testing is redundant and should not be required for these occupations. If the settings are correctly put in place and data is regularly supplied on shortages, labour market testing should not pose a further delay to equipping the accommodation sector with the workers it needs.²⁷

4.31 The Minerals Council agreed with this view, arguing that occupations in the mining sector, requiring both professional and trades skills, are projected to remain in shortages into the medium term. A reversal of the LMT policy would be 'one less obstacle to combatting these skills shortages'.²⁸

24 *Proof Committee Hansard*, 7 March 2019, Perth, p. 12. See also Chamber of Commerce and Industry, Submission 12, p. 40.

25 Minerals Council of Australia, *Submission 3*, pp. 3, 11.

26 Restaurant and Catering, *Submission 32*, p. 21.

27 *Submission 42*, p. 15.

28 Minerals Council of Australia, *Submission 3*, p. 11.

Labour market testing requirements for visa renewals

4.32 ACCI and other submitters argued that labour market testing should not be required for visa renewals, particularly where visa workers are staying with their current employer; rather, labour market testing should only be required at the time of the initial visa application of the worker.²⁹

4.33 The Law Council of Australia, which expressed support for waiving LMT requirements for all visa renewal applications in which the nominee is already employed by the sponsor, stated that in these situations, an employer is expected to test the local labour market before nominating any incumbent TSS visa holder for a further visa. In such a situation, the current policy creates a number of problems, including unnecessary work and expense for the business with no recruitment outcome.³⁰ The Law Council argued further that advertising in these circumstances exposes a business to claims of false advertising and potential legal action under employment law.³¹

Requirements around the form of advertising required for labour market testing

4.34 Some submitters expressed concern that the forms of advertising required under the LMT guidelines are overly prescriptive and do not match with how many industries conduct recruitment activities. For example, the Motor Trades Association of Australia submitted:

The issue of labour market testing requirement is a significant concern for MTAA and members and their business constituents as LMT requirements include methodologies that have largely been abandoned by most industries in the automotive sector.

It is the experience of retail motor traders that these forms of recruitment involving formal advertising in print and online do not work for the automotive sector; instead labour is sourced from Group Training Organisations (for apprentices) or through word-of-mouth (for qualified labour). Therefore the LMT used is of little use for automotive employer sponsors and negatively impacts the ability of retail motor traders to undertake the employer nomination process.³²

4.35 The National Farmers Federation (NFF) argued that the LMT advertising requirements are 'fundamentally flawed' as they fail to provide an accurate representation of local demand for agricultural jobs. It stated that labour market testing is a 'generally onerous process for farmers for little return...especially given

29 Joint University, *Submission 46*, pp. 4–5; Tourism Accommodation Australia, *Submission 42*, p. 15; Australian Chamber of Commerce and Industry, *Submission 12*, p. 17.

30 The Law Council of Australia noted that if the alternative outcome of LMT identifies a suitable Australian candidate, the visa holder would have a legitimate claim under employment law for unfair dismissal: see Law Council of Australia, *Submission 36*, p. 11.

31 Law Council of Australia, *Submission 36*, p. 11.

32 Motor Trades Association of Australia, *Submission 39*, p. 15. See also: National Farmers Federation, *Submission 13*, p. 14.

labour shortages are a known problem for their industry and arguably shouldn't need to be proven'.³³

4.36 The Migration Institute of Australia submitted that the requirement for advertisements to have a national reach does not reflect the reality that the Australian workforce is largely immobile, and cannot simply 'pack up families and homes and relocate'.³⁴ Such advertising requirements are therefore 'unlikely to have any significant impact on reducing the reliance on overseas skilled workers or reducing genuine temporary skilled shortages'.³⁵

Concerns around timeframes required for undertaking labour market testing

4.37 The committee heard concerns from stakeholders in the higher education, technology and medical research sectors that the maximum time period allowable between completing labour market testing and visa nomination (currently set at four months) is too short.³⁶

4.38 These submitters argued that when undertaking recruitment for highly qualified research, academic and professional positions in a competitive global market, lead times associated with recruitment processes are often in the order of six to nine months. In these circumstances, the LMT requirement of having completed advertising process within the preceding four months before lodging a visa nomination is unworkable and can lead to perverse outcomes.³⁷ Such outcomes have included, for example, universities being forced to re-advertise high level positions due to LMT timeframe requirements, when a successful candidate had already been identified.³⁸

4.39 It was recommended by these stakeholders that the required timeframes for LMT advertising be increased to six or nine months, or alternately that LMT requirements be waived for certain high level occupations in these industries.³⁹

Interpretation of changes made to labour market testing requirements in 2017

4.40 Australian Pork Limited (APL), the national representative body for Australian pork producers, expressed concern that the approach of labour market testing assessors within the Department of Home Affairs has changed since 2017:

33 National Farmers Federation, *Submission 13*, p. 15.

34 Migration Institute of Australia, *Submission 33*, p. 10.

35 Migration Institute of Australia, *Submission 33*, p. 10.

36 CSL Limited, *Submission 18*, pp. 1, 3; Group of Eight, *Submission 14*, p. [1, 4–5]; Cochlear, *Submission 19*, pp. 3–5.

37 CSL Limited, *Submission 18*; pp. 2–3; Cochlear, *Submission 19*, p. 4; Group of Eight, *Submission 14*, p. 3–4; Joint University, *Submission 46*, pp. 2–12; Law Council of Australia, *Submission 36*, pp. 12–13.

38 Joint University, *Submission 46*, pp. 2–5.

39 CSL Limited, *Submission 18*; pp. 2–3; Cochlear, *Submission 19*, p. 4; Group of Eight, *Submission 14*, p. 3–4; Joint University, *Submission 46*, pp. 2–12; Law Council of Australia, *Submission 36*, pp. 12–13.

Although the changes to the labour market testing (LMT) regime introduced in 2017 were not too extensive or unreasonable on paper, APL members applying for TSS visa nominations have noticed a marked difference in the attitudes of assessing officials.

Arbitrary and subjective judgements on applicants LMT processes are being employed to block access to much-needed skilled workers. For example, one producer was told—even though he had fulfilled all the LMT requirements on the application—the assessor did not feel the producer had carried out the LMT in good faith. The decision was not based on any failure to complete any step of the LMT process, just the assessing official's gut feeling. This is not an isolated experience.⁴⁰

Waivers of labour market testing requirements because of international trade agreements

4.41 As noted earlier in this chapter, exemptions to LMT requirements apply in circumstances where:

- LMT would be inconsistent with Australia's international trade obligations under the World Trade Organisation General Agreement on Trade in Services; or
- LMT is precluded under Free Trade Agreements to which Australia is a party.

4.42 The ACTU argued that the current waivers of labour market testing requirements because of international trade agreements should be abolished because these arrangements create loopholes that undermine local jobs and create a class of vulnerable low paid foreign workers.⁴¹ The ACTU commented specifically on the recently signed Trans-Pacific Partnership (TPP11):

In recent months with the ratification of 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.⁴²

40 Australian Pork Limited, *Submission 43*, p. 15.

41 Australian Council of Trade Unions, *Submission 11*, p. 4. See also: Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, pp. [7–8]; Electrical Trades Union of Australia, *Submission 49*, p. 13.

42 *Submission 11*, p. 6.

4.43 The Electrical Trades Union (ETU) submitted that free trade agreements create loopholes for skills assessments, as labour movement chapters in free trade agreements exclude foreign workers from the usual visa application processes. This is highlighted by the 'temporary entry of business persons' provisions of trade agreements, which has seen the 'creation of a visa class that avoids any checks and balances relating to skills and specifically exempts the workers from Australian wages and conditions'.⁴³

4.44 The ACTU made specific recommendations in this area, as follows:

- Labour market testing should apply to all occupations under the TSS 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).⁴⁴

Arguments supporting LMT waivers in trade agreements

4.45 Conversely, ACCI argued that fears over LMT waivers in international trade agreements are unfounded, claiming there is a lack of evidence suggesting any negative impacts.⁴⁵ To the contrary, ACCI submitted that available evidence did not support claims that waivers will threaten Australian jobs:

In the year before ChAFTA [China-Australia Free Trade Agreement], there were 3,520 primary applications granted for Chinese workers under the 457-visa program. In 2017–18, only 1,700 Chinese worker applications for temporary skilled visas were granted—less than half. Exemptions from

43 Electrical Trades Union of Australia, *Submission 49*, p. 11.

44 Australian Council of Trade Unions, *Submission 11*, p. 30.

45 Australian Chamber of Commerce and Industry, *Submission 12*, pp. 16–17. See also: Law Council of Australia, *Submission 36*; Committee for Melbourne, *Submission 35*.

LMT do not result in hordes of foreigners gaining access to our labour market.⁴⁶

Use of labour agreements in the temporary skilled visa system

4.46 The committee heard a considerable range of evidence on the utilisation of the labour agreement stream of the TSS visa subclass.⁴⁷

4.47 A labour agreement is a formal agreement between an Australian employer and the Australian Government and is used by employers to recruit foreign workers on a permanent or temporary basis. As explained in the Joint Departmental Submission:

[Labour agreements] enable approved Australian businesses facing unique labour shortages with an option to sponsor skilled overseas workers when there is a demonstrated need that cannot be met in the Australian labour market and standard skilled visa programs are not available. ... [The Labour Agreement] program provides an important flexible solution to support Australian businesses where required and where associated risks can be managed—with [labour agreements] considered on a case-by-case basis to maintain the integrity of the program.⁴⁸

4.48 As at 30 September 2018, there were 346 labour agreements in effect, which is an increase from 313 labour agreements in effect at the same point in 2017.⁴⁹

4.49 There are five main types of labour agreements available, as outlined below.

Company-specific agreements

4.50 Company-specific agreements are developed directly between the Department of Home Affairs and an employer, and are considered where a genuine skills or labour shortage exists for an occupation not covered by an industry labour agreement, or relevant project or designated area migration agreement. The terms are company-specific and considered on a case-by-case basis.⁵⁰

Global talent scheme (GTS)

4.51 The Joint Departmental Submission stated that agreements under the Global Talent Scheme:

...are for businesses, including Australian start-ups, seeking to fill a small number of niche highly-skilled roles, where their needs cannot be met under existing skilled entry programs. Compared to traditional labour agreements,

46 Chamber of Commerce and Industry, *Submission 12*, p. 17.

47 In addition to temporary TSS visa workers, labour agreements can also involve the recruitment of permanent migrant workers under the permanent Employer Nomination Scheme (ENS) visa program.

48 Joint Departmental Submission, *Submission 40*, p. 27.

49 Joint Departmental Submission, *Submission 40*, p. 27.

50 Joint Departmental Submission, *Submission 40*, p. 27.

the GTS provides fast processing and flexible concessions for approved participants via an Established Business stream and a start-up stream.⁵¹

4.52 The Global Talent Scheme was announced in March 2018, and scheduled to commence on 1 July 2018 as a one-year pilot program. However, the advisory panel with the function of assessing applications under the start-up stream was not established until 23 October 2018. At 31 January 2019, only 8 visas had been granted under the established business scheme and no visas had been issued under the start-up stream.⁵²

Industry agreements

4.53 Industry agreements provide fixed terms and conditions specific to an industry, and are agreed to by the Minister in consultation with industry stakeholders. Such an agreement is considered if the Department of Home Affairs has received evidence from a number of submissions to support a claim of ongoing labour shortages within the industry. An industry agreement cannot be changed once it is in place. There are currently seven industry agreements: dairy, fishing, meat, minister of religion, on-hire, pork and restaurant (fine dining).⁵³

Designated area migration agreements (DAMAs)

4.54 DAMAs are agreements between the Minister for Immigration, Citizenship and Multicultural Affairs and State and Territory Governments or regional bodies to provide a defined geographic region with foreign workers beyond those available via the TSS and ENS visa programs by: allowing variation to standard occupations and skills lists; and allowing negotiable concessions to the standard skilled visa program requirements.⁵⁴ These can include, for example, concessions on the level of the Temporary Skilled Migration Income Threshold and English language requirements.

4.55 DAMAs allow for a set maximum number of overseas workers to be nominated each year. The terms of each DAMA are negotiated individually and are 'tailored to the unique economic and labour market conditions of each regional area'.⁵⁵

4.56 Five DAMAs are currently in place:

- The Northern Territory DAMA (where a new DAMA was agreed to in December 2018, following the completion of an initial DAMA in place since 2015).⁵⁶

51 Joint Departmental Submission, *Submission 40*, p. 27.

52 Department of Home Affairs, *Response to Question taken on Notice No. 285, Supplementary Budget Estimates, Legal and Constitutional Affairs Legislation Committee*, 22 October 2018. See also: Emma, Koehn, 'Global talent scheme fails to issue visas as startups 'crippled'', *Sydney Morning Herald*, 1 March 2019, <https://www.smh.com.au/business/small-business/global-talent-scheme-fails-to-issue-visas-as-startups-crippled-20190301-p51129.html> (accessed 29 March 2019).

53 Joint Departmental Submission, *Submission 40*, p. 27.

54 Joint Departmental Submission, *Submission 40*, p. 28.

55 Joint Departmental Submission, *Submission 40*, p. 28.

- The Greater South Coast region of Victoria DAMA (announced on 10 December 2018).⁵⁷
- The Adelaide City Technology and Innovation Advancement Agreement DAMA (announced on 21 March 2019).⁵⁸
- The Regional South Australia DAMA (announced on 21 March 2019).⁵⁹
- The Kalgoorlie-Boulder DAMA (announced on 21 March 2019).⁶⁰

4.57 The Minister stated in December 2018 that discussions are underway in relation to potential DAMAs with other regions, including the Pilbara region in WA, Cairns in far North Queensland and the Orana region in central NSW.⁶¹

4.58 Of the five DAMAs currently in place, full details of the agreement are only publicly available in relation to the Northern Territory DAMA.⁶²

56 Joint Departmental Submission, *Submission 40*, p. 28; The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, *Media Release*, 'New Migration agreement set to boost NT population', 10 December 2018, available at <https://minister.homeaffairs.gov.au/davidcoleman/Pages/new-migration-agreement-to-boost-nt-population.aspx> (accessed 22 March 2019).

57 Joint Departmental Submission, *Submission 40*, p. 28; The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, *Media Release*, 'New agreement to help Victoria's Great South Coast region fill skill gaps', 10 December 2018, <https://minister.homeaffairs.gov.au/davidcoleman/Pages/new-agreement-to-help-victoria-great-south-coast-region.aspx> (accessed 22 March 2019).

58 The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, *Media Release*, 'New migration agreements to benefit South Australia', 21 March 2019, <https://minister.homeaffairs.gov.au/davidcoleman/Pages/new-migration-agreements-to-benefit-south-australia.aspx> (accessed 29 March 2019). Under the Adelaide City Technology and Innovation Advancement Agreement DAMA, up to 300 people per year will be able to be sponsored over the five-year agreement, with 60 occupations covered.

59 The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, *Media Release*, 'New migration agreements to benefit South Australia', 21 March 2019. Under the Regional South Australia DAMA, up to 750 people per year will be able to be sponsored over the five-year agreement, with 114 occupations covered.

60 The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, *Media Release*, 'Kalgoorlie-Boulder Secures DAMA', 21 March 2019, <https://minister.homeaffairs.gov.au/davidcoleman/Pages/kalgoorlie-boulder-secures-dama.aspx> (accessed 29 March 2019). Under the Kalgoorlie-Boulder DAMA, up to 500 people per year will be able to be sponsored over the five-year agreement, with 73 occupations covered.

61 The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, *Media Release*, 'New agreement to help Victoria's Great South Coast region fill skill gaps', 10 December 2018.

Project agreements

4.59 Project agreements allow skilled and specialised semi-skilled temporary foreign workers to work on infrastructure or resource development projects where there are genuine skills or labour shortages. They are designed to complement existing Australian Government initiatives to address skill and labour shortages by ensuring that shortages do not create constraints on major projects and jeopardise Australian jobs.⁶³

General requirements for all labour agreements

4.60 The Joint Departmental Submission noted employers accessing labour agreement are required 'to provide specific details for each of the occupations sought and the number of positions sought for each location and year' of the proposed agreement. Additionally, labour agreements must:

- identify the relevant skills shortage in the business and why these vacancies cannot be filled by the Australian workers;
- specify the number of skilled workers needed from outside Australia; and
- provide the age, skill and English language requirements that relate to the nominated occupations.⁶⁴

Submitter support for labour agreements

4.61 Some submitters expressed support for the use of labour agreements as a necessary component of the skilled visa system. For example, the NFF commented that these agreements are a 'means of overcoming some of the shortcomings—or rigidities—in the structure of the skilled visa program, in particular where the ANZSCO codes are not reflective of the business's needs'.⁶⁵

4.62 The AMIEU expressed support for the template meat industry labour agreement. It noted that this agreement was developed 'after exhaustive negotiations with the industry', and submitted that it has 'proven effective in managing many issues that had arisen prior to the agreement'.⁶⁶

62 See: Northern Territory Department of Trade, Business and Innovation, *Northern Territory Designated Area Migration Agreement*, <https://business.nt.gov.au/business/migration-information-for-business/northern-territory-designated-area-migration-agreement> (accessed 29 March 2019). The Department of Home Affairs website does not mention any of the other four current DAMAs on its *Designated area migration agreements* webpage: <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-agreements/designated-area-migration-agreements> (accessed 29 March 2019).

63 Joint Departmental Submission, *Submission 40*, p. 28.

64 Joint Departmental Submission, *Submission 40*, p. 28.

65 National Farmers Federation, *Submission 13*, p. 17.

66 Australasian Meat Industry Employees Union, *Submission 17*, p. 4.

4.63 Australian Pork Limited commented that the Pork Industry Labour Agreement (PILA) was developed because 'extensive industry-supported training, development, and outreach programs' had not been enough to eliminate long-standing and critical skills gaps in the pig production industry.⁶⁷ It noted that the PILA is the 'last-remaining viable pathway for meaningfully addressing skills shortages' in the industry.⁶⁸

Arrangements for accessing labour agreements

4.64 Some industry submitters supportive of labour agreements raised concerns that agreements are difficult to access at an administrative and operational level, or contain restrictive conditions. For instance, Australian Pork Limited commented as follows in relation to the PILA:

Only the PILA retains a pathway to permanency, but access to the agreement is being stymied at the operational level. Producers tell us they are having difficulty at all levels of the system, mostly related to unaccountable decision-making that lacks transparency, but also in terms of bearing the cost of increased fees and extended timeframes.

It is as though officials on the working level are being encouraged to obstruct access to the program, even when all formal requirements are being met by applicants. This observation has been reported to APL by producers, migration agents, and colleagues in other agricultural sectors with similar requirements for skilled labour.⁶⁹

4.65 The Australian Meat Industry Council argued that the template meat industry labour agreement 'contains restrictions that limit the capacity to provide long term certainty for both workers and company'.⁷⁰

4.66 The NFF acknowledged that while labour agreements can be an effective means to secure labour, they 'can be costly and time-consuming', and the approval process 'features significant shortcomings'.⁷¹

4.67 The NFF relayed concerns that the 'template' arrangements for industry labour agreements have taken up to two years to negotiate and implement, requiring substantial commitment of private and public resources. Additionally, requests by employers to access the agreements based on those template arrangements can take more than six months to process:

This delay, during which the farm has to manage without the necessary contingent of skilled staff, has a significant impact on business productivity.⁷²

67 Australian Pork Limited, *Submission 43*, p. 18.

68 *Submission 43*, p. 17.

69 Australian Pork Limited, *Submission 43*, p. 18.

70 *Submission 21*, p. 8.

71 National Farmers Federation, *Submission 13*, p. 17.

72 National Farmers Federation, *Submission 13*, p. 17.

Submitter and witness concerns about the use of labour agreements

4.68 Other submitters and witnesses identified problems with the use of labour agreements. For example, the ACTU's submission called for the abolition of all labour agreements, stating:

Labour agreements create pools of exploitable workers. There are currently [346] agreements with thousands of workers employed under them with no evidence employers are taking any steps to train Australian workers in the necessary skills or adequately test the local labour markets.⁷³

4.69 Mr Zachary Duncalfe, National Legal Officer for the Australian Workers' Union (AWU), told the committee that labour agreements:

...are subject to abuse by employers, are used far too frequently, and are not subject to anything nearing the level of scrutiny that should be required for agreements that have such significant potential to negatively impact Australian workers in terms of employment opportunities, career progression, training opportunities, and the maintenance of industry terms and conditions of employment.⁷⁴

Use of labour agreements where there are no genuine skills shortages

4.70 Some stakeholders argued that labour agreements are being used in cases where there is no genuine skills shortage that could not be filled by Australian workers. Mr Duncalfe of the AWU argued that industry labour agreements

...are the result of employer groups and employers unilaterally determining what job classifications an industry is experiencing a 'shortage' of and the terms and conditions of employment for these classifications. The AWU's experience has been that employers seeking labour agreements are generally only required to take minimal steps to demonstrate the relevant positions have been advertised locally. The net result of such a system is that Australian workers are denied employment and training opportunities in favour of cheaper foreign labour.⁷⁵

4.71 Mr Damian Kyloh of the ACTU raised a specific example where a labour agreement was being used in questionable circumstances:

[W]e've had examples of labour agreements in fast food work....That's work that was typically taken up by young teenage workers. That's what I did for my first job as well. To have a labour agreement to bring in temporary workers to do work in fast food outlets—I question whether there's a genuine high-level skill shortage in fast food outlets.⁷⁶

73 *Submission 11*, p. 5. See also: Electrical Trades Union of Australia, *Submission 49*, pp. 17–18.

74 *Proof Committee Hansard*, 6 March 2019, Mackay, p. 1.

75 *Proof Committee Hansard*, 6 March 2019, p. 1.

76 *Proof Committee Hansard*, 7 March 2019, p. 8.

Excessive discretion in the granting of labour agreements

4.72 The Law Council of Australia expressed concern at the increasing prevalence of labour agreements in the TSS visa program, noting there has been 'a proliferation of labour agreement types and subtypes over the last few years'.⁷⁷ It stated that labour agreements may have utility in some circumstances; however, the labour agreement program should not be used simply as a means of circumventing the usual requirements of the TSS visa.⁷⁸

4.73 The Law Council expressed further concern at the lack of clear boundaries around how labour agreements can be made, due to the fact that these agreements sit outside the Migration Regulations:

The labour agreement regime is an unsatisfactory workaround because the guidelines for approval sit entirely outside the [Migration] Regulations and the outcome is subject to significant Departmental and Ministerial discretion. A regime which is entirely discretionary, non-compellable, and without the TSS regulatory framework is not an appropriate mechanism for careful control of particular industries, occupations or regions.⁷⁹

Lack of transparency around the granting of labour agreements

4.74 The committee heard that there is a lack of transparency and accessibility to information about individual company labour agreements. In particular, the committee received evidence that during the process of a company negotiating with the Department of Home Affairs to access a labour agreement, there is only very limited scope for other relevant stakeholders to provide input.

4.75 Commenting on requirements for companies to undertake consultation with other relevant stakeholders when negotiating a labour agreement, the AWU noted that in practice this can be extremely limited, and consist of nothing more than sending a template letter to relevant stakeholders inviting input.⁸⁰ In these situations there is no requirement for the business or the Department of Home Affairs to respond to any concerns raised by relevant stakeholders, no opportunities for face-to-face discussions, and no visibility on whether relevant stakeholders' concerns have been addressed.⁸¹

4.76 Mr Duncalfe of the AWU commented on the lack of communication in several cases where the AWU had been contacted as part of a business's attempts to access a labour agreement:

The AWU is a relevant industrial stakeholder for the purposes of the proforma letter that must be completed and sent by employers seeking

77 *Submission 36*, p. 18.

78 *Submission 36*, p. 18.

79 *Submission 36*, p. 18.

80 Australian Workers' Union, *Submission 48*, pp. 4–5. See also: Electrical Trades Union, *Submission 49*, pp. 17–18.

81 Australian Workers' Union, *Submission 48*, pp. 4–5; Electrical Trades Union, *Submission 49*, pp. 17–18.

labour agreements. However, we are shut out from all processes, including decisions made by the department... We wish to make the point that we never hear from the Department of Home Affairs, even when we copy them into our responses to employers seeking labour agreements. We do not even get an email that confirms our email has been received by the department. The department does not publish any reasons for their decisions and we are not notified of those decisions being made, even when we have been identified as a relevant industrial stakeholder for that agreement. It is up to us to search on the Department of Home Affairs website to find out if a labour agreement has been granted, and even then the only information that we do receive is the company name and the date of the agreement. We do not receive any information on whether any of our submissions about the labour agreement have been heeded and we do not receive any information about if the terms of the labour agreement have changed since receiving our submissions or if the department has even required any further submissions or amendments.⁸²

Committee view

Labour market testing

4.77 The committee supports the principle of labour market testing (LMT) as a means of ensuring that temporary skilled visas are only being utilised when there is genuine evidence of a skills shortage that cannot be met by local workers.

4.78 The committee is concerned by reports that employers may be circumventing LMT by setting requirements in advertisements for vacant positions that are different for domestic workers compared with visa holders, to deliberately dissuade local applicants from applying. The committee is not convinced, in instances such as these, by arguments that *all* domestic applicants for jobs in particular industries are of low quality or unsuitable for the position.

4.79 Further, given youth unemployment rates around the country and in particular areas, employers should be willing to invest time and resources to skill young Australians, as they have for decades in this country, rather than turning to visa holders so that they are able to avoid this responsibility.

Arguments that LMT is not required in some industries

4.80 The committee was not convinced by arguments from specific sectors that labour market testing is unnecessary for their industries. Labour market testing provides up-to-date evidence of a skills shortage in a particular industry. Indeed, if undertaken correctly, this body of proof increases the strength of arguments that specific sectors are continuing to experience skills shortages and need to use the skilled visa system to fill vacancies. The committee is also in favour of keeping existing requirements that labour market testing should be required for visa renewals where workers are staying with their current employer. The temporary skilled visa

82 Mr Zachary Duncalfe, National Legal Officer, Australian Workers' Union, *Proof Committee Hansard*, 6 March 2019, pp. 1–2.

system is intended to fill *temporary* skills shortages; if these no longer exist, Australian citizens and permanent residents should be prioritised to fill vacancies.

4.81 In some industries and some regions, particularly rural and regional areas, there may indeed be genuine skills shortages. In other cases, however, normal labour market conditions that regulate the market by ensuring that employment conditions are satisfactory for both employers and workers, and wage levels are increased to attract more and better candidates, may be suppressed if employers are not genuinely looking to fill skilled positions with Australian citizens and permanent residents.

Expense and form of LMT advertisements

4.82 The committee notes evidence arguing that labour market testing requirements are expensive for employers, particularly small business, and may not be relevant in rural and regional areas, where word of mouth may be more commonly used rather than online or print advertisements. The committee suggests that the Australian Government should undertake further consultation with regional stakeholders about how to implement appropriate labour market testing requirements in these contexts that would help to prevent unscrupulous employers avoid important regulatory measures and ensure Australian workers are given priority.

Timelines for labour market testing requirements

4.83 The committee notes concerns from stakeholders in the university, technology and medical research sectors that in high-level recruitment processes in these industries, the maximum time period allowable between completing labour market testing and visa nomination (currently set at four months) is too short. In the view of the committee, the Australian Government should give consideration to extend LMT timeframes in these limited cases, to ensure that Australia's research institutions are not missing out on top-level global talent.

Need for proof of genuine labour market testing

4.84 The committee considers that evidentiary proof of proper labour market testing is the best measure to ensure that employers are not trying to avoid normal labour market incentives that would make conditions better for workers, or investing in training Australian workers. As such, the committee recommends that the Australian Government introduce stricter requirements for labour market testing, to promote the overall health of the Australian labour market.

Recommendation 8

4.85 The committee recommends that the Australian Government introduce more stringent evidentiary requirements for labour market testing to ensure that the intent of labour market testing arrangements is achieved and Australian employment opportunities are protected.

Labour market testing exemptions in international trade agreements

4.86 The committee is concerned about the potential impact of LMT waivers in international trade agreements on Australian workers. The lack of proper controls over the importation of skilled workers in these circumstances could have a significant

negative impact Australian employment conditions and opportunities for Australian workers.

4.87 The committee notes calls from stakeholders that existing exemptions in free trade agreements should be removed, and considers that, at a minimum, the Australian Government should commit to including no labour market testing waivers in future free trade agreements.

Recommendation 9

4.88 The committee recommends that the Australian Government resolve not to enter into any future free trade agreements that would involve labour market testing waivers.

Labour agreements

4.89 The committee recognises that labour agreements may in limited circumstances provide a means to address genuine skills shortages. However, evidence indicates that labour agreements may give rise to exploitation of migrant workers, migrants being favoured as a cheap alternative to an Australian workforce, and employers avoiding investing in jobs and skills training for locals.

4.90 The committee notes concerns raised during the inquiry about the lack of opportunity for meaningful stakeholder engagement during the process of businesses applying to access labour agreements. This is combined with a lack of transparency around how final decisions are taken on company specific labour agreements.

4.91 Given these issues, the committee recommends that the Australian Government review the use and effectiveness of labour agreements issued under the skilled migration program, and make necessary changes to ensure that labour agreements arise because of genuine skills shortages, that all relevant stakeholders are genuinely consulted and that the Department of Home Affairs publish its reasons for entering into or renewing a labour agreement.

Recommendation 10

4.92 The committee recommends that the Australian Government undertake a review of the use and effectiveness of labour agreements under Australia's skilled migration program, and implement any necessary changes to ensure that:

- **labour agreements are only entered into where there is publicly demonstrated evidence of a genuine skills shortage that cannot be addressed by the Australian workforce;**
- **all relevant stakeholders are genuinely consulted during the process of finalising labour agreements and provided with appropriate feedback in relation to concerns raised; and**
- **the Department of Home Affairs' reasons for entering into a labour agreement (or a renewal of any labour agreement) are made publicly available.**

Chapter 5

Investing in local training to address skills shortages

5.1 As noted in Chapter 2, it is a requirement that businesses employing workers on temporary short stay (TSS) visas (as well as the previous 457 visa) make a contribution towards the training of Australian workers.

5.2 This chapter examines the introduction of the Skilling Australians Fund, the mechanism through which this contribution is currently made by employers. Broader issues relating to the training of Australian workers in order to address local skills shortages in the medium and long term are also considered.

The Skilling Australians Fund levy

5.3 Prior to August 2018, training benchmarks under the 457 visa program required sponsors to demonstrate expenditure on training Australians by:

- spending at least two per cent of their payroll in payments to an industry training fund operating in the same or related industry; or
- spending at least one per cent of their payroll on training to Australian citizens or permanent residents employed in the business.¹

5.4 This requirement was replaced with the Skilling Australians Fund (SAF) charge in August 2018. The SAF requires sponsors to pay a levy upfront whenever they lodge a nomination application for a TSS visa. The levy cannot be recovered from or passed onto another person, including the sponsored employee.² It is designed to place a requirement on employers who sponsor overseas skilled workers to contribute towards the broader skill development of Australians.³

5.5 The SAF is used to train Australians and requires joint investment by state and territory governments. Allocation of resources from the SAF is prioritised towards traineeships and apprenticeships, with the objective of supporting Australia's future productivity, jobs and growth between 2017 and 2022 through this targeted training funding.⁴

1 Department of Home Affairs, 'Temporary Skill Shortage (TSS) visa – Sponsorship obligations, monitoring and sanctions', <https://archive.homeaffairs.gov.au/visas/supporting/Pages/482/sponsorship-obligations-monitoring-sanctions.aspx> (accessed 25 February 2019).

2 Law Council of Australia, *Submission 36*, p. 6.

3 Department of Home Affairs, 'Employer Sponsored Skilled visas – Skilling Australians Fund (SAF) levy. Available at: <https://archive.homeaffairs.gov.au/trav/work/empl/skilling-australia-fund> (accessed 19 March 2019).

4 Department of Education and Training, *Skilling Australians Fund*, <https://www.education.gov.au/skilling-australians-fund> (accessed 25 February 2019).

5.6 A joint submission from the Department of Home Affairs, the Department of Jobs and Small Business and the Department of Education and Training (Joint Departmental Submission) described the effect of the SAF to date:

The renewed focus on apprenticeships and traineeships is boosting the number of people who choose and succeed in this pathway and helping businesses to gain the skilled workers they need to drive innovation and growth and address skills shortages.⁵

5.7 The framework for the SAF is established by the *Migration (Skilling Australians Fund) Charges Act 2018* and the *Migration Amendment (Skilling Australians Fund) Act 2018* (the SAF Acts).

5.8 All businesses nominating overseas workers for employer-sponsored visas are required to pay the SAF levy. This applies to TSS visas, Employer Nomination Scheme (ENS)(subclass 186) visas and Regional Sponsored Migration Scheme (RSMS)(subclass 187) visas. The levy also applies to ENS and RSMS permanent visas.⁶

5.9 The Department of Home Affairs collects the levy, but the Fund itself is administered and allocated by the Department of Education and Training.⁷ The levy amount is set at the following rates for employers sponsoring workers for a TSS visa:

- \$1200 per nominated overseas worker per annum for small businesses with an annual turnover of less than \$10 million.
- \$1800 per nominated overseas worker per annum for businesses with an annual turnover of \$10 million or more.⁸

5.10 Businesses must also pay a one-off SAF levy payment when lodging a nomination application for an overseas worker for the ENS and RSMS permanent visas. The payment rates for each nominated overseas worker in these circumstances are: \$3000 for small businesses with an annual turnover of less than \$10 million; or \$5000 for businesses with an annual turnover of \$10 million or more.⁹

5.11 Between its introduction in August 2018 and 31 January 2019, the Department of Home Affairs collected \$90.3 million in SAF levy payments.¹⁰ According to the Department of Education and Training, the levy-reliant budget for

5 Department of Home Affairs, Department of Jobs and Small Business and Department of Education and Training (Joint Departmental Submission), *Submission 40*, p. 10.

6 Joint Departmental Submission, *Submission 40*, p. 10.

7 Joint Departmental Submission, *Submission 40*, pp. 6, 10.

8 Department of Home Affairs, *Employer Sponsored Skilled visas – Skilling Australians Fund (SAF) levy*, <https://archive.homeaffairs.gov.au/trav/work/empl/skilling-australia-fund> (accessed 25 February 2019).

9 Joint Departmental Submission, *Submission 40*, p. 10.

10 Department of Home Affairs, *Answer to questions on notice AE19/187*, 18 February 2019, provided to the Senate Legal and Constitutional Affairs Legislation Committee on 29 March 2019, p. 1.

the Skilling Australians Fund for the relevant year is \$243.4 million,¹¹ indicating there will be a shortfall. This suggests that projections by the government indicating that the SAF levy will raise \$1.2 billion in revenue over its first four years¹² may not be reliable.

5.12 The Australian Government invested around \$187 million in the first year of the Fund, from a budget of \$300 million.¹³ The Joint Departmental Submission stated:

In June 2018, the first year of the Fund, the Australian Government invested around \$187 million to support approximately 50,000 additional apprentices, trainees, pre-apprentices, pre-trainees and employment-related training commencements. The additional training opportunities delivered in 2017–18 by the states included a range of innovative and successful employer and apprentice incentives across occupations in demand and sectors of future growth. State projects had matched funding and demonstrated engagement with, and support from, key industry and employer groups.¹⁴

5.13 Under amendments made by the Senate during the passage of the SAF Acts in 2018, the operation of the SAF will be the subject of an independent review. This review is due to commence in November 2019 (18 months after the SAF Acts received Royal Assent) and is to be completed within six months.¹⁵

National Partnership Agreement on the Skilling Australians Fund

5.14 Between 2018 and 2022, the Fund will be managed through a National Partnership Agreement on the Skilling Australians Fund (NPSAF, or the Agreement). The objective of the Agreement is 'to improve employment outcomes by supporting Australians to obtain the skills and training they need for jobs in demand through increasing the uptake of apprenticeships, traineeships and employment related training'.¹⁶

11 Department of Education and Training, Answer to question on notice, *2018–19 Budget Estimates Question on notice no. 314*, provided to the Senate Education and Employment Legislation Committee on 12 October 2018, p. 3.

12 Commonwealth of Australia, *Federal Financial Relations: Budget Paper No. 3 2018–19*, p. 35.

13 Commonwealth of Australia, *Federal Financial Relations: Budget Paper No. 3 2018–19*, p. 35.

14 Joint Departmental Submission, *Submission 40*, pp. 10–11.

15 *Migration Amendment (Skilling Australians Fund) Act 2018*, s. 4.

16 Joint Departmental Submission, *Submission 40*, p. 11.

5.15 The Victorian and Queensland governments have not signed the NPSAF due to its instability and inadequacy.¹⁷

5.16 Through the Agreement and bilateral agreements with each state, states are able to develop projects which support additional apprentice, trainee and employment-related training in agreed priority areas including:

- Occupations in demand.
- Occupations with a reliance on skilled migration pathways.
- Industries and sectors of future growth that include, but are not limited to, the following priorities: tourism, hospitality, health, ageing, and community and social services, engineering, manufacturing, building and construction, agriculture and digital technologies.
- Trade apprenticeships.
- Rural and regional areas.
- Targeted cohorts.
- Industries and communities experiencing structural adjustment.¹⁸

5.17 The Joint Departmental Submission stated that projects funded under the Agreement must demonstrate that they have support from and will engage with industry and employers:

Industry is a key partner in ensuring that training delivers the skills industry needs and that skills spending is targeted to jobs in demand.¹⁹

5.18 The Department of Education and Training provided evidence on how the Agreement is being implemented, specifically looking at:

- the number of project proposals submitted by the states and territories for funding under the Agreement;
- the number of project proposals approved, still being considered or rejected; and
- the nature and value of the proposed projects.

17 See: Department of Education and Training, *Skilling Australians Fund*, <https://www.education.gov.au/skilling-australians-fund> (accessed 29 March 2019); The Hon Yvette D'Ath MP, Queensland Minister for Training and Skills, the Hon Susan Close MP, South Australian Minister for Higher Education and Skills, the Hon Gayle Tierney MP, Victorian Minister for Training and Skills, and the Hon Sue Ellery MP, Western Australian Minister for Education and Training, 'Turnbull's Budget a Disappointment for Training and TAFE', *Joint Media Release*, 11 May 2017, <https://www.premier.vic.gov.au/turnbulls-budget-a-disappointment-for-training-and-tafe/> (accessed 28 March 2019).

18 Joint Departmental Submission, *Submission 40*, p. 11.

19 Joint Departmental Submission, *Submission 40*, p. 11.

5.19 The committee was informed that the Northern Territory submitted two project proposals, while other state and territory governments submitted one.²⁰ In terms of project approval:

All project proposals submitted by signatory states as a part of the bilateral schedules under the NPSAF have been approved. Discussions were held with the states during the negotiation period to agree bilateral schedules to ensure the parameters of agreed projects met the requirements outlined in the NPSAF.²¹

5.20 The Department of Education and Training also provided high-level information on the projects in question, broken down by state and territory, as shown in Table 5.1.

Table 5.1 – Projects approved under the NPSAF

State	Project title	Commonwealth contribution in 2018–19
NSW	NSW Smart and Skilled Apprenticeship and Traineeship and Complementary Training programs	\$93.8 million
WA	Jobs and Skills WA	\$18.4 million
SA	Skilling South Australia Initiative	\$20.3 million
TAS	Building Tasmania’s Skills	\$6.1 million
ACT	Skilling Australia’s Capital Region	\$4.9 million
NT	Project 1: Territory Workforce Program	\$2.65 million
	Project 2: NT Pre-employment Training Program	\$0.25 million

Stakeholder views on the Skilling Australians Fund levy

5.21 Views on the SAF levy varied among submitters and witnesses. Key issues brought to the attention of the committee included: the quantum and timing of the SAF levy payment; and the availability of SAF levy refunds.

The quantum and timing of the SAF levy payment

5.22 The quantum of the SAF levy was identified as a major concern for business, with some submitters arguing that it is excessive and only exacerbated by the upfront nature of the payment. This, the Australian Chamber of Commerce and Industry (ACCI) stated, only adds to the already considerable burden placed on small

20 Department of Education, Answers to questions on notice, 6 March 2019 (received 15 March 2019), p. 1.

21 Department of Education, Answers to question on notice, 6 March 2019 (received 15 March 2019), p. 1.

business. ACCI called for the levy to be halved to \$600 and \$900 per year for each sponsored temporary migrant for small and large business respectively.²²

5.23 Business SA described the SAF levy as 'hefty', and submitted that this cost was contributing to making it financially unviable for businesses to hire short-term workers when they are urgently needed.²³

5.24 This view was echoed by Restaurant and Catering Australia (R&CA), which described the levy as a 'significant frustration'²⁴ for business owners:

The cost impost, as well as the upfront nature of the SAF levy, have significantly disincentivised businesses' from attempting to hire foreign workers on skilled visas. In order to resolve this issue, R&CA believes that the quantum of the Skilling Australians fund levy should be reduced by 50 per cent to reduce the cost burden for businesses in sponsoring a skilled visa applicant.²⁵

5.25 Like ACCI, R&CA did not support the requirement for SAF contributions to be made upfront, instead calling for the introduction of payment options:

As is the case with many small businesses across a number of different sectors, cash flow is a significant issue and the upfront nature of the SAF levy is creates a cost burden that inhibits participation.²⁶

5.26 While R&CA called for the levy to be halved, the organisation would nonetheless like to see existing funding for the SAF maintained at its current level through increased government contributions:

R&CA believes that it is necessary for the Commonwealth Government to make a stated commitment to maintain funding at current levels for the Skilling Australians Fund regardless of the level of money generated from the SAF levy.²⁷

5.27 Other submitters saw distinct benefits to the cost of the levy, however. The Migration Council of Australia submitted that ensuring employers pay more to hire a foreign worker has a protective effect for Australian job seekers:

The contribution not only funds national training initiatives for Australians in areas of need, it also serves as an assurance that employers are willing to pay extra to hire a foreign worker. This is an important part of ensuring the programme achieves its objective of also protecting Australian job seekers.²⁸

22 ACCI, *Submission 12*, p. 14. See also: Business SA, *Submission 16*, p. 8.

23 Business SA, *Submission 16*, p. 16.

24 Restaurant and Catering Australia, *Submission 32*, [p. 19].

25 Restaurant and Catering Australia, *Submission 32*, [p. 18].

26 Restaurant and Catering Australia, *Submission 32*, [p. 19].

27 Restaurant and Catering Australia, *Submission 32*, [p. 19].

28 Migration Council of Australia, *Submission 7*, p. 6.

5.28 The committee explored issues around the cost of the SAF levy with witnesses from the Department of Home Affairs. The levy, the committee heard, was designed to find a balance between imposing a cost on bringing in workers from overseas and enabling business to meet skills needs:

Some of the reforms have put a price into the marketplace, if you like, around the SAF levy. So if an employer brings in a worker on a TSS visa, they now make a contribution to the Skilling Australia Fund. That puts an additional price into the labour market. It sends a signal into the short-term labour market to say: if you have a genuine need to attract skills and you've done all the right things—you've done the labour market testing; you are going for an occupation that is identified as one of the areas we have a shortage in—then you will have to pay these costs to bring in the worker. It is a balance. It is not so onerous that it makes it impossible for business to get those needs met to grow the business but it is not free either, so it is striking a balance.²⁹

5.29 The Department of Home Affairs also commented on the timing of the SAF levy payment, explaining the rationale for collecting the levy at the time the sponsor lodges a nomination as follows:

Payment of the Skilling Australians Fund levy at the time of lodgement of a nomination seeks to minimise the administrative cost to sponsors and the Department of Home Affairs (the Department), by removing the need to go back to the sponsor for collection of any payable fees during the assessment process.³⁰

Levy refunds and exemptions

5.30 Refunds of the SAF levy are only available in limited circumstances. Examples include where:

- the visa application is refused on health or character grounds;
- the visa holder fails to commence employment in their nominated position;
- (for applications lodged after 17 November 2018) the TSS visa holder ceases within the first 12 months of employment in their nominated role (if the visa was approved for a period of 24 months or more); or
- the nomination application is withdrawn from processing in certain circumstances.³¹

5.31 The Law Council of Australia submitted that nomination application refusal rates have increased, however the levy is not refunded if nomination applications are

29 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, p. 42.

30 Department of Home Affairs, Answers to questions on notice, 8 March 2019 (received 25 March 2019), p. 6.

31 Law Council of Australia, *Submission 36*, p. 6.

refused.³² This is, in the Law Council's view, unreasonable considering that the employer receives no benefit from the employee in these circumstances:

The SAF levy was intended to be a *quid pro quo* in exchange for being permitted to sponsor overseas workers. For employers whose nomination applications are refused, the Law Council submits that it is unreasonable to retain the SAF levy from an employer as they fail to derive any benefit from the TSS program.³³

5.32 Industry representatives such as the Australian Chamber of Commerce and Industry (ACCI) agreed, recommending that refunds should be possible in all cases where an application has not been successful.³⁴

5.33 It is currently unclear what quantum of funds has been raised through SAF levy payments where the visa nomination was rejected. When questioned on what percentage of funds raised by the SAF levy has been collected in such cases, the Department of Home Affairs stated that it does not sufficiently disaggregate data about the payments to be able to answer this question:

The Department of Home Affairs Financial Management Information System...reports on aggregate revenue collected. It does not capture or report this revenue disaggregated by nominations and/or visa applications that have been rejected. A significant investment in resources would be required to build this capability[.]³⁵

Exemptions for essential service industries

5.34 The importance of public service industries such as hospitals and education institutions providing an appropriate level of service to all Australians was also brought to the committee's attention in the context of skills shortages and the SAF levy payment. The Migration Council of Australia suggested that industries providing essential public services could be made exempt from the SAF levy in order to ensure they can fill shortages more readily.³⁶

Effect of the SAF levy on employers' training activities

5.35 A number of stakeholders cited concerns around the impact of the SAF levy on employers who already make a significant contribution to training staff. In the view of one specialist management consultancy, this amounts to paying for training twice and creates a distinct disadvantage for some employers:

This 'double whammy' has created a disincentive for employers to train and engage apprentices as they will be required to pay again for each overseas

32 Law Council of Australia, *Submission 36*, p. 6.

33 Law Council of Australia, *Submission 36*, p. 6.

34 Australian Chamber of Commerce and Industry (ACCI), *Submission 12*, p. 15. See also: Australian Pork Limited, *Submission 43*, p. 19; Fragomen, *Submission 50*, p. 8.

35 Department of Home Affairs, Answers to questions on notice, 8 March 2019 (received 25 March 2019), p. 5.

36 Migration Council of Australia, *Submission 7*, p. 6.

skilled worker via a training levy under the SAF, anyway. The training levy under the SAF also puts these employers at a financial disadvantage compared to those employers who do not train, but are only required to pay the training levy.³⁷

5.36 The Law Council of Australia suggested that this could be mitigated by modifying the SAF for businesses already contributing significantly to the training of local employees. In effect, this would enable sponsors to offset their SAF levy liability by demonstrating and claiming actual expenditure on employee training.³⁸

5.37 The ACCI's submission also supported a mechanism that allows employers showing demonstrated training expenditure to be exempted from the SAF levy:

Under the previous training benchmarks, there was an option for employers to demonstrate that they invested in training by proving that they spent equivalent of 1% of payroll (benchmark) or more on training. We support this avenue of demonstrating a commitment to training and that in these circumstances an additional levy is not payable.³⁹

5.38 These views were echoed by Business SA, which described the levy as inflexible and argued that its real cost is borne by businesses which could previously demonstrate investment in training:

Under the previous system, businesses had to either put the equivalent of two per cent of their payroll into an Industry Training Fund, or demonstrate that they were spending the equivalent of one per cent of their payroll to train workers who were Australian citizens or permanent residents. All businesses spend money on training their staff; it is a necessary expense to ensure staff have the correct accreditations and knowledge to perform their role. Now, under the new system (which calculates fees based on turnover rather than payroll), those businesses would have to pay an upfront training levy of \$4,800 for a worker eligible for a four year subclass 482 visa, on top of the money they would already spend on training.⁴⁰

Ensuring that SAF funds contribute towards local skills needs

5.39 Investment in training is crucial to ensure that Australian skilled workers enter and remain in industries experiencing skills shortages.

5.40 During the inquiry, the committee considered how to ensure that funds from the SAF contribute towards the development of targeted local skills that address labour market shortages. In particular, the committee examined what safeguards are in place to ensure that projects approved under the Agreement contribute to the alleviation of genuine skills shortages, ultimately decreasing businesses' need to

37 Cross Cultural Communications and Management, *Submission 44*, p. 8. See also R&CA, *Submission 32*, [p. 19].

38 Law Council of Australia, *Submission 36*, p. 7.

39 ACCI, *Submission 12*, p. 14.

40 Business SA, *Submission 16*, p. 8.

employ overseas workers on temporary skilled visas. When questioned on this issue, the Department of Education and Training commented as follows:

The National Partnership on the Skilling Australians Fund (NPSAF) requires the Commonwealth Minister to consider the consistency of each project with the objectives and outcomes of the NPSAF when assessing project proposals, and the extent in which the project has delivered additional training in agreed priority areas, including occupations with a reliance on skilled migration pathways as per clause 29 of the NPSAF.⁴¹

5.41 The committee further explored with the department the broader question of what accountability mechanisms the Commonwealth requires to ensure that state and territory training initiatives are being implemented in a way that addresses skills shortages. Representatives of the department stated that it is difficult for the Commonwealth to maintain oversight of whether the states are being responsible in balancing the need to bring in a temporary migrant workforce, with the need to actually addressing their long-term skills needs through training initiatives.⁴²

Arguments that SAF funds should benefit industries proportionately

5.42 Some industry representatives submitted that the system for allocating SAF funding will not necessarily meet industry needs. As put by the Minerals Council of Australia (MCA):

Noting industry investment to training and education and commitment to apprenticeships and traineeships, along with the significance of industry to regional employment, the policy perspective and parameters of the levy imposed to raise revenue for the Skilling Australians Fund fails to achieve the demand-driven and industry-led imperative proposed.⁴³

5.43 The MCA added that, in its view, overseas workers are already seen as a last resort by the industry, and the contribution of temporary skilled visa holders to the minerals industry 'cannot be traded off to meet other governmental objectives'.⁴⁴ This is especially the case, the MCA submitted, when there is no guarantee that funds raised through the SAF system will be invested back into the relevant industries, such as mining.⁴⁵ To address this, the MCA suggested:

With the challenges of practical application and allocation of the fund, in particular the perceived cross-subsidisation of other industry sectors, the MCA suggests funds be allocated proportionally to each industry's use of

41 Department of Education, Answers to questions on notice, 6 March 2019 (received 15 March 2019), p. 2.

42 Ms Fiona Lynch-Magor, Acting Group Manager, Skills Market Group, Department of Education and Training, *Proof Committee Hansard*, 6 March 2019, p. 45.

43 Minerals Council of Australia, *Submission 3*, pp. 10–11.

44 Minerals Council of Australia, *Submission 3*, p. 11.

45 Minerals Council of Australia, *Submission 3*, p. 11.

the temporary skilled migration visas to support skilling and upskilling for that and ancillary industries.⁴⁶

5.44 The MCA concluded that although training outputs generated through the SAF have not demonstrated a direct effect on skills availability, the industry's investment in training would continue unabated.⁴⁷

Other proposals for ensuring that training outcomes are achieved

5.45 The committee heard other suggestions about how to ensure that employers utilising temporary skilled visa workers are contributing to local training outcomes.

5.46 This issue was explored in some depth by the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU) in its submission. The union submitted that the skilled visa scheme is in fact being used by some employers as an alternative to training and educating apprentices:

Abella (2006) argued that employers will always have a need for foreign workers if they can lower their costs by doing so. If employers can meet their labour needs while reducing their costs (including training costs) by employing temporary overseas workers their incentive to invest in an apprentice is reduced.⁴⁸

5.47 Other research cited by the CFMEU similarly found that:

...increasing the ease by which temporary overseas workers can be hired creates an alternative supply of trade labour which incentivises employers to engage temporary visa holders rather than invest in educating locals.⁴⁹

5.48 These findings, the union submitted, can also be seen in research conducted by the Productivity Commission:

Even the Productivity Commission (2015) found that the supply of qualified workers, including migrant workers, affects employers' incentives to invest in training an apprentice or trainee, especially if employers can quickly and cheaply fill vacancies from overseas workers.⁵⁰

5.49 The CFMEU stated that employers can only be incentivised to fill skills shortages by focusing more on training Australians—relying on workers from overseas as a last resort—in a limited number of ways:

In order for employers to train locals rather than engaging overseas labour, it needs to be more profitable to invest in education, which is rarely the case. Failing this, the Government needs to place restrictions on the use of temporary overseas workers, or at a minimum impose additional

46 Minerals Council of Australia, *Submission 3*, p. 11.

47 Minerals Council of Australia, *Submission 3*, p. 11.

48 Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, [p. 6].

49 Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, [p. 6].

50 Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, [p. 6].

requirements on employers utilising overseas workers to invest in education locally.⁵¹

5.50 The SAF levy, the union concluded, is an insufficient incentive for employers to invest in training Australian workers.⁵² Accordingly, the CFMEU recommended:

Employers who have a genuine need to sponsor overseas workers must be required to educate local workers to reduce their need to rely on temporary overseas workers in the future. Employers should be required to train workers and employ apprentices in the same occupations where they are using skilled overseas workers.⁵³

5.51 The Australian Nursing and Midwifery Federation suggested similarly that the Commonwealth could implement a policy that if an employer is going to access a temporary skilled visa worker, they must also take on a graduate.⁵⁴ Representatives from the Australian Meat Industry Employees Union agreed that if businesses employ an overseas temporary worker, they should also be required to employ a local apprentice or trainee.⁵⁵

5.52 Ms Adrienne Rourke, General Manager of the Resources Industry Network, told the committee at its Mackay public hearing that this kind of requirement could be used in place of the SAF levy, to ensure that local benefits are being realised:

Another point that was raised by quite a few members [of the Resources Industry Network] is that they see the skills training levy as being a revenue-raising exercise. From our economic development and my perspective, I'm still to see how that's going to work to the benefit of our region and what actual funds are going to come back specifically to us. Our members are paying money towards that if they're bringing in people through that visa system. We're obviously always parochial about this, but we'd like to see that direct money coming back on the ground to help businesses here with apprenticeships. A solution that was put forward in this process was: would it not make more sense, when you bring in one overseas skilled worker, to have to match them with an apprentice within the business? In that way, the business itself is responsible for the apprenticeship.⁵⁶

51 Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, [p. 6].

52 Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, [p. 7].

53 *Submission 38*, [p. 7].

54 Ms Annie Butler, Federal Secretary, Australian Nursing and Midwifery Federation, *Proof Committee Hansard*, 7 March 2019, p. 2.

55 Mr Ian McLauchlan, Assistant Secretary, Queensland Branch, Australasian Meat Industry Employees' Union, and Mr Bob Sutherland, Shed President, Thomas Borthwick & Sons, Australasian Meat Industry Employees' Union, *Proof Committee Hansard*, 5 March 2019, p. 22.

56 *Proof Committee Hansard*, 5 March 2019, p. 2.

5.53 The Australian Workers' Union argued more broadly that the current trend in TAFEs closing and the number of apprenticeships dropping to an all-time low should be actively reversed in order to shift focus back onto increasing local skills.⁵⁷

Investing in programs to improve employment outcomes of other migrant cohorts

5.54 The committee heard evidence that it would be beneficial for the Commonwealth to proactively support and promote industry programs and partnerships that assist other cohorts of visa holders in Australia with work rights, for example permanent humanitarian entrants, to achieve better employment outcomes. While it appeared that some individual initiatives were working well in this space, there was support by industry for greater coordination and resourcing at a national level.⁵⁸

Committee view

5.55 The committee notes that stakeholders have raised concerns relating to the SAF levy, particularly its payment structure and impact on businesses' other training activities. The committee recognises that the quantum of the SAF levy must be viewed in the context of competing interests, namely, the need to allow business the flexibility required to fill skills shortages quickly when necessary, and the need to ensure that their ability to do so does not indirectly act as a disincentive for adequate investment in training.

5.56 The committee further notes that the SAF levy was only introduced in August 2018. The committee therefore considers that the government should complete an evaluation of the effectiveness of the SAF levy parameters by the end of 2019, when enough time will have passed for the levy's initial impact on skilled visa uptake and industry concerns to be more accurately ascertained.

5.57 The committee notes that the government's National Partnership on the Skilling Australians Fund (NPSAF) is primarily reliant on levies collected under the SAF and that the budget for the NPSAF is not guaranteed. The government has stated that it will not top up any shortfall between SAF revenue and the NPSAF budget. The committee also notes that in the first six months of the levy, \$90.3 million was raised, and that the government has budgeted for \$243 million in levy revenue in the relevant year of the NPSAF. Based on those figures, \$150 million would need to be collected in five months to meet that budget. As it stands, the revenue collected by the SAF levy is falling significantly short of the government's original projections.

5.58 Stakeholders in a previous Senate committee inquiry into the Migration Amendment (Skilling Australians Fund) Bill 2017 and the Migration (Skilling Australians Fund) Charges Bill 2017 were highly critical of the design of the NPSAF

57 Mr Zachary Duncalfe, National Legal Officer, Australian Workers' Union, *Proof Committee Hansard*, 6 March 2019, p. 6.

58 See, for example: Ms Carol Giuseppi, Chief Executive Officer, Tourism Accommodation Australia, and Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Australia, *Proof Committee Hansard*, 6 March 2019, pp. 31-32.

and its heavy reliance on an insecure and fluctuating revenue source. Many submitters, including the Australian Chamber of Commerce and Industry, the Business Council of Australia and the Australian Council of Trade Unions (ACTU), called for the NPSAF to have secure and sufficient funding guaranteed.

5.59 Perhaps unsurprisingly, the government has failed to secure agreement regarding the NPSAF with either the Victorian or the Queensland governments and both governments have refused to sign on to the NPSAF due to its flaws. Those two states account for 45 percent of current apprentice and trainee activity, leaving a large hole in the government's national funding for vocational education, apprenticeships and skills development.

5.60 The committee notes that education funding expert Professor Peter Noonan, professorial fellow at the Mitchell Institute for Health and Education Policy, has independently observed the contradictions inherent in the Skilling Australians Fund design, and predicted that the Fund design would pose a barrier to settling agreements with the state and territory governments:

Revenue for the fund will be highest when skilled migration is highest, and lowest when employment of locally skilled workers is highest. That means the revenue stream for the fund will be counter-cyclical to the purpose for which it was established: [to] increase the proportion of locally trained workers and to lessen reliance on temporary skilled migration visas. Unless the Commonwealth guarantees funding levels and continues to make up any shortfall in the revenue, it will be difficult, if not impossible, for the Commonwealth to enter meaningful, bilateral agreements with the states through the fund.⁵⁹

5.61 The committee is gravely concerned that the design and the revenue raised by the government's visa scheme will not be sufficient to meet the Skilling Australians Fund budgeted expenditure or the emerging skill acquisition demands of a modern economy.

Recommendation 11

5.62 The committee recommends that the Australian Government guarantee adequate, additional funding if the income from Skilling Australians Fund levies does not meet the needs of industry and the vocational education sector to provide high-quality training to apprentices and trainees.

5.63 The committee notes that it is the strong view of stakeholders and experts that there are serious flaws in the vocational education system that are limiting our national productive capacity.

59 Professor Peter Noonan, *Opinion: The future of funding VET and higher education: a cohesive approach is needed*, 25 May 2017, p. 2, <https://www.campusreview.com.au/2017/05/the-future-of-funding-vet-and-higher-education-a-cohesive-approach-is-needed/> (accessed 30 March 2019).

5.64 The Productivity Commission's *Shifting the Dial: Five Year Productivity Review* reported that 'the VET system is a mess' and that:

Despite its important but complex role, the VET sector has been beset with a raft of problems leading to a sector characterised by rapidly rising student debt, high student non-completion rates, poor labour market outcomes for some students, unscrupulous and fraudulent behaviour on the part of some training providers. These outcomes report a range of problems in the VET sector.⁶⁰

5.65 In contrast to assertions by the current Minister for Skills and Vocational Education, Senator the Hon. Michaelia Cash, and her predecessor the Hon Karen Andrews MP, that the vocational education system is world class and superior to the German system, a 2017 Organisation for Economic Cooperation and Development (OECD) report on skills and global value chains shows Australia is poorly positioned in terms of skills characteristics to capitalise on opportunities in global value chains, and would struggle to meet the requirements of the technologically advanced sectors.⁶¹

5.66 The Business Council of Australia (BCA) is calling for 'systemic and transformational change' across education, but in higher education and vocational education and training (VET) in particular.⁶² The ACTU maintains that 'a significant wholesale reform of the VET sector is necessary to ensure the VET system can reliably deliver quality training for the jobs of the future'.⁶³

5.67 The government has been incapable of properly assessing and developing the policies and systems that would reverse the decline and effectively deal with the concerns raised by stakeholders. Instead the government has introduced a flawed National Partnership Agreement, cut funding to vocational education by more than \$3 billion since taking office and presided over a decline of 140,000 apprentices and trainees since taking office.

5.68 The committee believes that a comprehensive review of the sector is required to ensure that Australians are able to equitably access effective, relevant and high quality vocational education and training.

60 Productivity Commission, *Shifting the Dial: 5 Year Productivity Review, Report No. 84*, 3 August 2017, pp. 86, 93, www.pc.gov.au/inquiries/completed/productivity-review/report/productivity-review.pdf (accessed 30 March 2019).

61 Organisation for Economic Cooperation and Development, *Skills Outlook 2017—Skills and Global Value Chains*, p. 108, www.oecd.org/education/oecd-skills-outlook-2017-9789264273351-en.htm (accessed 30 March 2019).

62 Business Council of Australia, *Future-proof: Protecting Australians through Education and Skills*, October 2017, p. 5, <http://www.bca.com.au/publications/future-proof-protecting-australians-through-education-and-skills> (accessed 30 March 2019).

63 Australian Council of Trade Unions, *Submission 12*, p. 12, Senate Education and Employment Legislation Committee inquiry into The Migration Amendment (Skilling Australians Fund) Bill 2017 and the Migration (Skilling Australians Fund) Charges Bill 2017.

5.69 The committee notes that after almost six years in government, the Coalition has appointed a former New Zealand National Party Minister to conduct a perfunctory and truncated review of VET system within an unacceptably short timeframe.⁶⁴ This review will have no prospect of dealing with the complex problems plaguing the system.

5.70 To improve immediate local training outcomes, the committee considers that overall funding for the TAFE and VET sectors must be increased, as this is the most expedient and effective way of addressing gaps in local training in the specific sectors experiencing skills shortages. Labor has already announced that at least two thirds of government funding will be guaranteed to TAFE.

5.71 Given that under the current government the SAF on its own is failing to provide sufficient funding for the workforce development effort, the committee believes that the government should provide guaranteed additional Commonwealth funding to immediately improve outcomes for vocational education and skills development.

Recommendation 12

5.72 The committee recommends that the Australian Government commit to increasing overall funding levels for TAFE and vocational education and support a comprehensive and thorough commission of inquiry into Australia's post-secondary education system.

5.73 The committee is also of the view that more can be done to encourage student uptake of courses relating to industries experiencing skills shortages, and that the Australian Government has a role to play in assisting in this area.

Recommendation 13

5.74 The committee recommends that the Australian Government consider ways in which to encourage better information sharing between industry, vocational education and training providers, and potential students in order to encourage student uptake and local employment in industries experiencing skills shortages.

5.75 In order to fulfil the stated purpose of the temporary skilled visa system, visa positions should be restricted to jobs where there is a genuine skills shortage in a particular area. Concurrently, clear and targeted mechanisms are needed to train local workers in these areas to address these shortages.

5.76 There are not sufficient accountability arrangements in place to ensure that local workers are trained up in areas of skills shortage. The committee heard that it is difficult for the Commonwealth to maintain oversight of whether the states and territories are being responsible in balancing the need to bring in a temporary migrant workforce, with the need to actually address their long-term skills needs through training initiatives.

64 Department of Education and Training, *VET Review*, <https://www.education.gov.au/vet-review> (accessed 29 March 2019).

5.77 As such, the committee considers that there is a clear need to increase access to information on how states and territories prioritise training initiatives. This should include better communication and transparency between the states, vocational education providers, and the Commonwealth. The proposed independent authority in skilled migration matters outlined in Chapter 3 (see Recommendation 7 in that chapter) would have a role to play in ensuring that regional skilled migration needs are being matched with appropriate training initiatives.

5.78 The issue of accountability for the training of workers in areas of skills shortages is especially pertinent now that the National Partnership Agreement on the Skilling Australians Fund has entered the implementation phase. There must be public accountability about how funds delivered through the Agreement are genuinely achieving the outcome of addressing skills shortages in the Australian labour market.

Recommendation 14

5.79 The committee recommends that the Department of Education and Training be required to present a report to Parliament bi-annually on the progress of the National Partnership Agreement on the Skilling Australians Fund and the extent to which it is achieving the outcome of addressing skills shortages in the Australian labour market.

5.80 The committee notes employer concerns over declines in training taking place in enterprises. The committee also notes the absence of any national data source that describes the investment that employers make in vocational education and training at the workplace level.

Recommendation 15

5.81 The committee recommends that the Australian Government work with the Australian Bureau of Statistics and the National Centre for Vocational Education and Research to investigate and establish a research instrument to enable analysis of employer investment in the development and training of their workforces.

Chapter 6

Temporary skilled worker compliance and enforcement arrangements

Introduction

6.1 This chapter outlines the evidence received by the committee in relation to the extent and prevalence of the exploitation of workers on temporary skilled visas, as well as information on the awareness of workers on their workplace rights. Importantly, the committee was also provided with a number of case studies of worker exploitation.

6.2 The committee considered the current initiatives for awareness raising for both workers and employers, and the skilled visa compliance and enforcement frameworks, as well as evidence on the inadequacies of the current enforcement arrangements.

6.3 During the latter part of the committee's inquiry, the release of the Report of the Migrant Workers' Taskforce provided a comprehensive assessment on the current enforcement arrangements and considered recommendations on areas to be addressed in future.

The extent of skilled visa worker exploitation and awareness of workplace rights

6.4 The committee heard evidence on the prevalence of the exploitation of workers on temporary skilled visas, including the difficulties on obtaining accurate information on the extent of this issue.

6.5 The Construction, Forestry, Maritime, Mining and Energy Union described the exploitation and underpayment of temporary working visa holders as 'not a series of isolated incidents', but 'endemic'.¹ Mr Mathew Kunkel, Director, Migrant Workers Centre, indicated that barriers to temporary migrant workers reporting issues means that there will always likely be underreporting of incidence of exploitation in these areas.² The Victorian Trades Hall Council provided context for the reasons that workers rarely come forward to the Fair Work Ombudsman or other government authorities:

[Results from the National Temporary Migrant Worker Survey show that less] than one quarter of migrant workers on temporary work visas said they would speak out for fear of losing their visa. This is due to the complete dependence of migrant workers on their employer.

The structure of visas is such that, if a migrant work on a temporary work visa loses their employer's good grace, they only have 60 days to find

1 *Submission 38*, [p. 14].

2 *Proof Committee Hansard*, 7 March 2019, p. 40.

another job, or they must leave the country or be in breach of their visa. This creates a huge power imbalance where migrant workers are tied to their employers, no matter their wages or conditions. These workers have no capacity to exercise power.³

6.6 The Victorian Trades Hall Council also noted:

Even more concerning, 5% of migrant temporary workers indicated they paid some form of 'deposit' for their job in Australia, and 4% were required pay cash back out of their wages to their employer.⁴

6.7 Mr Kunkel explained the implications of this in terms of workers seeking redress:

The temporary nature is one aspect of why workers are having problems in the workplace. We would say it's not only the temporary nature of the visas that causes the problem but the way in which workers are, in effect, bonded to employers such that, when there are problems in the workplace, workers are faced with a difficult choice of going up against the person that is effectively the only thing keeping them in the country. So, it's an additional barrier to seeking redress on these issues.⁵

6.8 Mr Kunkel, while agreeing that the number of temporary skilled visas may be declining, contended that this did not necessarily mean that worker exploitation was less likely:

I think the issue is that it's not necessarily the number of people on these temporary skill visas that's creating the exploitation opportunities; it's the insecure nature of the workers' position in the country that creates it. In the transition from 457 visas to the new temporary skills system, the numbers for the visa class might have changed, but the scams remain the same. The other thing that we've seen is, in some cases, student visas becoming a de facto work visa because of the holes in our wider migration system.⁶

6.9 In terms of the extent of underpayment of migrant workers, Unions NSW cited the results of an audit it had performed on job advertisements which estimated that migrant workers in the hospitality industry were underpaid on average \$4,825 a year. Unions NSW noted that researchers have predicted migrant workers have been underpaid in excess of \$1 billion.⁷

6.10 Commenting on exploitation experienced by international students working in Australia, the National Tertiary Education Union (NTEU) stated:

3 *Submission 22*, [p. 3]. See also Law Council of Australia, *Submission 36*, pp. 14–15.

4 *Submission 22*, [p. 4] (citing findings from the 2017 National Temporary Migrant Worker Survey).

5 *Proof Committee Hansard*, 7 March 2019, pp. 39–40.

6 *Proof Committee Hansard*, 7 March 2019, p. 40.

7 *Submission 45*, Attachment 1, p. 10.

In addition to underpayment, International student workers have also reported bullying and intimidation by their employer to the Fair Work Ombudsman, with cases of employers threatening to deport or "blacklist" the student workers for future work if they complained.⁸

6.11 The ACTU reported that sham contracting practices extend to temporary visa holders, particularly in the construction and cleaning sectors. The ACTU described sham contracting as 'the practice of disguising an employment relationship as one of principal and independent contractor'.⁹ The motivation behind sham contracting is to enable the employer to avoid paying leave entitlements and superannuation, and is often achieved by requiring the worker to have an Australian Business Number (ABN). The ACTU explained that:

...manipulation of ABNs facilitates and legitimises sham contracting, wage theft, and phoenixing by attempting to put the ABN holder outside of the reach of the PAYG system and the ambit of industrial legislation.¹⁰

6.12 The Report of the Migrant Workers' Taskforce acknowledged the 'ongoing issues around sham contracting' but did not further investigate the issues because of work currently being done by government agencies. The Taskforce noted that:

The ATO and the Department of Home Affairs are implementing strong integrity measures for visa holders obtaining ABNs to address cases of misuse of ABNs and sham contracting. This includes providing more information to prospective ABN holders and employers, better identifying visa holders when they are applying for an ABN, and taking action with employers who incorrectly treat their employees as contractors by making them wrongly apply for an ABN.¹¹

6.13 The ACTU argued, however, that workers on temporary skilled visas have no need for ABNs at all, because their reason for being in Australia is employment and not conducting a business (which would require a different visa). The ACTU concluded that:

...ABNs are not and should not be available to temporary visa workers. There should be a screening process put in place by the ATO to ensure that these categories of workers are not issued with ABNs and so are not subject to the exploitative practice of sham contracting.¹²

Awareness of Australian workplace laws and protections

6.14 There was evidence provided to the committee on the extent to which migrant workers were aware of Australian workplace laws and protections. The Law Council of Australia referred to some of the findings of its Justice Project, a national,

8 *Submission 4*, [p. 7].

9 Australian Council of Trade Unions, *Submission 11*, p. 24.

10 Australian Council of Trade Unions, *Submission 11*, p. 24.

11 *Report of the Migrant Workers' Taskforce*, March 2019, p. 74.

12 Australian Council of Trade Unions, *Submission 11*, p. 24.

comprehensive review into the state of access to justice in Australia for people experiencing significant disadvantage, which reported in August 2018 that:

...temporary work visa holders are less likely to know of their legal rights and,...where holders of this visa type are aware of their legal rights, they are less likely to enforce them. The Justice Project noted that temporary work visa holders may have a limited understanding of Australian laws and society, and therefore are unable to identify that they have a legal need. The Justice Project further cited findings that some employers have exploited the lack of knowledge of the Australian legal system by discouraging employees from taking their grievances further.

Additionally, [Temporary Skill Shortage (TSS)] visa holders often do not speak English as a first language, which maybe a barrier to accessing assistance to enforce their rights. It was reported in the Justice Project that low levels of English language proficiency impede access to legal information and support services.¹³

6.15 The NTEU indicated that students on visas with work rights are aware of their work rights, but other factors, including work insecurity, financial pressures and the need to keep the employer happy lead to visa breaches. The NTEU also noted that only a small number of the workers had reported the exploitation they experienced.¹⁴

Case studies

6.16 Submitters and witnesses provided a number of case studies that demonstrated non-compliance with visa conditions and exploitation of workers. In many instances, both visa non-compliance and worker exploitation were occurring concurrently.

6.17 The Australian Council of Trade Unions (ACTU) noted that despite the requirement for the subclass 400 visa that the work be 'highly specialised', the visa is being used to fill semi-skilled positions for which qualified Australian applicants are available. The ACTU provided the following examples:

Chinese labourers flown in to dismantle the former Mitsubishi car plant in the Adelaide Hills paid \$1.90 an hour, Filipino metal fabricators paid \$4.90 an hour to install animal feed mills in NSW, and nine Indonesian timber workers flown into Tasmania and promised bonuses when they returned home.¹⁵

6.18 The ACTU's submission claimed that in cases such as these, subclass '400 visas are sometimes approved within 24 hours with seemingly little oversight'.¹⁶

13 *Submission 36*, p. 15.

14 *Submission 4*, [p. 7].

15 *Submission 11*, p. 23. See also Mr Trevor Gauld, National Policy Officer, Electrical Trades Union, *Proof Committee Hansard*, 5 March 2019, pp. 27–28.

16 *Submission 11*, p. 23. See also Mr Trevor Gauld, National Policy Officer, Electrical Trades Union, *Proof Committee Hansard*, 5 March 2019, pp. 27–28.

6.19 The Electrical Trades Union's (ETU) submission referred to the case of four people, two from the Philippines and two from Thailand, brought into Australia to work on a solar farm construction project outside of Townsville on subclass 400 visa arrangements. Those four workers were being paid \$40 per day plus and additional \$42 for food and accommodation.¹⁷ The ETU stated that the workers were brought in on skilled specialist visas, however, their qualifications and licences were never assessed:

Schneider Electric had brought over [the four workers] workers on subclass 400 "Specialist" visas on the basis of the unavailability of locally skilled workers despite Townsville having an unemployment rate of 8.77% as at the 2018 June quarter and the ETU being aware of numerous unemployed members in the region who had been refused employment on the project despite applying.

The work which these 4 individuals were to perform, as stated to Immigration, includes licensed electrical work but their skills and qualifications were never assessed, the workers were not licenced to perform it... In fact Schneider's lawyers were adamant that, as these 4 are employed by a foreign entity, Schneider Electric Australia:

- had done nothing illegal; and
- was under no obligation to pay.¹⁸

6.20 The ETU noted that Schneider Electric had settled the matter, increasing the workers' wages and paying backpay. However, as these payments went to an offshore bank account there was no way to confirm: if the payments were received by the workers; who owned the bank account the payments were directed to; and whether the workers were, ultimately, able to keep the money.¹⁹

6.21 A further case was referred to by the Victorian Trades Hall Council, in which a worker who was working in hospitality in Melbourne had been charged \$50,000 for a permanent visa:

In a flagrant disregard for this worker's wages and the visa process, he was asked [to] transfer half of the deposit to his employer's friend's account: a friend who had no relationship to the restaurant or work. This worker is too afraid to report his employer because he does not want to interfere with any change of gaining permanent residency.²⁰

Compliance measures and protections for workers, enforcement arrangements and sanctions frameworks

6.22 The joint submission by the Department of Home Affairs (Home Affairs), Department of Jobs and Small Business, and Department of Education and Training

17 *Submission 49*, pp. 13–14.

18 *Submission 49*, pp. 13–14.

19 *Submission 49*, p. 14.

20 *Submission 22*, pp. [4–5].

(Joint Departmental Submission) sets out the measures for compliance checking and protection for workers, enforcement arrangements and sanctions frameworks. The release of the Migrant Workers' Taskforce's final report in March 2019, although focussed on the experience of temporary migrants who derived work rights from international student and working holiday visas, provided the committee with some additional information on the adequacy of compliance, enforcement and sanction aspects of the temporary skilled visa system. Submissions and evidence to the committee also addressed these issues.

6.23 The Joint Departmental Submission advised:

All temporary visa holders with a work right, including those sponsored by Australian businesses on TSS and subclass 400 visas, are entitled to the same basic rights and protections as Australian and permanent residents under applicable workplace laws including work, health and safety, and workers compensation.²¹

6.24 The Joint Departmental Submission noted the Commonwealth agencies responsible for arrangements for the skilled visa system include the Fair Work Ombudsman, Home Affairs and the Australian Border Force. The Australian Border Force also works with other agencies, such as the Australian Federal Police, the Australian Criminal Intelligence Commission and the Australian Taxation Office to target individuals involved in the exploitation of vulnerable persons.²²

6.25 The aforementioned Migrant Workers Taskforce was established in 2016 'as part of the Australian Government's commitment to protect vulnerable workers'. It was asked to identify further proposals for improvements in law, law enforcement and investigation, and other practical measures to more quickly identify and rectify any cases of migrant worker exploitation.²³

Compliance initiatives and protections for workers

6.26 In terms of raising the awareness of overseas workers of workplace laws and informing employers of their obligations, Home Affairs has been working with the Fair Work Ombudsman on a range of communication approaches:

This includes high level messaging at key points in an overseas worker's journey, SMS nudge notifications providing messages about workplace rights and protections, reviewing communications across government for simplicity and consistency, messaging across government websites and products, and promoting messages in locations visited by overseas workers. A trial of 'push messaging' began with Working Holiday Maker visa holders (subclass 417 and 462) on 18 November 2018. Home Affairs

21 *Submission 40*, p. 22.

22 *Submission 40*, p. 22.

23 Department of Jobs and Small Business, *Migrant Workers Taskforce*, <https://www.jobs.gov.au/migrant-workers-taskforce> (accessed 21 March 2019).

communication activities and initiatives are due to be completed within the 2018–19 program year.²⁴

6.27 In addition, Home Affairs operates a Visa Entitlement Verification Online system (VEVO) which allows visa holders, employers, education providers and other registered organisations to check visa conditions, including work rights.²⁵

6.28 The Law Council of Australia referred to the information provided to visa holders upon being granted a TSS visa, and expressed the view the information pack provided to visa holders could be improved:

An information pack should be developed that outlines in plain English all necessary information under both immigration law and employment law about the visa that they hold, its conditions, as well as their rights and protections under the Migration Act and Fair Work Act, and how to access support.²⁶

6.29 One of the initial tasks at the commencement of the Migrant Workers' Taskforce was a stocktake of existing communications strategies being used by government departments and agencies to inform workers, including visa holders, of their work rights and obligations. In discussing these strategies, the Migrant Workers' Taskforce observed:

[I]t became clear that government agencies are investing a great deal in disseminating information about workplace laws and conditions... However, the stocktake also demonstrated that agencies often take a siloed approach to their communications work, and that there is an overall lack of a cohesive messaging and delivery strategies being used across government agencies. The stocktake further highlighted that Taskforce agencies could benefit from greater insight into how useful migrant workers found the formats and messages and whether they could be improved.²⁷

6.30 The Migrant Workers' Taskforce had commissioned the Department of Jobs and Small Business and the Fair Work Ombudsman to conduct research into the information needs of migrant workers in order to inform future whole-of-government communications strategies. The Report of the Migrant Workers' Taskforce summarised the key findings from that research:

- many migrants do not have a good knowledge of workplace rights in Australia;
- after arriving in Australia migrant workers are somewhat more receptive to workplace rights information;
- the timing of communications about workplace rights is important;

24 *Submission 40*, p. 23.

25 *Submission 40*, p. 22.

26 *Submission 36*, pp. 15–16.

27 *Report of the Migrant Workers' Taskforce*, March 2019, pp. 55–56.

- employers, family and friends, and educational institutions are important sources of information on workplace rights;
- migrant workers' misconceptions influence whether, and how, they engage with workplace rights information and government agencies;
- employers' knowledge of workplace rights also affect employees' access and knowledge;
- government communications materials, and efforts to disseminate them, can be improved.²⁸

6.31 The research also found that awareness of the VEVO app was low, and that feedback from those using the app was mixed, with 'some participants suggesting the app could be expanded to include more detailed information on workplace laws and conditions'.²⁹

'Anonymous Report' function

6.32 The Joint Departmental Submission also referred to the 'Anonymous Report' function, launched in 2016 and operated by the Fair Work Ombudsman, which enables members of the community—including workers, consumers, concerned citizens and businesses—to anonymously notify the ombudsman of potential non-compliance with workplace laws. The service has been promoted to migrant workers through a digital and traditional media campaign. Reporting can also be done 'in-language', as a means to encourage and support people from culturally and linguistically diverse backgrounds to report workplace issues.³⁰

6.33 As at 30 June 2018, the Fair Work Ombudsman had received 15 138 anonymous reports, 1 294 of which were in languages other than English. In 2017–18, hospitality was by far the most reported industry (37 per cent of all reports), followed by retail (13 per cent), and building and construction (five per cent).³¹

6.34 The Migrant Workers' Taskforce provided the following assessment of the 'Anonymous Report' Function:

Used in combination with other operational data and research, anonymous reports have helped the [Fair Work Ombudsman] to improve its targeting for compliance activities, allowing the agency to focus on a particular precinct, location, sector or type of conduct where there may be systemic problem. For example the [Fair Work Ombudsman] relied on intelligence from anonymous reports as part of a hospitality campaign that targeted specific food precincts in Melbourne, Sydney and Brisbane.³²

28 *Report of the Migrant Workers' Taskforce*, March 2019, pp. 56–59.

29 *Report of the Migrant Workers' Taskforce*, March 2019, p. 59.

30 *Submission 40*, p. 23.

31 *Report of the Migrant Workers' Taskforce*, March 2019, p. 53.

32 *Report of the Migrant Workers' Taskforce*, March 2019, p. 53.

Fair Work (Protecting Vulnerable Workers) Act 2017

6.35 The Joint Departmental Submission referred to the *Fair Work (Protecting Vulnerable Workers) Act 2017* (Protecting Vulnerable Workers Act) which commenced in October 2017. The submission stated that the Protecting Vulnerable Workers Act strengthens protections for vulnerable workers by:

- Increasing penalties for breaches of record-keeping and pay slip obligations and introduced a new category of 'serious contraventions' (with penalties 10 times higher) for deliberate and systematic breaches. A 'serious contravention' happens when the:
 - Person or business knew they were contravening an obligation under workplace law.
 - Contravention was part of a systematic pattern of conduct affecting one or more people.
- Providing stronger provisions to make franchisors and holding companies responsible for breaches of the *Fair Work Act 2009* (Fair Work Act) in certain circumstances.
- Expressly prohibiting employers from unreasonably requiring employees to make payments (i.e. 'cash-back' arrangements).
- Strengthening the evidence gathering powers of the [Fair Work Ombudsman].³³

6.36 The Report of the Migrant Workers' Taskforce provided an overview on the implementation of the Protecting Vulnerable Workers Act, including activities undertaken by the Fair Work Ombudsman to support employer compliance, such as:

- publishing information and resources on [the Fair Work Ombudsman's] website aimed at assisting workplace participants to understand and comply with their obligations
- launching a new Record Keeping and Pay Slip Online Learning Course to educate employers and make record-keeping practical and easy
- hosting a roundtable with key franchise sector stakeholders to discuss how the new laws affect franchisors, and publishing new information on the [the Fair Work Ombudsman's] website
- considering how, and to whom, [the Fair Work Ombudsman] will apply the new franchising and serious contravention provisions.³⁴

6.37 The Fair Work Ombudsman has also commenced its first legal action involving new provisions that prohibit a person from providing false or misleading information or documents to a Fair Work Inspector. Further, the Fair Work Ombudsman has also commenced the first legal action using new reverse onus of proof provisions, which

33 *Submission 40*, p. 22.

34 *Report of the Migrant Workers' Taskforce*, March 2019, p. 63.

require employers to disprove underpayment allegations where there is inadequate time and wages records or a failure to issue payslips.³⁵

6.38 The Report of the Migrant Workers' Taskforce noted, given that the Protection of Vulnerable Persons Act only came into operation in late 2017, that it would take some time to see the full impact of the amendments.³⁶

Enforcement arrangements and sanctions frameworks

6.39 The Joint Departmental Submission outlined that Home Affairs and the Australian Border Force have sanction frameworks for employers/sponsors who do not comply with legislative requirements. The sanctions framework has graduated tiers, and current sanctions include warnings, infringement notices, barring or cancelling a sponsor from engaging in a program, civil penalties and referrals to the Commonwealth Director of Public Prosecution for criminal prosecution.³⁷

6.40 Monitoring efforts to ensure that sponsors comply with their obligations include: writing to sponsors to request information; site visits, with or without notice; and information exchanges between Commonwealth, state and territory government agencies.³⁸

6.41 The Report of the Migrant Workers' Taskforce also noted the range of enforcement tools available to the Fair Work Ombudsman in cases of deliberate or repeated exploitation of highly vulnerable workers by operators, including: compliance notices; enforceable undertakings; infringement notices; and court action.

Joint agency initiatives and data sharing

6.42 Home Affairs and the Fair Work Ombudsman have also engaged in a joint agency initiative, through the Australian Border Force Taskforce Cadena, since 2015, to cooperate on issues related to illegal work, visa fraud and exploitation of overseas workers. The Joint Departmental Submission stated that the Taskforce 'has identified a higher level of criminality than was originally understood' when the Taskforce was first established, including criminal syndicates involved in 'using complex financial structures to... avoid payment of taxes, creditors and employee entitlements'. The focus for the 2018–19 program 'is to detect and disrupt criminal syndicates that profit from the serious exploitation of foreign workers and Australia's migration system', especially where these have links to serious criminal offending.³⁹

6.43 The Joint Departmental Submission outlined that it has undertaken recent reforms to allow Home Affairs to identify, by sharing tax file numbers with the Australian Taxation Office, employers who are underpaying overseas skilled workers,

35 *Report of the Migrant Workers' Taskforce*, March 2019, pp. 63–64.

36 *Report of the Migrant Workers' Taskforce*, March 2019, p. 64

37 *Submission 40*, p. 23.

38 *Submission 40*, p. 24.

39 *Submission 40*, p. 25.

and to publish on the Home Affairs website the details of sponsors who have breached their obligations.⁴⁰

6.44 The Migrant Workers' Taskforce noted:

The ability for government agencies to share information provides an important avenue to help identify potential non-compliance. It could also support successful prosecutions where patterns of non-compliance can be shown. Information sharing also supports agencies' education and compliance strategies to focus their priorities and direct their resources to those areas where they will have the greatest impact.

...

Information and intelligence is also shared by certain government agencies to support compliance and enforcement actions for particular purposes, such as Taskforce Cadena...⁴¹

6.45 The Migrant Workers' Taskforce also referred to limitations in data sharing between agencies:

Taskforce agencies noted that data sharing efforts have been constrained by agency specific legislative restrictions, inhibiting the sharing of data across government and between agencies. Within these constraints, agencies have continued to work to find ways to share and use data more effectively to the extent the law allows.⁴²

Limited Assurance Protocol

6.46 Since January 2017, Home Affairs and the Fair Work Ombudsman have engaged in a Limited Assurance Protocol, under which Home Affairs generally will not cancel an individual's visa where they have breached their work visa conditions but have also reported exploitation to the Fair Work Ombudsman.⁴³

6.47 The Migrant Workers' Taskforce referred to a review of the Limited Assurance Protocol⁴⁴ carried out by Home Affairs and the Fair Work Ombudsman in June and July 2018. The review focussed on 35 visa holders, almost 60 per cent of whom were on some form of international student visa and almost 23 per cent were 457 visa holders. No migrant worker referred under the Assurance Protocol had their visa cancelled for breaching work-related visa conditions.⁴⁵ Although the review found the Assurance Protocol is 'largely a positive initiative', Home Affairs and the Fair Work Ombudsman 'found a number of opportunities for improvements in the design,

40 *Submission 40*, p. 25.

41 *Report of the Migrant Workers' Taskforce*, March 2019, pp. 53–54.

42 *Report of the Migrant Workers' Taskforce*, March 2019, p. 54.

43 *Submission 40*, p. 26; Independent Schools Council of Australia, *Submission 26*, p. 2.

44 The Migrant Workers' Taskforce referred to the Limited Assurance Protocol as the 'Assurance Protocol'.

45 *Report of the Migrant Workers' Taskforce*, March 2019, p. 50.

practical operation and promotion of the Assurance Protocol'.⁴⁶ In particular, it was found that there needed to be improved clarity on the operation of, and broadened access to, the Assurance Protocol.⁴⁷

Submitter and witness views on enforcement arrangements and sanctions framework

6.48 The Law Council of Australia noted the development of enforcement arrangements available to Home Affairs over the past decade, and expressed the view that Home Affairs 'has adequate enforcement powers under the Migration Act and *Migration Regulations 1994* (Cth) to refuse applications, cancel visas or take action against employers'.⁴⁸

6.49 The Migration Institute of Australia stated that Fair Work Australia must be commended for the 'significant amount of work they have put into identifying breaches of the rights and protections of overseas workers and the public resources they have developed in this space'. It commented further that recent legislative changes and media reporting should serve to discourage employers breaching their obligations.⁴⁹

6.50 The Migration Council of Australia argued that guidance needs to be developed and disseminated in relation to how specific breaches of employer obligations will be sanctioned:

Current enforcement options include [a]dministrative actions, enforceable undertaking and civil actions. Clear guidelines on the types of sanctions applicable to each breach of obligation including warnings, setting a range of fixed cumulative pecuniary penalties and barring egregious employers from the Program for a number of years or indefinitely depending on the severity of the breach, would reinforce program integrity.⁵⁰

6.51 The Migration Council also expressed support for legislative changes which would provide Home Affairs with the ability to publish information identifying sponsors who have not complied with their obligations:

This name and shame approach is both an incentive to ensure employers abide by their obligations and a warning to prospective workers who may consider working for a listed employer. Further details on the parameters of the naming policy (whether the breach and penalty will be publicised and the duration of the publication) and its effects remain to be seen. At the very least, this initiative increases transparency and accountability of the Program.⁵¹

46 *Report of the Migrant Workers' Taskforce*, March 2019, p. 50.

47 *Report of the Migrant Workers' Taskforce*, March 2019, p. 50.

48 *Submission 36*, p. 14.

49 *Submission 33*, p. 10.

50 *Submission 7*, p. 7.

51 *Submission 7*, pp. 7–8.

6.52 Other submitters and witnesses argued that despite recent developments, current compliance and enforcement arrangements are insufficient. For example, RDA Far South Coast described current enforcement arrangements in regional areas as 'woefully inadequate'.⁵² Mr Craig Thomas of the ETU told the committee that where law enabling compliance action to be taken exists, it 'is not enforced in any meaningful way whatsoever'.⁵³ Mr Thomas outlined some of the practical difficulties encountered when an attempt is made to raise concerns about migrant worker exploitation:

As far as reporting things goes, if you report to the department of immigration, the bureaucratic process of making a complaint is so difficult that, even for someone trained in it, it is almost impossible to do, let alone if you were a migrant worker concerned about exploitation. It is extraordinarily difficult, and normally the first thing that occurs—and we've made these reports—is that the department of immigration rings the employer. The employer gets really angry and gets rid of the complaining workers. That's been our experience... If we ring up the Fair Work Ombudsman to make complaints around these kinds of breaches, they tell us at times that they can't accept our complaints. They tell us that we don't have any authority because the migrant worker is not a member of the union. Where we do manage to contact a friendlier person within the department who takes the call—some are openly hostile—they'll thank us for the information and tell us that we have no right to know what they do with it, and we never hear anything again. I have never yet seen a situation where we've made a complaint and an actual official from either the department of immigration or the Fair Work Ombudsman actually attends the site.⁵⁴

Recommendations of the Migrant Workers' Taskforce

6.53 The Report of the Migrant Workers' Taskforce made a significant number of recommendations for further actions, which are relevant to the committee's inquiry. The full list of the Migrant Workers' Taskforce's recommendations are set out in Appendix 3 to this report.

6.54 In particular, the Migrant Workers' Taskforce recommended improving migrant workers awareness of rights and entitlements. This includes:

- developing of a whole-of-government approach to information and education needs of migrant workers (Recommendation 2).
- education providers providing information to international students about workplace rights, and provide support services for international students with workplace issues (Recommendations 15, 16 and 17).

52 *Submission 34*, pp. 3-4. See also: RDA Orana, *Submission 31*, p. 5.

53 Mr Craig Thomas, State Organiser (Mackay), Electrical Trades Union, *Proof Committee Hansard*, 5 March 2019, p. 35.

54 Mr Craig Thomas, State Organiser (Mackay), Electrical Trades Union, *Proof Committee Hansard*, 5 March 2019, p. 35.

6.55 The Taskforce made recommendations to better protect migrant workers by amending the *Fair Work Act 2009* (Fair Work Act) to:

- clarify that temporary migrant workers working in Australia are entitled at all times to workplace protections under the Fair Work Act (Recommendation 3); and
- prohibit persons from advertising jobs with pay rates that would breach the Fair Work Act (Recommendation 4).

6.56 The Migrant Workers' Taskforce also made recommendations to strengthen the enforcement regime by:

- increasing the general level of penalties for breaches of wage exploitation provisions in the Fair Work Act (Recommendation 5);
- introducing criminal sanctions for the most serious forms of exploitative conduct, such as where the conduct is clear, deliberate and systemic (Recommendation 6);
- providing courts with specific powers to make additional enforcement orders against employers who underpay migrant workers (Recommendation 7);
- amending the *Fair Work Act 2009* to adopt the model provisions relating to enforceable undertakings and injunctions contained in the *Regulatory Powers (Standard Provisions) Act 2014 (Cth)* (Recommendation 8);
- providing the Fair Work Ombudsman with the same information gathering powers as regulators such as the Australian Competition and Consumer Commission (Recommendation 11);
- ensuring that the resourcing for the Fair Work Ombudsman is adequate, noting that an increase may be appropriate (Recommendation 10);
- developing legislation to declare that it is an offence to knowingly unduly influence, pressure or coerce a temporary migrant worker to breach a condition of their visa (Recommendation 19); and
- excluding employers who have been convicted by a court of underpaying temporary migrant workers from employing new temporary visa holders for a specified period (Recommendation 20).

6.57 To ensure that temporary workers are confident in bringing forward complaints, the Taskforce also recommended a review of the Assurance Protocol between the Department of Home Affairs and the Fair Work Ombudsman within 12 months. The review should consider whether further changes are needed (Recommendation 21).

6.58 The Taskforce also recommended that the government give 'greater priority to build an evidence base and focus its existing research capacity within the Department of Jobs and Small Business on areas affecting migrant workers' (Recommendation 22). This recommendation also included additional specific courses of action, as follows:

- the Department of Education and Training should work with the Council for International Education and peak organisations to help identify mechanisms for providers to collect data about student visa holders' experiences of working in Australia;
- the Department of Education and Training should conduct regular surveys of overseas students that include workplace experience; and
- the Government should support work being undertaken by ABARES, the science and economics research division of the Department of Agriculture and Water Resources to increase data collection in relation to agricultural labour.

Committee view

6.59 By preventing the exploitation of workers on temporary visas, two benefits are achieved: overseas workers are afforded their full rights under Australian law and, secondly, these workers cannot be used to undermine the wages and conditions of Australian workers.

6.60 The evidence to the committee demonstrates that enforcement of visa arrangements and protection from exploitation of workers on temporary skilled visas remains a significant area of concern. The committee recognises that government agencies, particularly through the Fair Work Ombudsman and Home Affairs, have undertaken significant work in the last few years to address these issues. The committee notes the work of the Migrant Workers' Taskforce and the comprehensive assessment in the taskforce's final report on the progress of implementation of initiatives.

6.61 The committee is of the view that the recommendations in the Report of the Migrant Workers' Taskforce provide a considered course of action that, if followed, will address many of the concerns raised with the committee. The committee notes that in responding to the Report of the Migrant Workers' Taskforce, the Australian Government has accepted in-principle all recommendations of the taskforce. The committee commends the work of the Migrant Workers' Taskforce and supports the adoption and implementation of all the Taskforce's recommendations as soon as practicable.

6.62 In addition to the recommendations contained in the Report of the Migrant Workers' Taskforce, there are still several areas where the committee considers a more effective approach is required.

6.63 Unfortunately, there is currently insufficient data available about the location and number of workers on temporary visas. This makes it difficult for government agencies and support services (including unions) to provide targeted support to workers. Increased transparency in this area is important. Simple changes include requiring wages for temporary work visa holders to be paid directly into Australian bank accounts (and therefore within the oversight and jurisdiction of Australian agencies), and publication of data about the location of employers utilising temporary visa workers. The *Fair Work Act 2009* should also be amended to grant unions standing to commence civil actions for breaches of that Act, and breaches to the *Migration Act 1958* in relation to visa work conditions.

6.64 The committee notes the findings of the Migrant Workers Taskforce and research by the Law Society on the challenges currently facing temporary workers who want to know their rights and access support. It is important that temporary workers are provided with a copy of the relevant collective agreement, award or labour agreement upon commencement. This information should also include contact details for support services and the relevant union.

6.65 The committee notes the evidence from the ACTU and others that ABNs are misused by unscrupulous employers. While acknowledging current efforts the government has recently made to address this concern, the committee agrees that ABNs should not be available to temporary visa workers, including those on student visas and working holiday visas.

6.66 The Fair Work Ombudsman has an important role to perform in the enforcement of Australian law in this context, alongside the Department of Home Affairs and the Department of Jobs and Small Business. It is essential that relevant government agencies and departments are adequately resourced to ensure that enforcement action is effective.

6.67 The committee notes that the Department of Home Affairs and the Fair Work Ombudsman have also engaged in a joint agency initiative, through the Australian Border Force Taskforce Cadena, since 2015, to cooperate on issues related to illegal work, visa fraud and exploitation of overseas workers. Certainly this Taskforce has made an important contribution to reducing exploitation of workers. However, the evidence to this inquiry indicated that four years later, workers on temporary visas continue to be exploited. The Migrant Workers Taskforce recommended that a review be conducted of Taskforce Cadena in 12 months. As noted earlier, the committee supports this recommendation. However, based on the evidence provided, the committee considers that resourcing for this taskforce should be increased before the review is completed.

Recommendation 16

6.68 The committee recommends that the Australian Government implement all recommendations from the Report of the Migrant Workers' Taskforce as soon as practicable.

Recommendation 17

6.69 The committee recommends that the Australian Government increase funding for Taskforce Cadena—or a similar taskforce—to ensure that the Taskforce is adequately resourced.

Recommendation 18

6.70 The committee recommends that the Australian Government require that employers pay wages for temporary visa holders into an Australian bank account.

Recommendation 19

6.71 The committee recommends that the Australian Government propose amendments to the relevant law to make it unlawful for temporary visa workers, including persons on student visas and working holiday visas, to apply for or to hold, an Australian Business Number (ABN).

Recommendation 20

6.72 The committee recommends that the Australian Government consider amending the *Fair Work Act 2009* and the *Migration Act 1958* to grant unions standing, where appropriate, to commence civil actions for breaches of those Acts in relation to visa work conditions.

Recommendation 21

6.73 The committee recommends that the Australian Government ensure that unions have standing to complain to the Fair Work Ombudsman or the Department of Home Affairs about concerns relating to the exploitation of temporary visa workers, even if that worker is not a union member.

Senator Louise Pratt
Chair

Dissenting report of Government Committee Members

1.1 Government members of the committee are of the view that Australia has a robust and flexible skilled visa regime that delivers benefits to the Australian economy as well as conferring proper protection on the jobs of Australian workers and of skilled migrant workers. This regime is responsive to changes in labour market shortages, encompasses emerging technologies and the creation of new skilled roles, and maintains a contemporary, consultative and up-to-date approach to skills assessments.

1.2 This inquiry has been another example of the Senate Committee system being used by the Labor Party to conduct political and policy research at the taxpayers' expense in the guise of a parliamentary inquiry. In essence the inquiry appeared intended to give some of the union movement an opportunity to reinforce its demands on the federal opposition.

1.3 The inquiry report is scheduled for tabling in the Senate on Tuesday April 2nd. The Chair's report of over 100 pages was provided to Committee members at 11pm on Saturday March 30th. This meant that the work of compiling a response to the Chair's report could not properly commence until Monday April 1, 24 hours prior to the tabling of the report. The usual practice of the committee is to allow more time than this for members to consider the content of a draft report.

1.4 The Chair's report presents a view that we should be suspicious of workers and professionals who enter Australia on skilled visas. Government members of the Committee are deeply saddened by this insular and parochial position. Government Senators take an alternate view which is that the holders of skilled visas can bring great energy, diversity and opportunity to the Australian labour market. By bringing skilled professionals and workers from overseas to fill gaps in the labour market here, we are ensuring continuity in industry, helping regional areas not to stagnate economically due to skills shortages, and creating opportunities for Australian workers to engage with methodologies that might otherwise remain unfamiliar.

1.5 Committee members also acknowledge the social and cultural value that skilled migrants can bring to regional communities – a fact that is implicit in the current Government's approach to skilled migration, regional migration and decentralisation. Evidence to one of the inquiry's public hearings supported the view that the greatest benefit is conferred on regional communities where migrant workers become embedded in the local community:

The 400 visa—the one that's only for about six months—is good, but I guess we want to see the people here for four years, because they're the ones actually living in our community. They're going to be renting here, spending their wages here, buying cars here and buying furniture here in our local community, and they're

engaged in our local community. And that's what we would prefer, rather than people flying in and out for work.¹

1.6 The Chair's report repeatedly refers to 'stakeholders' who have provided evidence to the inquiry; however, Government Senators are convinced, having reviewed the Chair's report, that these 'stakeholders' are in fact the ACTU, the AWU and the CFMEU. These unions are *not* stakeholders in the skilled visa framework. On the contrary, they are agitators for the deconstruction of the framework and would gladly deny Australian industries – the same industries that employ so many Australians – the benefits of the skilled visa framework. This again would appear to support the alarming conclusion that Labor Senators are using taxpayer-funded Senate committees to conduct research and study into policy areas on behalf of the Labor Party.

1.7 The Chair's report states at paragraph 3.78 that:

The committee is concerned by evidence received during the inquiry that various occupations included in the skilled migration occupation lists do not, in fact, appear to be suffering from a shortage of appropriately skilled Australian citizens and permanent residents.

1.8 Government Senators are greatly concerned that the Chair's report characterises anecdote and opinion as 'evidence'. This practice, and the politically opportunistic nature of the Chair's report, would again point to the politicisation of this issue. A single idea, proffered without authority or support by an official of the ACTU, ought not be cast as empirical evidence that is beyond dispute. This is clearly deceptive and wrong.

1.9 At paragraph 3.79 the Chair's report states:

Given that the stated purpose of the TSS visa is to fill critical skills shortages and ensure that Australian workers are given the first priority for jobs, the primary basis for occupations being included on the occupation lists must be empirical evidence demonstrating a genuine labour market shortage that cannot be resolved through increasing wages or training Australian workers.

1.10 Once again the Chair and the Labor Party appear to have missed the point. The primary basis for occupations being included in the occupation lists is not that a labour shortage in that area *cannot* be resolved by increasing wages or additional training, but that such a shortage *has not* been resolved by increasing wages or additional training. Excluding an occupation from the scheme because a shortage of workers in that occupation *could* be resolved by increased wages or additional training would have a limiting impact on the relevant sector by reducing the available workforce and/or reducing the number of positions available by artificially inflating applicable wages.

¹ ROURKE, Ms Adrienne, General Manager, Resource Industry Network, Committee Hansard, 5 March 2019, p. 2.

1.11 Additionally, while the Chair's report mentions "training" repeatedly, it fails to mention 'incentive to relocate' as a factor that could alleviate skills shortages in certain regional locations. Government members of the committee acknowledge that very often the required skills can be found in Australia, the problem is that the people who possess these skills cannot always be persuaded to re-locate to regional Australia.

1.12 The Chair's report goes on to reveal its bias at paragraph 3.80 which states:

..decisions made on the composition of the lists should reassure all relevant stakeholders that their input and concerns have been taken into account. This includes both the union sector, which is often best placed to provide on-the-ground evidence on whether a reported skills shortage is genuine or not, and industry, which will suffer adversely if it is unable to fill critical vacancies.

1.13 The suggestion that the union movement, rather than the relevant Commonwealth departments and employers, should be called upon to adjudicate whether a shortage is "genuine" is farcical, especially considering the unions only represent a very small percentage of Australian workers and can hardly be considered representative.

1.14 The Chair's suggestion at paragraph 3.81 that the skilled visa occupation lists are compiled '...subject to ministerial or departmental whims' is offensive, petulant and inaccurate.

1.15 Government Senators also note that the Chair's suggestions of implementing additional oversight to the skilled visa system will likely only serve to have a limiting effect on the system's success. Adding layers of bureaucracy to the operation of the skilled visa will not add value to Australian businesses and industry, it will not add expedience, and it will not improve the experience of skilled visa holders.

1.16 Government Senators are reassured by Australian Bureau of Statistics and Department of Home Affairs data that indicates that on average across all industries and occupations, the number of primary TSS/subclass 457 visa holders in Australia represent less than one per cent of employed persons. The Chair's report itself acknowledges this figure at paragraph 2.13.

1.17 The Chair's report complains that the government has not published any reasons for its decisions on occupation lists, for example stating at paragraph 3.38:

The committee heard significant concerns about the lack of transparency surrounding the final ministerial decision-making process for adding and removing occupations on the lists.

1.18 The Department of Jobs website, however, relevantly provides that *‘In May 2018, the Department released a Traffic Light Bulletin on possible changes to the skilled migration occupation lists, and held a period of public consultation.’*²

1.19 The Chair’s report states at paragraph 6.65 that:

The committee notes the evidence from the ACTU and others that ABNs are misused by unscrupulous employers. While acknowledging current efforts the government has recently made to address this concern, the committee agrees that ABNs should not be available to temporary visa workers, including those on student visas and working holiday visas.

1.20 The Chair’s report goes on to recommend that that the Government implement the recommendation of the Migrant Workers Taskforce. The Chair appears to have overlooked the fact that the Migrant Workers Taskforce was established by the Government in 2016 as part of a suite of programs designed to protect vulnerable workers. The Taskforce report was released on March 2, 2019 and the Government has accepted all 22 recommendations.

1.21 Recommendation 1 of the Chair’s report calls for the Australian Government to *‘continue to monitor the trajectory of visa applications and grants under the Temporary Skills Shortage (Subclass 482) visa over the next six months, with a view to making any necessary adjustments to the overall settings for this visa subclass in 2020.’* The relevant Commonwealth Departments have provided to this Inquiry extensive and credible evidence that speaks to their effective ongoing oversight and deployment of the skilled visa regime. Government members of the committee accept this evidence and believe that the Chair should also.

1.22 Recommendation 2 calls for the Australian Government to *‘increase the Temporary Skilled Migration Income Threshold (TSMIT) to a minimum of at least \$62,000, and mandate that the rate of the TSMIT be indexed annually in line with the average full-time wage.’* Government members support any measure that addresses specific and demonstrable need in the Australian skills landscape and recommend that if a Government-led review of the TSMIT is to be conducted that it specifically consider the challenges faced by regional, remote and non-regional employers.

1.23 Recommendation 3 calls on the Department of Home Affairs to *‘review and update its policies regarding health assessments of temporary visa holders, to ensure that visa applications will not be rejected on health grounds in cases where there is no possibility of health and social services costs accruing to the Commonwealth or state and territory governments.’* Government members reject the premise of this recommendation, the basis of which is the assertion, detailed at paragraph 2.103 of the Chair’s Report, that the Department of Home Affairs:

² <https://www.jobs.gov.au/news/skilled-migration-occupation-lists-review-consultation-may-june-2018>, accessed April 2, 2019.

..may be rejecting temporary skilled visas on the basis that an applicant or a family member with a health condition or disability would cause undue health and social services costs to accrue to the Commonwealth and state or territory governments.

1.24 The Government members of the Committee would welcome any evidence of this phenomenon that the Chair may be able to provide and would reserve the right to reply to that evidence if and when it is provided.

1.25 Government members note that the Temporary Skill Shortage (TSS) visa holders (Subclass 482) may ask for a waiver of the health requirement where family members or the visa applicant have a disability / medical condition assessed as costing more than \$40,000 to the Commonwealth for only the length of the temporary visa only (the cost is assessed up to 4 years per visa for a TSS). The Committee's Chair's Recommendation 3 is not made in light of the full facts and have not have fully considered all the evidence that is available.

1.26 Recommendation 4 calls on the Australian Government to '*publish, in future updates to the skilled migration occupation lists, its reasons for including new occupations, moving occupations between the different lists, or removing occupations altogether that were included in previous iterations of the lists.*' Government members of the Committee are not opposed to the level of transparency being suggested by the Chair's report but would caution against any move towards a system of challenging these decisions. It is obvious that the only individuals who are in any way limited by the program is the union movement who may lose a very few potential members, and also the illusion of having control over certain workplaces.

1.27 Recommendation 5 '*recommends that the Australian Bureau of Statistics prioritise its review of the ANZSCO framework*'. Government members of the committee agree that the Australian Bureau of Statistics should conduct a review of the ANZSCO framework but rejects any call for the ABS to do so outside the scope of the agency's routine funding arrangements. Government members are confident that the ABS will embark on its review in the fullness of time.

1.28 Recommendation 6 recommends '*that the current skills assessment regime for the skilled visa system be strengthened by:*

- *ensuring all testing is performed by an appropriate industry body and not by immigration officials;*
- *guaranteeing that workers who currently require an occupational license must successfully complete a skills and technical assessment undertaken by a Registered Training Organisation approved by Trades Recognition Australia before being granted a visa;*

- *introducing a risk based approach to assess and verify that workers are appropriately skilled for occupations that do not require an occupational licence; and*
- *introducing a minimum sampling rate of visas issued in order to verify that migrant workers are actually performing the work the employer has sponsored them to perform.'*

1.29 Government members of the Committee do not agree with this recommendation and are concerned that placing assessment or oversight of the skilled visa program in the hands of unions or industry bodies could create a conflict of interest. Government members also dismayed to once again see the Labor Chair's report suggesting that holders of skilled visas present risks as opposed to opportunities. It is disturbing that the Chair seems opposed to welcoming workers from around the world who bring with them great opportunities for Australian workers and industry to learn new approaches and new skills.

1.30 Recommendation 7 call on the Australian Government to '*consider the establishment of a new independent tripartite authority to provide advice and recommendations to government on skilled migration issues*'. Government members of the Committee are opposed to Recommendation 7. The creation of an independent authority would create additional layers of unnecessary oversight that would duplicate existing oversight functions, place an unfair burden on the Australian taxpayer, and add bureaucratic and administrative complexity to the skilled visa framework that would have little effect other than to slow down a process that the Chair's report already claims inaccurately is slow and complex.

1.31 Recommendation 8 calls on the Australian Government to '*introduce more stringent evidentiary requirements for labour market testing to ensure that the intent of labour market testing arrangements is achieved and Australian employment opportunities are protected*'. Government members of the committee agree in principle that the accuracy of labour market testing translates directly to the efficacy of the skilled visa framework. Government members however note that this recommendation is vague and does not venture to suggest what might constitute 'more stringent evidentiary requirements'.

1.32 Recommendation 9 recommends '*that the Australian Government resolves not to enter into any future free trade agreements that would involve labour market testing waivers*'. Government members of the committee do not support the application of prescriptive limitations to the negotiation of free trade agreements that may potentially have economy-wide benefits. Government members would, however, add that this recommendation is entirely hypothetical and should be treated as such.

1.33 Recommendation 10 recommends '*that the Australian Government undertake a review of the use and effectiveness of labour agreements under Australia's skilled migration program, and implement any necessary changes to ensure that:*

- *labour agreements are only entered into where there is publicly demonstrated evidence of a genuine skills shortage that cannot be addressed by the Australian workforce;*
- *all relevant stakeholders are genuinely consulted during the process of finalising labour agreements and provided with appropriate feedback in relation to concerns raised; and*
- *the Department of Home Affairs' reasons for entering into a labour agreement (or a renewal of any labour agreement) are made publicly available.'*

1.34 Government members of the Committee do not agree with Recommendation 10 of the Chair's report. Government members support the continued consultation between employers, employees and government to determine skills shortages and take the appropriate action where such shortages are identified.

1.35 Recommendation 11 recommends that the Australian Government '*guarantee adequate, additional funding if the income from SAF levies does not meet the needs of industry and the vocational education sector to provide high-quality training to apprentices and trainees*'. The view of Government members is that the Government has demonstrated its commitment to skills development in Australia, including the allocation of funding to skills-development programs.

1.36 Recommendation 12 calls on the Australian Government to '*commit to increasing overall funding levels for TAFE and vocational education and support a comprehensive and thorough commission of inquiry into Australia's post-secondary education system*.' While Government members agree in principle with the suggestion that the scope of educational and vocational training programs be reviewed and increased from time to time, the effective application of this suggestion would require consultation with, and the cooperation of, state and territory governments. Government members of the Committee would encourage COAG participants to further engage regarding TAFE and vocational education.

1.37 Recommendation 13 calls on the Australian Government to '*consider ways in which to encourage better information sharing between industry, vocational education and training providers and potential students in order to encourage student uptake and local employment in industries experiencing skills shortages*'. Government members of the Committee are of the view that this recommendation (Recommendation 13) duplicates the previous recommendation (Recommendation 12) and Government members' response would also be the same.

1.38 Recommendation 14 recommends '*that the Department of Education and Training be required to present a report to Parliament bi-annually on the progress of the National Partnership Agreement on the Skilling Australians Fund and the extent to which it is achieving the outcome of addressing skills shortages in the Australian labour market*'. Government Committee members are satisfied that there is sufficient transparency across this sector and would note that the cost of duplicating existing

functions would outweigh the benefits of providing a small amount of additional oversight.

1.39 Recommendation 15 calls on the Australian Government to *‘work with the Australian Bureau of Statistics and the National Centre for Vocational Education and Research to investigate and establish a research instrument to enable analysis of employer investment in the development and training of their workforces’*. Government members recognise that businesses increasingly seek less red tape and the Commonwealth needs to be mindful of any extra imposition on business. Government members have concerns about the likelihood of collecting a viable data sample without unduly imposing on the time, operating costs or privacy of businesses.

1.40 Recommendation 16 recommends *‘that the Australian Government implement all recommendations from the Report of the Migrant Workers’ Taskforce as soon as practicable’*. The Migrant Workers Taskforce was established by the Government in 2016 as part of a suite of programs designed to protect vulnerable workers. The Taskforce report was released on March 2, 2019 and the Government has accepted all 22 of the Taskforce’s recommendations.

1.41 Recommendation 17 recommends *‘that the Australian Government increase funding for Taskforce Cadena—or a similar taskforce—to ensure that the Taskforce is adequately resourced’*. The Chair’s report acknowledges at paragraph 6.67 that taskforce Cadena has made *‘an important contribution to reducing exploitation of workers’* and then goes on to speculate wildly about the efficacy and funding of the Taskforce. The Government has accepted the Migrant Workers Taskforce recommendation that a review be conducted of Taskforce Cadena within twelve months. Government members are confident that, as with all aspects of national security and border management, the Government and the Department of Home Affairs are consistently providing all necessary resourcing to Taskforce Cadena.

1.42 Recommendation 18 recommends *‘that the Australian Government require that employers pay wages for temporary visa holders into an Australian bank account’*.

1.43 Recommendation 19 recommends *‘that the Australian Government propose amendments to the relevant law to make it unlawful for temporary visa workers, including persons on student visas and working holiday visas, to apply for or to hold, an Australian Business Number (ABN)’*.

1.44 Recommendation 20 recommends *‘that the Australian Government consider amending the Fair Work Act 2009 and the Migration Act 1958 to grant unions standing, where appropriate, to commence civil actions for breaches of those Acts in relation to visa work conditions’*. Government members do not agree with this recommendation. Unions do not have standing to initiate action regarding visa work conditions because unions are not representative of the Australian workforce generally, nor of the specific occupations relevant to the skilled visa program.

1.45 Recommendation 21 recommends *‘that the Australian Government ensure that unions have standing to complain to the Fair Work Ombudsman or the Department of Home Affairs about concerns relating to the exploitation of temporary visa workers, even if that worker is not a union member’*. Government members of the Committee disagree with this recommendation. Granting standing to unions to initiate court action where they have no specific interest and do not have any relationship with the worker in question is simply absurd.

Recommendations of Government Members of the Committee

Recommendation 1

1.46 The Government members of the committee recommend that the Skilling Australians Fund be operated in regional locations in a manner that takes into account and is responsive to specific local needs.

Recommendation 2

1.47 The Government members of the committee recommend that the relevant Departments take mechanical, technological and social advancements into consideration and consider updating occupation lists to include new occupations (such as Drone Pilot) and evolving work environments and circumstances.

Recommendation 3

1.48 The Government members of the committee recommend that Government continues to support regional growth by incentivising skilled Australian workers to fill identified skilled shortages in regional Australia.

Recommendation 4

1.49 The Government members of the committee recommend that regional skilled visas, and employers who are deemed ‘low-risk’, are prioritised in the application processing.

Recommendation 5

1.50 The Government members of the committee recommend that a Government-led review of the TSMIT be conducted and that it specifically consider the challenges faced by regional and remote employers.

Senator the Hon Ian Macdonald
Deputy Chair

Appendix 1

Submissions, additional information, answers to questions on notice and tabled documents

Submissions

1. Name Withheld
2. Shop Distributive & Allied Employees' Association
3. Minerals Council of Australia (MCA)
4. National Tertiary Education Union National Office
5. Estrin & Saul Lawyers and Migration Specialists
6. Australian Nursing & Midwifery Federation
7. Migration Council Australia
8. Association of Heads of Independent Schools of Australia (AHISA)
9. Australian Small Business and Family Enterprise Ombudsman (ASBFEO)
10. Housing Industry Australia (HIA)
11. Australian Council of Trade Unions (ACTU)
12. The Australian Chamber of Commerce and Industry
13. National Farmers' Federation
14. The Group of Eight
15. Exhibition and Event Association of Australasia
16. Business SA
17. The Australasian Meat Industry Employees Union (AMIEU)
18. CSL Limited
19. Cochlear
20. Science & Technology Australia
21. Australian Meat Industry Council (AMIC)
22. Victorian Trades Hall Council
23. Ports Australia

24. Motor Trade Association of South Australia
 25. Queensland Tourism Industry Council
 26. Independent Schools Council of Australia
 27. Universities Australia
 28. Consult Australia
 29. Australian Association of Social Workers
 30. The Australasian Institute of Mining and Metallurgy
 31. RDA Orana
 32. Restaurant & Catering Australia
 33. Migration Institute of Australia
 34. RDA Far South Coast
 35. Committee for Melbourne
 36. Law Council of Australia
 37. Federation of Ethnic Communities Council of Australia
 38. Construction Forestry Maritime Mining and Energy Union
 39. Motor Traders Association of Australia
 40. Joint submission from the Department of Home Affairs, Department of Jobs and Small Business, and Department of Education and Training
 41. Tourism & Transport Forum
 42. Tourism Accommodation Australia
 43. Australian Pork Limited
 44. Cross Cultural Communications and Management
 45. Unions NSW
 46. Joint University
 47. Payne's Farm Contracting
 48. Australian Workers' Union
- Response from Edway Group
- Response from Sunpork Farms

49. Electrical Trades Union of Australia
Response from Hercules Carparking Systems
50. Fragomen

Additional Information

- 1 Dr Chris F. Wright and Dr Andreea Constantin, 'An analysis of employers' use of temporary skilled visas in Australia', provided by the ACTU following a public hearing in Perth on 7 March 2019.

Answers to questions on notice

- 1 Answers to written questions on notice, received from the Australian Bureau of Statistics on 20 March 2019
- 2 Answers to written questions on notice, received from the Department of Education and Training on 15 March 2019
- 3 Answers to questions on notice, received from the Department of Jobs and Small Business on 25 March 2019
- 4 Answers to questions on notice, received from the Department of Home Affairs on 25 March 2019

Appendix 2

Public hearings and witnesses

Tuesday 5 March 2019—Mackay

Members in attendance: Senators Ian Macdonald, Watt.

COLE, Mr Glenn, Director, Australian Skilled Migration

CRAWFORD, Ms Georgine, Coordinator of the Community Action for a Multicultural Society (CAMS) Multicultural Community Program

FFROST, Ms Nicolette, General Manager, George Street Neighbourhood Centre

GAULD, Mr Trevor, National Policy Officer, Electrical Trades Union

GSCHWIND, Mr Daniel, Chief Executive, Queensland Tourism Industry Council

KEMP, Mr Neil, Shed Secretary, Thomas Borthwick & Sons, Australasian Meat Industry Employees' Union

LUND, Mr Jason, Mackay Organiser, Australian Manufacturing Workers' Union

McLAUCHLAN, Mr Ian, Assistant Secretary, Queensland Branch, Australasian Meat Industry Employees' Union

MIOTTO, Ms Sarah, Spannerman Autocare

O'SULLIVAN, Mr Matthew, Recruitment Manager, Australian Skilled Migration

ROSE, Mr Greg, Community Solutions

ROURKE, Ms Adrienne, General Manager, Resource Industry Network

SUTHERLAND, Mr Bob, Shed President, Thomas Borthwick & Sons, Australasian Meat Industry Employees' Union

THOMAS, Mr Craig, State Organiser (Mackay), Electrical Trades Union

VIGILANTE, Mr Simon, Sharp's Heavy Equipment Repairs, Mackay Region Chamber of Commerce

Wednesday 6 March 2019—Sydney

Members in attendance: Senators Fierravanti-Wells, Pratt.

ALACH, Mr Christopher, Acting Branch Manager, Skills Outcomes and Financing Branch, Department of Education and Training

AL-KHAFAJI, Mr Mohammad, Acting Chief Executive Officer, Federation of Ethnic Communities' Councils of Australia

BEASLEY, Mr Alistair, Branch Manager, Migration Policy Branch, Small Business and Economic Strategy Group, Department of Jobs and Small Business

CULLY, Mr Peter, Group Manager, Small Business and Economic Strategy Group, Department of Jobs and Small Business

DUNCALFE, Mr Zachary, National Legal Officer, The Australian Workers' Union

GIUSEPPI, Ms Carol, Chief Executive Officer, Tourism Accommodation Australia

HARNIMAN, Mr Julian, Head of Public Affairs and Policy, Restaurant and Catering Industry Association

HOURIGAN, Mr John, National President and MIA Director, Migration Institute of Australia

JOHNSON, Mr Richard, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division, Department of Home Affairs

KAUFMAN, Mr Alexander, Vice President, NSW/ACT Branch, Migration Institute of Australia

LAMBERT, Ms Jenny, Director, Employment, Education and Training, Australian Chamber of Commerce and Industry

LAUSBERG, Ms Adele, Policy and Research Adviser, Tourism Accommodation Australia

LYNCH-MAGOR, Ms Fiona, Acting Group Manager, Skills Market Group, Department of Education and Training

MARKEY, Ms Bronwyn, Professional Support Manager, Migration Institute of Australia

PAYNE, Ms Juliana, Chief Executive Officer, Restaurant and Catering Industry Association

RICHARDS, Mr Peter, Assistant Secretary, Skilled and Family Visa Program Branch, Department of Home Affairs

STARK, Ms Lauren, Policy and Projects Officer, Federation of Ethnic Communities' Councils of Australia

VYMYS, Mr Peter, Chief Executive Officer, Migration Institute of Australia

WELLARD, Dr John, Policy Director International, Universities Australia

WILLARD, Mr Michael, Assistant Secretary, Global Mobility Branch, Department of Home Affairs

Thursday 7 March 2019—Perth

Members in attendance: Senators Brockman and Pratt.

BUCHAN, Mr Mick, State Secretary, Construction and General Division, Construction, Forestry, Maritime, Mining and Energy Union, Western Australia Branch

BUTLER, Ms Annie, Federal Secretary, Australian Nursing and Midwifery Federation

CULLEN, Mr Thomas, Policy Officer, Workplace Relations and Legal Affairs, National Farmers' Federation

DYMOND, Dr Tim, Organising and Strategic Research Officer, Unions WA

FORD, Dr Carina, Deputy Chair, Migration Law Committee, Law Council of Australia

GARLAND, Ms Carina, Assistant Secretary, Victorian Trades Hall Council

GOTHARD, Dr Jan, Health and Disability Specialist, Estrin & Saul Lawyers and Migration Specialists

KUNKEL, Mr Mathew, Director, Migrant Workers Centre

KYLOH, Mr Damian, Associate Director of Economic and Social Policy, Australian Council of Trade Unions

LIND, Dr Gavin, General Manager, Workforce and Innovation, Minerals Council of Australia

MacDONALD, Mr Nathan, Senior Policy Lawyer, Law Council of Australia

McCARTNEY, Mr Steve, State Secretary, Australian Manufacturing Workers' Union, Western Australia Branch

ROGERS, Mr Ben, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation

SPENTZARIS, Mr Chris, Member, Migration Law Committee, Law Council of Australia

SZUKALSKA, Ms Karolina, Manager, Education, Minerals Council of Australia

WISCHER, Ms Kristen, Senior Federal Industrial Officer, Australian Nursing and Midwifery Federation

Appendix 3

Recommendations contained in the *Report of the Migrant Workers' Taskforce*, March 2019.

Recommendation 1

It is recommended that the Government establish a whole of government mechanism to further the work of the Migrant Workers' Taskforce following its completion.

Recommendation 2

It is recommended that a whole of government approach to the information and education needs of migrant workers be developed. It is recommended that this approach be informed by findings of the research project, *The Information Needs of Vulnerable Temporary Migrant Workers about Workplace Laws*, with implementation of the following measures:

- a) improve the delivery and accessibility of personalised, relevant information to provide the right messages at the right time to migrant workers
- b) use behavioural approaches to encourage and advise migrant workers how to take action if they are not being paid correctly
- c) enhance the promotion of products and services already available from government agencies — particularly in-language information — through search engine optimisation, expanded use of social media channels, and cross-promotion of Fair Work Ombudsman material by other agencies
- d) improve messaging in government information products so they are translated, simple, clear and consistent
- e) work with industry and community stakeholders to educate employers and address misconceptions about the rights and entitlements of migrant workers in Australian workplaces.

Recommendation 3

It is recommended that legislation be amended to clarify that temporary migrant workers working in Australia are entitled at all times to workplace protections under the *Fair Work Act 2009*.

Recommendation 4

It is recommended that legislation be amended to prohibit persons from advertising jobs with pay rates that would breach the *Fair Work Act 2009*.

Recommendation 5

It is recommended that the general level of penalties for breaches of wage exploitation related provisions in the *Fair Work Act 2009* be increased to be more in line with those applicable in other business laws, especially consumer laws.

Recommendation 6

It is recommended that for the most serious forms of exploitative conduct, such as where that conduct is clear, deliberate and systemic, criminal sanctions be introduced in the most appropriate legislative vehicle.

Recommendation 7

It is recommended that the Government give the courts specific power to make additional enforcement orders, including adverse publicity orders and banning orders, against employers who underpay migrant workers.

Recommendation 8

It is recommended that the *Fair Work Act 2009* be amended by adoption of the model provisions relating to enforceable undertakings and injunctions contained in the *Regulatory Powers (Standard Provisions) Act 2014* (Cth).

Recommendation 9

It is recommended that the Fair Work Ombudsman be provided with the same information gathering powers as other business regulators such as the Australian Competition and Consumer Commission.

Recommendation 10

It is recommended that the Government consider whether the Fair Work Ombudsman requires further resourcing, tools and powers to undertake its functions under the *Fair Work Act 2009*, with specific reference to:

- whether vulnerable workers could be encouraged to approach the Fair Work Ombudsman more than at present for assistance
- the balance between the use of the Fair Work Ombudsman's enforcement and education functions
- whether the name of the Fair Work Ombudsman should be changed to reflect its regulatory role
- getting redress for exploited workers, including the use of compliance notices and whether they are fit for purpose
- opportunities for a wider application of infringement notices
- recent allocations of additional funding.

Recommendation 11

It is recommended that the Government consider additional avenues to hold individuals and businesses to account for their involvement in breaches of workplace laws, with specific reference to:

- a) extending accessorial liability provisions of the *Fair Work Act 2009* to also cover situations where businesses contract out services to persons, building on existing provisions relating to franchisors and holding companies; and

-
- b) amending the *Fair Work Act 2009* to provide that the Fair Work Ombudsman can enter into compliance partnership deeds and that they are transparent to the public, subject to relevant considerations such as issues of commercial in confidence.

Recommendation 12

It is recommended that the Government commission a review of the *Fair Work Act 2009* small claims process to examine how it can become a more effective avenue for wage redress for migrant workers.

Recommendation 13

It is recommended that the Government extend access to the Fair Entitlements Guarantee program, it should be done following consultation regarding the benefits, costs and risks, and it should exclude people who have deliberately avoided their taxation obligations.

Recommendation 14

It is recommended that in relation to labour hire, the Government establish a National Labour Hire Registration Scheme with the following elements:

- a) focused on labour hire operators and hosts in four high risk industry sectors — horticulture, meat processing, cleaning and security — across Australia
- b) mandatory for labour hire operators in those sectors to register with the scheme
- c) a low regulatory burden on labour hire operators in those sectors to join the scheme, with the ability to have their registration cancelled if they contravene a relevant law
- d) host employers in four industry sectors are required to use registered labour hire operators.

Recommendation 15

It is recommended that education providers, including through their education agents, give information to international students on workplace rights prior to coming to Australia and periodically during their time studying in Australia.

Recommendation 16

It is recommended that education providers, through their overseas students support services, assist international students experiencing workplace issues, including referrals to external support services that are at minimal or no additional cost to the student and that specific reference to this obligation be made in the National Code of Practice for Providers of Education and Training to Overseas Students.

Recommendation 17

It is recommended that the Council for International Education develop and disseminate best practice guidelines for use by educational institutions.

Recommendation 18

It is recommended that the Minister write to the Prime Minister requesting that accommodation issues affecting temporary migrant workers be placed on the Council of Australian Governments (COAG) agenda. Through COAG, the Australian Government should work with state and territory governments to address accommodation issues affecting temporary migrant workers — particularly working holiday makers undertaking ‘specified work’ in regional Australia.

Recommendation 19

It is recommended that the Government consider developing legislation so that a person who knowingly unduly influences, pressures or coerces a temporary migrant worker to breach a condition of their visa is guilty of an offence.

Recommendation 20

It is recommended that the Government explore mechanisms to exclude employers who have been convicted by a court of underpaying temporary migrant workers from employing new temporary visa holders for a specific period.

Recommendation 21

It is recommended that the Fair Work Ombudsman and the Department of Home Affairs undertake a review of the Assurance Protocol within 12 months to assess its effectiveness and whether further changes are needed to encourage migrant workers to come forward with workplace complaints.

Recommendation 22

It is recommended that the Government give a greater priority to build an evidence base and focus its existing research capacity within the Department of Jobs and Small Business on areas affecting migrant workers. It should do this to better understand the extent, nature and causes of any underpayment and exploitation migrant workers may experience. The department should work across departments where appropriate. Separately, and in addition:

- a) the Department of Education and Training should work with the Council for International Education and peak organisations to help identify mechanisms for providers to collect data about student visa holders' experiences of working in Australia
- b) the Department of Education and Training should conduct regular surveys of overseas students that include workplace experience
- c) the Government should support work being undertaken by ABARES, the science and economics research division of the Department of Agriculture and Water Resources to increase data collection in relation to agricultural labour.

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.