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Submission to the Select Committee on Temporary Migration

March 2020



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and Industry

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Summary of Recommendations

This submission outlines the importance of a responsive temporary migration program, highlights the current shortcomings of the program and provides the following recommendations on how the system can be improved:

Recommendations:

- Ensure access to all skilled occupations for employers nominating workers under the employer nominated temporary and permanent skilled streams, except where there are integrity concerns.
- Maintain within the Australian Bureau of Statistics a current statistical list of occupations, known as ANZSCO, and immediately commence the next review, which is long overdue.
- Enable pathways to permanency for temporary skilled workers in all skilled occupations and eliminate the differential between short term and long-term temporary skilled workers.
- Improve processing times and reduce regulatory red tape including the heavy requirements for labour market testing for skilled occupations.
- Reintroduce migration outreach officers working within industry bodies to provide advice to business to help them navigate the complexity in the system.
- Implement a whole-of-government approach to labour market analysis and planning; monitor use of skilled migration to ensure system integrity and to inform independent skilled migration; and, align skills development and migration strategies based on labour market needs.
- Ensure visa fees and arrangements are internationally competitive.
- Recommence the review of visa categories with the aim to simplify the system and make it more accessible but not at a cost of reduced flexibility.
- Increase confidence in the temporary visa program through an active compliance program of education and enforcement.
- Halve the skilling Australians fund levy and improve the refund policy.
- Continue to promote international education and working holiday maker programs.

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1 Introduction

The Australian Chamber of Commerce and Industry (Australian Chamber) welcomes the opportunity to make a submission to the Select Committee on Temporary migration. We note that the Committee is inquiring into both skilled and unskilled temporary migration and, as such, our submission covers both areas of public policy.

The Australian Chamber is a strong advocate for a workforce development strategy that focuses on the skills development of Australian workers supplemented by a flexible and responsive migration system to fill the gaps. Australian businesses increasingly compete not just locally but globally for talent and skills.

Australia's temporary migration programme fills a range of objectives. The overall objective of a temporary skilled migration program is to ensure that it meets skill needs where and when Australian workers are not available so that businesses, no matter where they are located have the skills they need, when they need them, in order to survive, grow and employ. The program needs to be flexible enough to satisfy skill requirements across the country.

Due to recent changes to the program, the current temporary skilled migration system struggles to effectively achieve this objective and this submission highlights its shortcomings and makes recommendations on how the system can be improved.

Other components of the temporary migration program each have their own objectives, and the work rights element is only one of these. Two of the largest components of the migration program with work rights, being working holiday makers and international students, each contribute significantly to our economy and to cultural exchange, and the largest component reflects our special relationship with New Zealand. All have a vital role to play.

2 Context

In December 2018, the Australian Chamber released a major policy paper on migration and population titled '*Migration works for all of us – delivering benefits to all Australians*'. The paper is provided to the Committee as an attachment to this submission, and provides an important context for the Australian Chamber's position on migration policy. This paper sets out the strong evidence that the impact of migration on employment is net positive for Australia.

3 Temporary Skilled Migration

In principle, temporary skilled visas are intended to be particularly responsive to the business cycle and adjust very quickly to market conditions¹. In a 2018 report, the OECD stated that a survey showed relative to employers in other OECD countries, Australian employers have more difficulties meeting demand for workers with specific skills. 41 percent of employers in Australia report having

¹ OECD 2018, Recruiting Immigrant Workers: Australia, https://read.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-australia-2018_9789264288287-en#page38

difficulties filling vacancies, which places Australia well above the OECD average of 38 percent and among the top ten OECD countries possibly facing labour shortages².

The temporary skilled migration system has been examined on numerous occasions by different inquiries and independent reviews. The 2008 and the 2014 review of the integrity in the subclass 457 program, the 2016 Senate Education and Employment References Committee inquiry into the exploitation of temporary work visa holders, and the 2018/19 Senate Inquiry into Temporary Skilled migration are significant in this review history. Components of the program, such as TSMIT and training benchmarks have also been separately reviewed. The scope and remit of these inquiries overlap and so do the submissions made by stakeholders.

3.1 Impact of the 2017 changes

This current inquiry is an opportunity to evaluate the impact of the changes made to the temporary skilled visa system in April 2017.

The Australian Chamber supported the replacement of the subclass 457 visa, recognising the opportunity to reset a program that had lost public confidence. However, the 2017 changes to the migration program affected both temporary and permanent employer nominated migration without the opportunity to understand the proposed changes and provide input to the process. The changes, especially to the occupation lists, have had a significant negative impact on business, with many businesses now unable to access the skills they need, due to the occupation not being eligible for migration. Exacerbating the condition is the quantum of the Skilling Australians Fund Migration Training Levy, effective 12 August 2018, requiring even small businesses to pay substantially to use the system. The changes along with a heavy handed and time-consuming approach to processing has resulted in a system that is heavily regulated and very expensive for business to access while failing to meet the needs of the labour market.

3.2 Recent use of the temporary skilled program

The use of the temporary skilled migration program has traditionally had a strong link to economic and employment conditions. More recently, policy settings have had a greater impact. Figure 1 shows that TSS visas granted reduced post the April 2017 changes despite strong employment growth overall. There has been a small recovery since then³. Figure 2 enables the inclusion of the most recent figures for September 2019 and shows the downward trend of temporary skilled primary visa holders since 2013.

² OECD 2018, Recruiting Immigrant Workers: Australia, https://read.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-australia-2018_9789264288287-en#page38

³ Data.gov.au, <https://data.gov.au/dataset/visa-temporary-work-skilled>

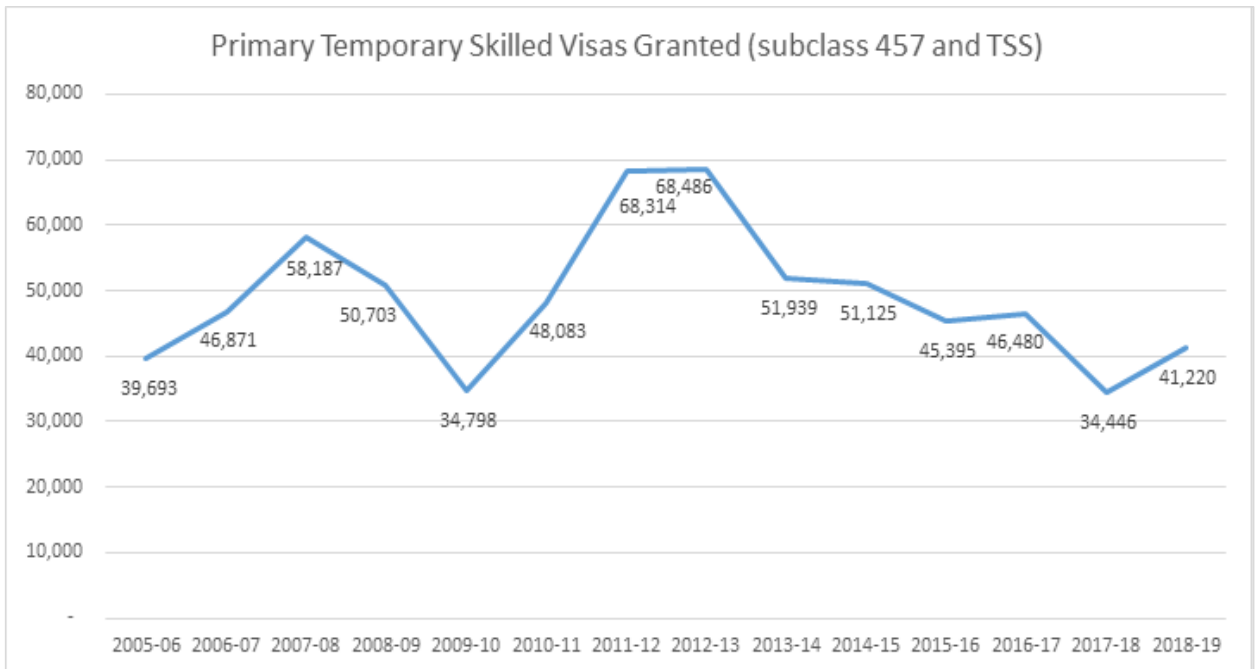


Figure 1: Primary Temporary Skilled Visas (subclass 457 and TSS) Granted

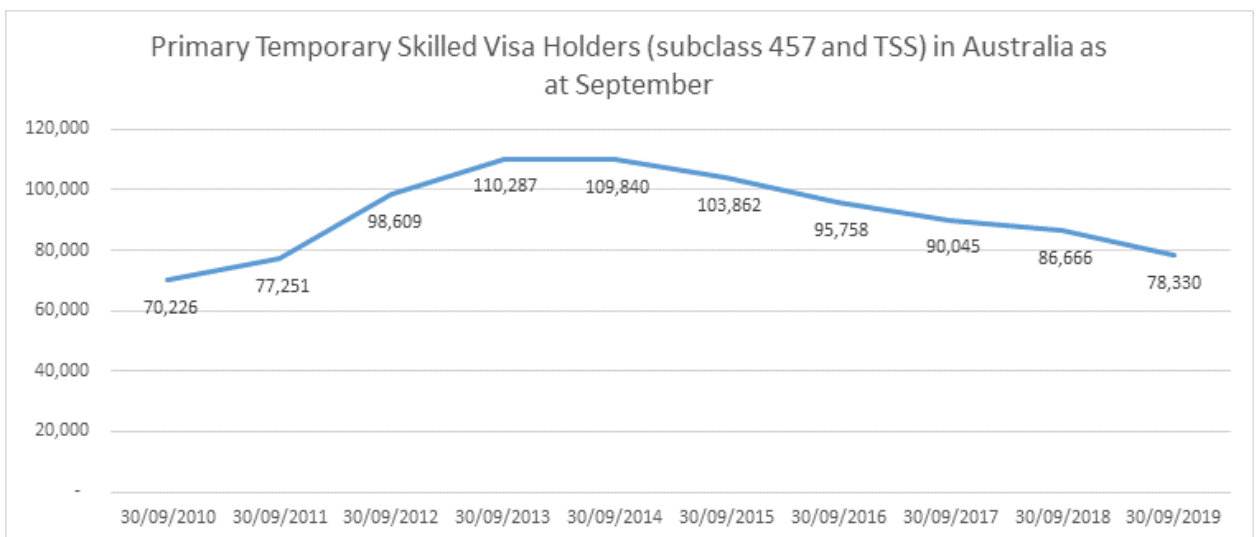


Figure 2: Primary Temporary Skilled Visas (subclass 457 and TSS) in country

3.3 Temporary skilled migration in workforce context

Our temporary and permanent migrant intake program makes up a very small proportion of Australia's workforce, which is 13.3 million in 2018 (figure 2). Temporary skilled migrants are sourced from overseas or from other temporary visa programs, and can flow through to any of the permanent skilled visa categories, although these pathways were restricted by the 2017 changes. The changes in work experience requirement had a particularly negative impact on the transition of vocational education and training graduates who are granted only an 18-month post study work visa. They are unlikely to meet the two-year experience requirement denying business the opportunity to recruit a

potential worker skilled and trained in Australia (at the migrant's expense) even when the business has been unable to locate and employ a suitably skilled Australian for the job.

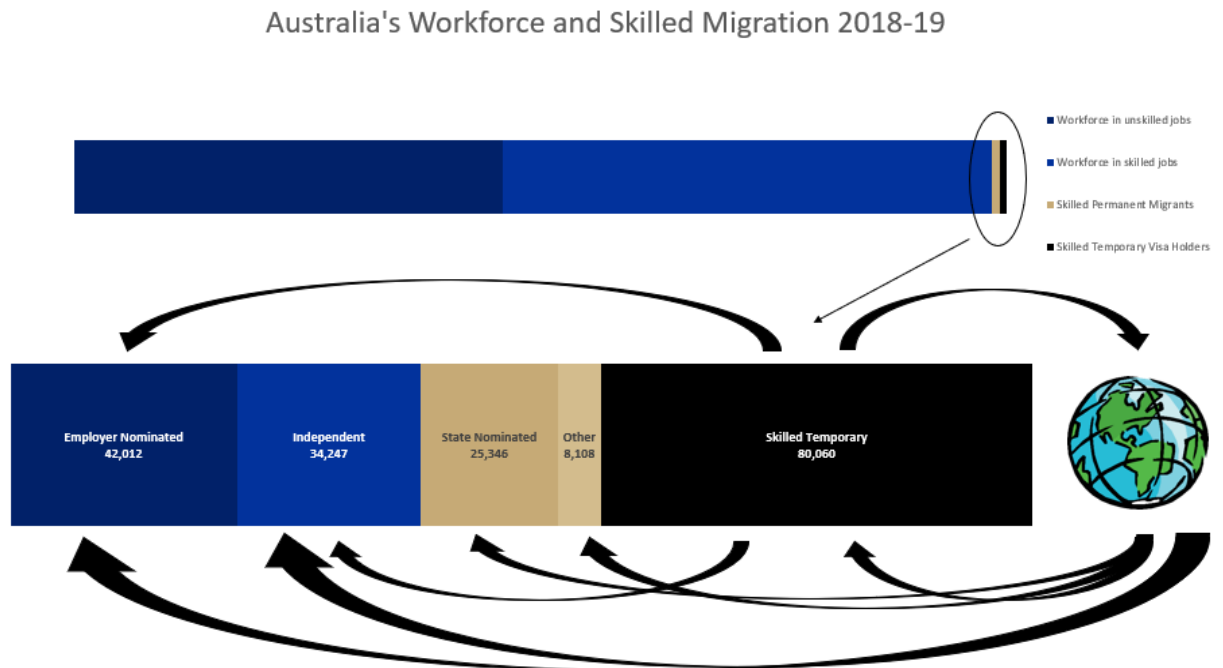


Figure 3: Australia's Workforce and Skilled Migration 2018-19

3.4 Complexities of the Occupation Lists

On 18 April 2017, the Government announced reforms to Australia's temporary and permanent skilled visa programs including scrapping the subclass 457 visa and introducing the Temporary Skills Shortage (TSS) visa (subclass 482). The new TSS visas entail tighter eligibility criteria and higher costs compared to the previous subclass 457 visa. The TSS visa comprises of a short-term, a medium to long-term and a labour agreement stream.

- The **short-term stream** of the TSS visa is for employers to fill temporary skills and labour needs with temporary migrants, in occupations determined to be on the Short Term Skilled Occupation List (STSOL) for a maximum of two years (or four years if an international trade obligation (ITO) applies).
- The **medium-term stream** of the TSS visa is for employers to fill skills needs with migrants, in occupations determined to be on the Medium and Long-term Strategic Skills List (MLTSSL) or the Regional Occupation List (ROL) for up to four years, with the provision of permanent residency after three years.
- The **labour agreement stream** is for employers to access migrants who are not catered for in the above two streams, in accordance with a labour agreement as negotiated with the Department of Home Affairs.

ACCI does not support the denial of more than one-third of the skilled occupations from the temporary skilled visa system nor does it support the division of the temporary skilled visas into two streams, and removing a pathway to permanency from a large percentage of occupations. Whereas previously all skilled occupations on the CSOL were eligible for employer nominated skilled migration, now:

- 243 occupations are on the STSOL available for the TSS short-term stream and have no pathway to permanent migration
- 59 occupations on the ROL available for the TSS medium-term stream in regional areas
- 210 occupations on the MLTSSL available for the TSS medium-term stream
- 137 skilled occupations are not eligible for temporary migration at all.

These changes removed the:

- Responsiveness in the system that allowed for employers to satisfy their skill needs – needs that are real even though they may not show up on a national assessment of skill shortages. There is no harm in occupations being on the list that were seldom used (except if there are integrity concerns around certain occupations) so their removal is a cosmetic change for “PR” purposes. However, there is harm if a specialist business cannot approach the system to satisfy a niche skilled worker when their business desperately needs it;
- Pathway to permanency for many occupations which was a fundamental strength of the system. Employer nomination visas are the most effective for migration as the employment outcomes are the highest of all categories. As one of the country’s leading demographers states this “two-step process is very effective because of the guaranteed employment of the migrant as opposed to the potentially long job search that needs to be undertaken by an independent skilled applicant”⁴.

The changes have also increased the complexity in the system, by creating confusion around multiple occupation lists. A much better approach would have been to retain the consolidated sponsored occupations list (CSOL), which was by-and-large a list of all skilled occupations on the ANZSCO, as the basis for temporary and employer nominated permanent migration. With this approach integrity issues can be dealt with on an occupation basis through caveats rather than by national skills analysis. For example, if a particular occupation was shown by analysis to be the subject of integrity concerns, then a limitation could have been introduced, such as the removal of a pathway to permanency or a shorter term of visa for that one occupation. This would be in line with the recommendations of the 2014 457 Visa Integrity Review Panel’s recommendations. The panel recommended specifically that all skilled occupations remain accessible to temporary skilled migration⁵.

The pathways to transition from temporary skilled to permanent are vital since this two-step migration process allows for those most likely to succeed in integrating fully into Australia. Temporary skilled migrants are already pre-integrated into our labour force and have established social. Over the period

⁴ McDonald, Peter 2016, “Ageing in Australia: Population changes and responses”, Population Ageing and Australia’s Future, ANU Press, pp.65-83.

⁵ Azarias, J et al 2014, Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Programme, Commonwealth of Australia.

2010-11 to 2013-14, holders of 457 temporary visas represented two-thirds of all employer-sponsored permanent visa grants, providing great outcomes for migrants and employers alike⁶.

3.5 National Assessment of Skills Shortage

The STSOL, MLTSSL and ROL are products of a national skills shortage assessment undertaken by the Department of Education, Skills and Employment (DESE). Any occupation deemed to be in shortage features on either of the lists, reviewed annually by the DESE.

Accurately identifying labour market needs across the country is a vital exercise that needs to be undertaken in the broader context of developing skills in the economy. However, the need for skills shortage assessment for employer sponsored temporary skilled migration is adequate to identify all skill needs. The shortages experienced by an individual business in a particular location at a particular point in time cannot be identified by a national assessment or data set on skills shortages, even if a rich and diverse data set capable of constantly adapting to capture market conditions was available. Skill shortages and recruitment difficulties exist at the national level and within states and territories. Within states and territories, there can be shortages between metropolitan areas and regional areas⁷. They can exist locally but not show up regionally or nationally.

There are specialisations in occupations that an analysis of an occupation cannot possibly be able to accurately identify. This makes a profound difference to an assessment that the skills being sought are in shortage. For example, putting aside definitional issues around cooks and chefs, the issue of assessing specialisation in occupations is effectively illustrated, since skills within these occupations are not readily transferable across cuisine specialisations. Can a Chinese chef cook Italian food? How many Mongolian, Peruvian or Japanese Chefs does Australia need? Can a cutting edge, trendy Asian/Australian fusion restaurant offering main courses at over \$40 a unit pick from the broad field of chefs?

In other occupations and industries, new technology being introduced can often mean that specialists are needed to operate the machines and train others. A macro level nationwide data analysis cannot possibly identify these nuances. This is true even for regional skills needs where regional data sets are sparse and often inadequate to aid in constructing an accurate picture of various regional skills needs. For example, motor mechanics might not be in national shortage, but a business in Kalgoorlie might face a vacancy they are unable to fill due to lack of local mechanics in Kalgoorlie or the unwillingness of other Australian mechanics to move to Kalgoorlie to take up the job. In this instance, the business is left with no option but turn to migration options, which is a long protracted and complicated process, especially for a small business.

3.6 Methodology of the Occupation Lists

During the initial consultation conducted by the DESE, regarding the methodology, the role and impact of industry and stakeholder input was not clear, given that submissions had to be based on robust modelling. Most business and industry groups would not have the resources to produce such

⁶ OECD 2018, Recruiting Immigrant Workers: Australia, https://read.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-australia-2018_9789264288287-en#page28

⁷ OECD 2018, Recruiting Immigrant Workers: Australia, https://read.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-australia-2018_9789264288287-en#page40

modelling to corroborate anecdotal evidence received from members including small businesses. The methodology therefore fails to account for all the nuances of the modern labour market.

ANZSCO includes 'not elsewhere classified' (NEC) classifications. These occupations presented particular challenges since industries and individual stakeholders including small businesses likely mounted evidence about only one occupation within an NEC category. The methodology failed to make clear how NEC were to be dealt with.

3.6.1 Example of Occupational Lists creating issues for business

The removal of Air Transport Professional NEC occupation has had a profound negative impact on a premier Australian Hot Air Balloon operator operating in Queensland, NSW and Victoria. The hot air ballooning industry has experienced rapid growth with increasing number of international and domestic tourists choosing to indulge in the activity. Hot Air Balloon Pilots need skills very similar to airline or fixed wing pilots with the same CASA rules applicable. There are numerous vacancies currently available for Hot Air Balloon Pilots around Australia, and due to the extremely small and limited pool of pilots, the business is unable to fill their vacancies. While they have made every effort to train pilots, it is not a job for everyone, and therefore the business has had to rely on the skilled migration process. The process of becoming a hot air balloon pilot can include:

- Starting off in private operations for 12 months and needing 75hrs of training;
- Pass the navigational exam
- Pass the air law exam
- Pass a class 1 medical
- Pass the theory exam for a Commercial Pilots licence (CPbL)
- Balloons generally only fly for 1 hour a day at day break, therefore building training hours takes time
- Therefore, it usually takes 3 to 4 years before a pilot becomes economically viable to an operator.

An experienced pilot will have the ability to supervise and train the next generation of pilots, thus creating the future pipeline of talent and skills. For every hot air balloon pilot employed, the business creates additional jobs by employing Australians in supporting roles to run the business. The business recommended the addition of a sub-classification for Hot Air Balloon Pilot to mirror that of an Aeroplane Pilot or Helicopter Pilot. However, due to the removal of the Air Transport Professional NEC from the occupation list, the business is unable to access any skilled migrants and as a last resort has put in an application for a labour agreement, which is yet to progress beyond the application stage. The business is effectively running itself into the ground along with the potential value it can add to the economy.

3.6.2 Hierarchy of the Occupation Lists

The creation of multiple occupation lists has resulted in an informal hierarchy of lists.

- The MLTSSL is the best list for an occupation since it provides access to skilled migrants under the medium-term stream of the TSS. It is open to all employers (regional and urban) and the skilled migrant can stay for up to four years with a pathway to permanent residence after three years.

- The ROL is the next best list for an occupation since it provides access only to regional employers but has a pathway to permanency for the migrant.
- The STSOL is the least favourable list for an occupation since it only provides access to skilled migrants under the short-term stream of the TSS. It is open to all employers (regional and urban) with a maximum stay of two years (four years if an ITO applies) with no pathway to permanency.

This STSOL limitation concerns business since prospective talent find the limitation of two years with no pathway to permanency unattractive and do not see it as worthwhile to make the move for the period.

ACCI proposes that the process of determining skill shortages and allocating occupations to lists be simplified by abolishing multiple lists and establishing a workforce development agency to analyse skill needs in the economy.

3.7 ANZSCO

One of the pillars of labour market statistical infrastructure is the Australian and New Zealand Standard Classification of Occupations (ANZSCO). This infrastructure maintained by the Australian Bureau of Statistics (ABS) includes information from the Census and underpins a wide range of labour market data such as job outlook information and occupation lists that determine migration eligibility.

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 (2009 and 2013) since its introduction in 2006 (having transitioned from the previous ASCO codes). Canada, which has a similar classification of occupations, has had regular revisions with a structural review scheduled every ten years (2001, 2006, 2011, and 2016). 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. However, the Australian Bureau of Statistics (ABS), custodians of the statistical product say that they are unable to commence a review due to labour and resource constraints and competing priorities. Regular review of major statistical infrastructure such as the ANZSCO needs to be built into the normal operating budget of the ABS. The ABS has not even committed to a review in the future, only that it will be considered post the 2021 Census process.

All occupations are experiencing technological progress and the nature of work and job roles are constantly changing. ANZSCO not only identifies new jobs, but it also appraises the duties within their job and assigns an appropriate skill level. A large number of stakeholders across the economy share our concerns, including colleagues from Business NZ. The 2018 OECD Report on Getting Skills Right in Australia⁸ also highlighted the need to update the ANZSCO since emerging occupations such as cyber security, artificial intelligence experts and others were not included in the current classification. According to the ABS Forward Work Program released October 2018, the resource required to fully implement the review is \$4 million⁹.

⁸ OECD 2018, Getting Skills Right Australia, https://read.oecd-ilibrary.org/employment/getting-skills-right-australia_9789264303539-en#

⁹ ABS 2018, Forward Work Program 2018-19, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/1006.0?OpenDocument>

ACCI recommends the Federal Government immediately fund a review of the ANZSCO in the context of both workforce planning and skilled migration. Of equal importance is ensuring regular revisions and structural reviews are incorporated into the ABS' work plan at intervals which are in line with industry best practice with budgeted resources. It should not be contingent on external stakeholders advocating for the review.

3.8 Processing Delays and Cost

The enormous application costs and ballooning delays in the processing of applications has severely impacted the responsiveness and flexibility of the system to meet the immediate labour needs of business. Visa application fees are high in Australia by OECD standards¹⁰. The added layer of labour market testing and other compliance requirements has increased the time it takes to put in an application. Although the processing times have improved in the last 12 months, there is still some way to go before the program can be described as responsive and flexible.

Stream	Application Cost	Current Processing Times (28 January 2020)
TSS (short-term stream)	From \$1,265	75% of applications in 41 days ¹¹ 90% of applications in 70 days
TSS (medium-term stream)	From \$2,645	75% of applications in 36 days ¹² 90% of applications in 55 days
Labour Agreement	From \$2,645	75% of applications in 34 days ¹³ 90% of applications in 54 days

3.9 Skilling Australians Fund (SAF) Migration Training Levy

ACCI does not support the direct connection between the SAF migration training levy and the Skilling Australians Fund National Partnership Agreement for apprenticeships. This has created unnecessary complexity around the convoluted funding arrangement at both ends.

The quantum of the SAF levy is a major issue for business. The quantum of the levy is excessive and surpasses what was recommended by the 457-programme integrity review¹⁴. Adding to this is the upfront nature of the levy and inadequate refund policy, which is proving to be a huge burden for small business. Similar to representations made in our 2019-20 Pre-budget submission, ACCI recommends the levy be halved to \$600 per year for small business and \$900 for large business for each sponsored temporary migrant instead of the current fees which are:

Stream	Small Business (annual turnover less than \$10 million)	Large Business (annual turnover more than \$10 million)
TSS (short-term stream for 2 years)	\$2,400	\$3,600
TSS (medium-term stream up to 4 years)	\$4,800	\$7,200

¹⁰ OECD 2018, Recruiting Immigrant Workers: Australia

¹¹ Department of Home Affairs 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482/short-term-stream>

¹² Department of Home Affairs 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482/medium-term-stream>

¹³ Department of Home Affairs 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482/labour-agreement-stream>

¹⁴ Azarias, J et al 2014, Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Programme, Commonwealth of Australia.

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.

In addition, it is a significant concern that the levy is payable upfront for the full duration of the visa with a refund available only in limited circumstances¹⁵:

- Where the migrant fails the health or character checks
- The sponsorship and visa applications are approved but the migrant does not arrive or commence employment
- The visa holder leaves the sponsoring employer within the first 12 months of employment where the visa period was for more than 12 months (refund is only given for unused full years)
- The nomination fee is refunded

ACCI recommends that the ability to access refunds should be extended to ensure that in all cases where the application has not been successful, the training levy would be refunded.

3.10 Temporary Skilled Migration Income Threshold (TSMIT)

The temporary skilled visa program is underpinned by both a market rates approach, and an eligibility that is built around skilled occupations. Overseas skilled workers are paid the same amount as an equivalent Australian worker. Commentary around the TSMIT often is confused, and refers to the TSMIT as the amount an overseas worker is paid – this is not the role of the TSMIT.

The TSMIT has two roles:

1. To provide an income floor primarily designed to ensure that temporary skilled visa holders are able to support themselves, given their ineligibility for certain benefits Australians receive and also to discourage working for others (income floor); and
2. As an eligibility threshold, such that jobs that are paid lower than the TSMIT would not be entitled to access a temporary skilled visa holder (eligibility threshold).

In relation to the role as an income floor, TSMIT is a blunt instrument not reflective of the substantial differences in costs of living across industries, and across a wide range of locations and circumstances that would impact the cost of living. In the long term, with a market rates system in place and good compliance history in the program, the need for TSMIT to perform this role should be minimised, if not eliminated. While planned compliance measures are implemented which aim to build confidence in the program, there may be an argument to retain the income floor as it is a simple dollar amount. However, it should not be the long-term objective to retain the TSMIT as other integrity measures such as market rates and pay compliance in the program should be sufficient to ensure an appropriate income floor.

¹⁵ Department of Home Affairs 2018, <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/learn-about-sponsoring/cost-of-sponsoring>

The second role of the TSMIT as an eligibility threshold should be removed immediately as it is not necessary given the requirement to only fill skilled vacancies on the occupation lists. Employers in industries and regional areas where the market rate of skilled workers is often below the TSMIT should not be denied the opportunity to use the skilled visa program if they are experiencing shortages. Remuneration in regional Australia is in most cases substantially less than in the metropolitan areas, and where this is not the case, the market rate of pay reflects the amount needed for workers to live and work. The cost of living in regional areas is also often lower. A substantial part of total household income is spent on housing, but even allowing for incomes being lower, the proportion spent on housing is less in areas outside of the greater capital cities.

To reflect differences in the market pay and the cost of living between cities and regional Australia and to assist in minimising the difference in the market rate of pay between an overseas worker and an Australian worker doing the same role, the TSMIT as an income floor should be 10 percent lower for regional areas (defined as work outside the capital city metropolitan areas of all states and territories).

3.11 Labour Market Testing (LMT)

It is common ground that where Australians with the relevant skills are available they should fill job vacancies. Employers face many existing barriers when using the highly regulated and expensive skilled migration program and these barriers are already a very strong incentive for employers to employ Australian workers as a first priority. Sponsoring a migrant is costly – in fees and levies, as well as being time-consuming. The TSS requires numerous compliance requirements that a migrant must meet to be eligible for a temporary skilled visa.

- Health and Character: The migrant must meet specified health and character requirements at their cost, which entails passing health assessments and obtaining police certificates.
- English language: The migrant must provide evidence of requisite English language skills through sitting an English language exam such as the ILETS with a minimum score of 5.
- Skills assessment and Experience: The migrant must provide evidence that they have the necessary skills, qualifications and employment background to perform the nominated occupation having worked in a relevant occupation for at least two years.
- Minimum Salary: The employer must pay the migrant according to the Temporary Skilled Migration Income Threshold (TSMIT), currently \$53,900, which is no lesser than the minimum wages paid to an Australian.
- Perform Approved work: The migrant must be working directly for the sponsor or for an associated entity of the sponsor, unless the nominated occupation is exempt from this requirement¹⁶.

On top of these barriers, the laws have strengthened in the last few years to require labour market testing (LMT), which is an obligation on employers to advertise and report results before hiring a temporary skilled migrant. It does not add much value to achieving the recruitment of Australians first

¹⁶ Department of Home Affairs, <https://archive.homeaffairs.gov.au/trav/visa-1/482->

(it is likely that numerous attempts to recruit Australians were made before reaching out to a migrant), but it significantly adds to the red tape burden.

Sadly, the debate about LMT has become an ideological battle that ignores the evidence. It has even threatened the approval of Free Trade Agreements (FTAs), with the ACTU claiming that there should be no exemptions from LMT granted in FTAs. Opponents to waiving LMT in FTAs are fighting a paper tiger. In reality, the process of LMT is red tape with little impact on outcomes. In 2015, unions rolled out similar arguments against the China-Australia Free Trade Agreement (ChAFTA) as it contained exemptions for LMT. The facts show just how weak the paper tiger is. In the year before ChAFTA, 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 LMT do not result in hordes of foreigners gaining access to our labour market.

The Australian Chamber concurs with the recommendation of the 457 Integrity Review that based on the lack of evidence of its effectiveness and due to the high regulatory burden, labour market testing for the TSS visa program should be abolished. Alternatively, there is scope to reduce the complexity of administrative procedures without compromising on compliance, by easing the labour market testing for high-wage occupations and renewals

4 Other Temporary Visa holders

Much is often made of the relatively large number of temporary visa holders with work rights in Australia. The table below summarises the temporary visa holders with some work rights in country:

Temporary Work Visas*	December 2018	December 2019	Percentage Change
New Zealand Citizens	656,983	668,687	1.78%
Working Holiday Makers	145,479	141,142	-3.00%
Temporary Graduate	70,049	89,324	27.52%
Temporary Resident (Skilled Employment)	136,007	119,160	-12.39%
Temporary Resident (Other Employment)	35,944	39,079	8.72%
Other Temporary	2,977	3,240	8.83%
International Students	433,624	480,543	10.82%
Crew and Transit	25,112	23,748	5.43%
Bridging Visa Holders	188,773	216,141	14.50%

*Includes secondary visa holders

Concerns fuelled by the quoting these “large numbers” of temporary visa holders are ill founded and lack an understanding of what makes up these numbers. The biggest component with work rights are New Zealanders. In this area of public policy, there appears to be no stakeholder suggesting that New Zealanders should not have full work rights. The controversial aspect of New Zealand migration appears to be more about people with criminal records being sent back to NZ or whether there are long term entitlements to welfare benefits.

International students and working holiday markers are other large components of the program, and it is worth making observations on each category. With the other large component, being bridging visas, these are people waiting for a visa decision so the situation for the migrant is more uncertain. Thus, even though they generally have work rights attached, their options for employment will often be impacted by this uncertainty.

4.1 Working Holiday Makers

Valuable working holidaymaker and seasonal worker programs deliver enthusiastic and mobile young workers particularly into the regions to provide the labour needed when it is most useful. These workers generally have skills above the seasonal job requirements, which increases the productivity benefit to industries such as agriculture and tourism. This seasonal work is often not attractive or suitable for young unemployed Australians who are looking for longer-term employment solutions that are a closer to their home and support networks.

The economic benefit of WHM, particularly through the tourism dollars they spend, is very high. They spend more than they earn in Australia. Without this visa, we would be economically worse off, and regional communities will suffer from lack of access to the labour they need to satisfy seasonal demand.

4.2 International Students

International education is one of Australia’s largest export industries worth over \$32 billion to the economy and contributing to the cost of research and educating Australians¹⁷. There are also strong intangible benefits of soft power diplomacy and increased cultural understanding. As at July 2019, there were 927,411 international students studying in Australia, 97 percent of which are studying in our major cities, and 70 percent in NSW and Victoria combined¹⁸.

While they are here international students add to demands on infrastructure and housing as do tourists, but the economic benefit vastly outweighs the cost. The jobs generated by tourism and education exports provide opportunities for Australians to work in a growing service economy at a time when jobs in mining, manufacturing and agriculture are falling in relative terms. There are also flow on benefits to jobs in construction and infrastructure to meet the needs.

International students are temporary migrants - around 85 per cent of international students leave Australia when their studies have concluded¹⁹. For those that seek permanent residency, the benefit of a strong international education program is that these migrants are trained here, which makes

¹⁷ Department of Home Affairs & Treasury 2018, Shaping a Nation, <https://cdn.tspace.gov.au/uploads/sites/107/2018/04/Shaping-a-Nation-1.pdf>

¹⁸ Department of Education and Training 2018, International Students in Regional Areas, <https://internationaleducation.gov.au/research/Research-Snapshots/Documents/Location%20of%20International%20Students%20in%202019.pdf>

¹⁹ Department of Home Affairs & Treasury 2018, Shaping a Nation, <https://cdn.tspace.gov.au/uploads/sites/107/2018/04/Shaping-a-Nation-1.pdf>

their skills more relevant to Australia, yet without the costs of their education being paid for by Australians.

Although international students have limited work rights (up to 40 hours per fortnight), evidence indicates that only about half take up the opportunity to work, and those that do, work a median of around 15 hours per week²⁰.

Suggesting that there should be limits on international student numbers due to concerns about employment competition is false economics. International education creates jobs. We should be mindful of the small number of examples where international students are being paid below their wage entitlement but these concerns should not overwhelm the positive benefits that derive from international students choosing to study in Australia.

5 Permanent v Temporary migration

One of the Committee's Terms of Reference is "*whether permanent migration offers better long-term benefits for Australia's economy, Australian workers and social cohesion.*" We do not agree with the premise of this question as it implies that one has a greater priority than the other. Both permanent and temporary migration have an important role to play. Temporary migration, in particular temporary skilled migration, plays a useful role in providing a pathway to permanent migration as it allows both the migrant and the employer to assess the long-term fit, including from the migrant's perspective whether they feel comfortable within the broader culture and community that Australia offers. It is a shame that with the more recent changes to temporary skilled migration that many occupations have lost this important pathway to permanency.

6 Workplace Relations Issues

The Committee's terms of reference include an examination of "*the impact of wage theft breaches of workplace rights and conditions, modern slavery and human trafficking on temporary migrants*". In this area of public policy, it is unfortunate that a small minority of employers who misuse our migration system are often associated with breaches of a range of laws, including the Fair Work Act, awards and minimum wages. This is a well-recognised problem globally. In Australia, a great deal has been done and is being done at this time, which calls into question the need for any further consideration and recommendations of this committee. The Committee is urged to be cautious as any further recommendations may be potentially confusing, and at worst detracting from wider efforts to combat underpayments, including for migrants.

6.1 Underpayment

Regulated pay obligations apply based on the work done, not on who does it²¹. Migrants are entitled to the pay they are contracted to receive, and to the same minimum and regulated wages as other employees (noting that the Temporary Skilled Migration Income Threshold provides a floor on wages for TSS visa holders).

²⁰ Universities Australia 2018, Student Finances Survey 2017

²¹ With some exceptions that are not relevant here, such as juniors or some employees with disability.

Migrant workers are often identified as potentially vulnerable in every nation's industrial relations system, and migration and labour authorities go to particular efforts to overcome misperceptions, promote rights, and inform migrant workers. Australia's Fair Work Ombudsman (FWO) provides dedicated resources in language to assist migrant workers, and translation services. The FWO also works cooperatively with the Department of Home Affairs.

Clearly there have been and continue to be problems, evidenced most visibly by the 7-Eleven underpayment of, largely, international student visa holders. Many of these problems arise within migrant communities / language groups and at the extreme end, can involve complex implied threats against persons not resident in Australia, and multiple breaches of a number of laws. Alternatively, problems arise due to the desire of the visa holder to secure an income source and not having sufficient understanding of their rights, or being concerned about the loss of income if they complain.

Action is being taken to address such concerns:

6.1.1 Migrant Worker Taskforce

The Migrant Worker Taskforce (MWT), headed by Professor Allan Fells was a direct response to the cases such as the 7-Eleven workers. This was an extensive and wide-ranging inquiry into the issues of concern to this committee.

The MWT made 22 recommendations²², which the Government accepted in principle prior to the 2019 Election. We understand that the Government will during March 2020 introduce legislation to implement the recommendations of the MWT (at least in regard to workplace relations and the Fair Work Act).

This extensive inquiry, including the pending legislation, essentially removes the need for this term of reference and this inquiry examining such issues. Parliament will very shortly be able to review a solution to these concerns, and we do not therefore see value in again seeking to identify the problem.

6.1.2 Inquiry into 'Unlawful underpayment of employees' remuneration'

The current, Opposition initiated, inquiry of the Senate Economics Committee into 'Unlawful underpayment of employees' remuneration'²³, which has the following terms of reference is also relevant:

- a. *the forms of and reasons for wage theft and whether it is regarded by some businesses as 'a cost of doing business';*
- b. *the cost of wage and superannuation theft to the national economy;*
- c. *the best means of identifying and uncovering wage and superannuation theft, including ensuring that those exposing wage/superannuation theft are adequately protected from adverse treatment;*
- d. *the taxation treatment of people whose stolen wages are later repaid to them;*
- e. *whether extension of liability and supply chain measures should be introduced to drive improved compliance with wage and superannuation-related laws;*

²² [Report of the Migrant Workers' Taskforce \(2019\)](#)

²³ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Underpaymentofwages

- f. the most effective means of recovering unpaid entitlements and deterring wage and superannuation theft, including changes to the existing legal framework that would assist with recovery and deterrence;*
- g. whether Federal Government procurement practices can be modified to ensure that public contracts are only awarded to those businesses that do not engage in wage and superannuation theft; and*
- h. any related matters.*

This is a well ventilated area, subject to independent recommendations, which are in the process of being implemented, and the community will see draft legislation very shortly (which will almost certainly be subject to a further inquiry through the Senate Education and Employment Legislation Committee).

Therefore, underpayments and breaches of workplace rights and conditions impacting on migrant workers are being examined and addressed through other avenues. We see no cause for additional examination or engagement with these considerations at this point through this Committee, and are concerned at risks of ineffective or poorly directed efforts if these considerations are splintered into yet another inquiry and set of recommendations.

As an important side note, the use of “wage theft” in the terms of reference lacks clarity. The term remains a contested slogan without a set or accepted definition, making this a very difficult question to respond to. Is the Committee asking about the impact of all underpayments on migrant employees, or of that subset for which there is clear intentionality? Is the Committee asking about underpayments which occur for a limited period, and are corrected? Or those which are enduring / sustained?

This may be a more answerable question in the wake of the introduction of new legislation to impose new penalties, including criminal penalties, for some workplace relations non-compliance within coming weeks. However, the answer is going to be that the proposed new penalties will apply to the underpayment of both Australian citizens and permanent residents, and migrants.

6.2 Modern Slavery

The Australian Parliament passed Modern Slavery legislation in 2018²⁴. Approximately 3,000 of Australia’s larger enterprises are now in the process of doing what is required under the Act, to start reporting in December 2020.

The Modern Slavery Act 2018 followed:

- a. A major inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade²⁵.
- b. An earlier departmental consultation paper, and a series of consultation roundtables.

There is also a Modern Slavery Expert Advisory Group, to provide advice on key issues and strengthen business engagement to effectively implement the Act²⁶.

In addition, there is parallel Modern Slavery legislation in NSW, which seems a regrettable duplication in an area in which there is a clear national if not multinational dimension.

²⁴ The Modern Slavery Act 2018 (Cth)

²⁵ <https://www.aph.gov.au/modernslavery>

²⁶ <https://www.homeaffairs.gov.au/criminal-justice/Pages/modern-slavery.aspx>

It is questionable whether anything more can be usefully investigated about modern slavery in Australia or linked to Australian operations prior to the first round of public reporting, and also whether there is any value in the Parliament attempting to consider this in advance of the three year review that has been built into the Commonwealth Modern Slavery Act 2018²⁷.

6.2.1 Human Trafficking

This is largely an issue outside formal employment in Australia, operating beyond the organised employer movement. Regardless of the strict legal situation, human traffickers are criminals rather than employers.

ACCI supports Australia continuing to take a largely law enforcement and diplomatically led approach to Human Trafficking, and in particular the Bali Process led by Australia.

7 Recommendations

1. Ensure access to all skilled occupations for employers nominating workers under the employer nominated temporary and permanent skilled streams, except where there are integrity concerns.
2. Maintain within the Australian Bureau of Statistics a current statistical list of occupations, known as ANZSCO, and immediately commence the next review, which is long overdue.
3. Enable pathways to permanency for temporary skilled workers for all skilled occupations and eliminate the differential between short term and long term temporary skilled workers.
4. Improve processing times and reduce regulatory red tape including the heavy requirements for labour market testing for skilled occupations. Consider reintroducing migration outreach officers working within industry bodies to provide advice to business to help them navigate the complexity in the system.
5. Implement a whole-of-government approach to labour market analysis and planning; monitor use of skilled migration to ensure system integrity and to inform independent skilled migration; and, align skills development and migration strategies based on labour market needs.
6. Ensure visa fees and arrangements are internationally competitive.
7. Recommence the review of visa categories with the aim to simplify the system and make it more accessible but not at a cost of reduced flexibility.
8. Increase confidence in the temporary visa program through an active compliance program of education and enforcement.
9. Halve the skilling Australians fund levy and improve the refund policy.
10. Continue to promote international education and working holiday maker programs.

8 Conclusion

A well-managed temporary migration system will facilitate Australia's economic prosperity and contribute to the success of our society as a whole. The high level of regulation in the system, along

²⁷ Section 24

with important compliance monitoring and enforcement, is sufficient to limit overuse of the program in all but an isolated few occupations and sponsors. Yet, the 2017 changes resulted in the system becoming too expensive, inflexible and unresponsive, as well as overly complex thus effectively creating red tape and a disincentive to use the system.

9 About the Australian Chamber

The Australian Chamber of Commerce and Industry is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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