

## **SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION ON THE INQUIRY INTO AUSTRALIA'S SKILLED MIGRATION PROGRAM**

### **1 INTRODUCTION**

- 1.1. The Migrant Workers Centre ('MWC') welcomes the opportunity to provide this submission to the Joint Standing Committee on Migration regarding Australia's skilled migration program.
- 1.2. The MWC is a non-profit organisation located in Carlton, Victoria, that helps migrant workers understand their rights and get empowered to enforce them. By 'migrant workers' the MWC refers to persons who were born in a country other than Australia and work in Australia under instructions for income. Its goal is to end labour exploitation and fix our workplace system so that every worker, regardless of their migrant status, is treated with dignity and respect.
- 1.3. In the last decades, Australia has calibrated migration policies to prioritise workers who can address specific domestic skill shortages for permanent residency.<sup>1</sup> Whereas the number of permanent visas issued is tightly controlled and kept low, capped to 66,100 issuances in the financial year 2020-21, the federal government issues an unlimited number of temporary visas (Table 1). The result is an ever-expanding population of migrant workers on temporary visas struggling to acquire permanent residency.
- 1.4. These workers are exposed to exploitation, discrimination, and harassment by employers who falsely claim to have the power to arrange their permanent residency or have their temporary visas cancelled. The MWC witnesses the exploitation of migrant workers every day.
- 1.5. Australia needs to protect all the working people on this land. We also need to ensure the integrity of our migration programs. To these effects, this submission focuses on some key issues relevant to the following three Terms of Reference of this inquiry:
  - 4) The administrative requirements for Australian businesses seeking to sponsor skilled migrants, including requirements to prioritise job opportunities for Australians and job creation;
  - 5) The costs of sponsorship to businesses seeking to sponsor skilled migrants; and
  - 6) The complexity of Australia's skilled migration program including the number of visa classes under the program and their requirements, safeguards and pathways.
- 1.6. In the following sections, this submission focuses on the problems of (a) employer control over migrant workers, (b) limited pathways to permanent residency, (c) the complexity of recruitment and employment processes, and (d) incoherent requirements of skills and experience.

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<sup>1</sup> Anthony O'Donnell and Richard Mitchell, 2001, "Immigrant Labour in Australia: The Regulatory Framework," *Australian Journal of Labour Law* 14, no. 3: 269-305.

**TABLE 1. SKILLED VISAS CURRENTLY OPEN TO NEW APPLICATIONS (SIMPLIFIED)****PERMANENT VISAS**

(issuance capped at 66,100 in FY 2020-21, excluding Business-oriented subclasses)

Subclass & Stream			Prerequisites		Occupation	Nomination
			Professional	Geographical		
186	Employer Nomination Scheme	DE	Positive skill assessment; 3-yr experience		Listed; Remunerated equivalent to TSMIT	Employer
		LA			Labour agreement	Employer
		TR	3-yr experience on subclass 482 with sponsoring employer		Listed; Remunerated equivalent to TSMIT	Employer
187	Regional Sponsored Migration Scheme	TR	3-yr experience on subclass 482 with sponsoring employer		Nominated for subclass 482	Regional employer
189	Skilled Independent		Positive skill assessment; Enough points for invitation		Listed	
190	Skilled Nominated		Positive skill assessment; Enough points for invitation	Currently living and working in state/territory	Listed	State/ territory gov
191	Permanent Residence (Skilled Regional)		(to be announced by commencement on 16 November 2022)	3-yr working and earning equivalent to TSMIT in designated regional area		
858	Global Talent		Internationally recognised achievement		priority sectors (GT pathway) or other sectors (DT pathway)	Relevant individual/ organisation
887	Skilled Regional			2-yr living and 1-yr working in specified regional area on subclass 489		Family or state/ territory gov

Notes: DE (direct entry), LA (labour agreement), TR (temporary residence transition).

Sources: DHA, 27 Feb 2021, List of all visas; DHA, 28 Jan 2021, Migration program planning levels.

**TEMPORARY VISAS**  
(issuance uncapped)

Subclass & Stream			Prerequisites		Occupation	Nomination
			Professional	Geographical		
403	Temporary Work (International Relations)	PL		National of 10 participating countries	Nominated	Regional employer
482	Temporary Skill Shortage	ST	Positive skill assessment; 2-yr experience		Listed; Remunerated equivalent to TSMIT	Employer
		MT				
		LA	2-yr experience		Labour agreement	Employer
		GT	3-yr experience		Remunerated equivalent to TSMIT (Startup pathway) or FWHIT (Established Business pathway)	Employer
489	Skilled Regional	EX	2-yr living on one of repealed temporary skilled regional visas			
491	Skilled Work Regional		Positive skill assessment; Enough points for invitation	Currently living and working in state/territory	Listed	State/ territory gov
494	Skilled Employer Sponsored Regional	ES	Positive skill assessment; 3-yr experience		Nominated	Regional employer
		LA	3-yr experience		Labour agreement	Regional employer

Notes: ES (employer sponsored), EX (extended stay pathway), GT (global talent employer sponsored), LA (labour agreement), MT (medium-term), PL (Pacific labour), ST (short-term).

Sources: DHA, 27 Feb 2021, List of all visas; DHA, 28 Jan 2021, Migration program planning levels.

## 2 SUMMARY OF RECOMMENDATIONS

### ACCESS TO PERMANENT RESIDENCY

**RECOMMENDATION 1.** All holders of employer-sponsored temporary skilled visas should be given a clearer pathway to permanent residency as recommended by this Committee.<sup>2</sup> They should be allowed to combine local employment experience with different employers toward meeting the minimum three-year local experience required for the Temporary Residence Transition stream of subclasses 186 and 187.

**RECOMMENDATION 2.** The employer-sponsorship system should be abolished or limited to an absolute necessity of temporary skilled visas. The Temporary Residence Transition stream of subclasses 186 and 187 should be reformed to allow holders of employer-sponsored temporary skilled visas to access it through a state/territory-government sponsorship instead of an employer sponsorship.

**RECOMMENDATION 3.** The new permanent visa (subclass 191) should be a pathway for long-term temporary migrant workers of all visa subclasses who have contributed to the economy and made strong ties to Australia.

**RECOMMENDATION 4.** Visa conditions and eligibility requirements should be designed to create organic pathways from temporary to permanent visas. As a matter of priority, subclasses 476 and 485 graduate visas should allow recent graduates to stay at least three years and gain required employment experience.

### HUMAN-FACED MIGRATION

**RECOMMENDATION 5.** Migrant workers on temporary skilled employer-sponsored visas should be provided with at least 90 days to find another sponsor in the event of termination of their original employer sponsorship.

**RECOMMENDATION 6.** The federal government should replace labour agreements with businesses that subordinate migrant workers to their employers with ones with regional governments that facilitate the settlement of temporary migrant workers and the development of regional Australia.

**RECOMMENDATION 7.** The federal government should explore the benefits of adopting a government-to-government mechanism for overseas skill recruitment.

**RECOMMENDATION 8.** The federal government should introduce an overseas skill search portal website integrated with the Department of Home Affairs' ImmiAccount website, the Fair Work Ombudsman's website, and unions' websites to prevent any loopholes of contraventions in the skilled migration program.

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<sup>2</sup> Joint Standing Committee on Migration, March 2021, Interim Report of the Inquiry into Australia's Skilled Migration Program. Recommendation 10.

**RECOMMENDATION 9.** Building on this Committee’s recommendation on improving visa process transparency, we recommend allocating more resources to visa processing and providing visa applicants with more frequent and detailed updates on visa processing via the Department of Home Affairs’ ImmiAccount webpage.<sup>3</sup>

**RECOMMENDATION 10.** The federal government should establish a genuinely tripartite, independent, and transparent body with responsibility and commensurate funding that can provide objective evidence-based advice to the government on matters pertaining to skills shortages, training needs, workforce capacity and planning, and labour migration. The tripartite body should have a balanced representation from businesses, unions, and the federal government.

**RECOMMENDATION 11.** All gazetted occupation lists should accurately reflect Australia’s current employment challenges as recommended by this Committee.<sup>4</sup> State/territorial governments should invite businesses to register vacancies and develop occupation lists based on genuine skill shortages.

**RECOMMENDATION 12.** A clear and strong firewall between the Fair Work Ombudsman and the Department of Home Affairs should be created by making comprehensive improvements to the existing Assurance Protocol to protect wage theft victims and whistle-blowers. When a migrant worker reports wage theft, any breaches of visa-specific work conditions should not provide a ground for cancelling the worker’s current visa or denying a subsequent visa.

**RECOMMENDATION 13.** The federal government should establish a bridging visa with work rights to extend the stay of temporary migrant workers who are victims of workplace exploitation, harassment, or injury and enable them to access justice in court, compensation, or medical/psychological treatment.

### **PROTECTION OF MIGRANT WORKERS’ WORKPLACE RIGHTS**

**RECOMMENDATION 14.** The federal government should proactively disseminate the message that the standards under the *Fair Work Act 2009* apply to every worker equally, irrespective of their residency or visa status. Information about workplace rights, including the right to access and join a union, should be delivered in community languages, upon issuing any visa with work rights.

**RECOMMENDATION 15.** Local governments should facilitate migrant workers’ follow-up education upon arrival in collaboration with trade unions and community legal centres to offer online or offline workplace rights workshops in community languages.

**RECOMMENDATION 16.** The federal government should protect the entitlements of every worker in the face of liquidation by amending the *Fair Entitlements Guarantee Act 2012* and extending the

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<sup>3</sup> Joint Standing Committee on Migration, March 2021, Interim Report of the Inquiry into Australia's Skilled Migration Program. Recommendation 3.

<sup>4</sup> Joint Standing Committee on Migration, March 2021, Interim Report of the Inquiry into Australia's Skilled Migration Program. Recommendation 7.

eligibility to make a claim under the Act to all, irrespective of their residency or visa status. Access to Medicare should also be expanded to cover workers on temporary visas.

**RECOMMENDATION 17.** A national labour hire licensing scheme should be introduced to address the prevalence of exploitation of migrant workers through indirect engagement and to better protect their workplace rights by establishing a national licensing regime for labour hire firms by replicating and scaling up the best practice requirements of the Queensland and Victorian state schemes.

**RECOMMENDATION 18.** Employers and their directors with records of exploitation or contribution to exploiting migrant workers should be disqualified to sponsor migrant workers in the future. Employers knowingly influencing or coercing migrant workers into breaching their visa conditions should be regulated and sanctioned.

**RECOMMENDATION 19.** Criminal sanctions should be introduced against serious forms of wage theft. The onus of proof should be reversed when employers have breached payslip and record-keeping obligations. Falsifying or failing to keep employee records should also be criminalised. Additional penalties should be introduced against contraventions made disproportionately against migrant workers.

**RECOMMENDATION 20.** Migration agents' adherence to the code of conduct should be actively regulated. Those knowingly facilitating fraudulent employment arrangements or labour exploitation should be disqualified.

**RECOMMENDATION 21.** Education agents should be regulated not to provide migration advice or contribute to the exploitation of migrant workers. When found guilty of breaching the *Fair Work Act 2009* or the *Migration Act 1958* directly or indirectly through their education agents, education service providers should be deregistered from the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

**RECOMMENDATION 22.** Courts and tribunals should be reformed to enable fast and simple avenues for all workers to recover stolen wages.

**RECOMMENDATION 23.** At federal, state, and local levels, no public contracts should be awarded to businesses that have any record of wage theft.

### 3 EMPLOYER SPONSORSHIP

- 3.1. Table 1 above lists all permanent and temporary visa streams currently available to skilled migrant workers. It also shows that, before applying for a visa, one needs to meet numerous criteria that can be largely grouped into three: (a) prerequisites, (b) a skilled occupation, and (c) a position nominator.
- 3.2. The prerequisites concern one's own qualities. They range from personal qualities such as age, health, and competency in English to professional ones such as educational qualifications recognised in Australia, third-party confirmation of skill possession, and record of employment in a skilled occupation. Some visas have geographical prerequisites such as having contributed to the economy of regional Australia, implying that they are accessible only by those who have held temporary visas.
- 3.3. Among the other two criteria—a skilled occupation and a position nominator—the position nominator is of the greatest concern to the workers the MWC has met. A migrant worker must be nominated by either an employer or a state/territory government unless they are eligible to apply for:
  - subclass 189 (only up to 6,500 places available in FY2020-21);
  - subclass 191 (to be commenced on 16 Nov 2022);
  - subclass 489 (to be phased out); or
  - subclass 858 (accessible only for people with internationally recognised achievement).
- 3.4. When an employer nominates a migrant worker to a position and gets the nomination approved by the DHA, the employer becomes the sponsor of the migrant worker for the duration of their employment. Although the DHA reserves the ultimate decision-making power to grant the migrant worker a visa, the employer sponsorship system delegates some of the Commonwealth's sovereign power to businesses by allowing them to decide who can enter the country.
- 3.5. The system is a remnant of the time when it was difficult for the federal government to verify migrant workers' skills. In the past, there were no ways to examine the validity of international qualifications and no professional bodies such as VETASSESS to assess one's skill level and experience. Businesses were believed to be best placed to apprehend domestic skill shortages and locate overseas skills with which to fill the gaps. Today, overseas-acquired skills and experience can be verified with ease. In addition, the liberalist assumption that when businesses act in their own interest, it also serves the interest of Australia's national economy. Studies show more than ample evidence that businesses recruit and operate not to grow the national economy but to better position themselves in the global market.<sup>5</sup>
- 3.6. More importantly, some employers abuse their sponsor status to make a profit and outperform their law-abiding competitors. Migrant workers argue that the employer sponsorship system can subordinate them to their sponsoring employers and breed labour exploitation. They believe they are entitled to recover the expenses they made to employ migrant workers such as service fees for a migration agent and the Skilling Australians Fund levy by exploiting the

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<sup>5</sup> Patrick Brownlee, 2016, "Global Capital's Lieutenants: Australia's Skilled Migrant Intake and the Rise of Global Value Chain Production," *Journal of Australian Political Economy* 48, no. 77: 108–35.

workers. These employers exploit migrant workers for long hours, and steal wages from them.

- 3.7. When employers have the power to terminate or extend a migrant worker's life in Australia, the fear of losing their livelihood and future chance of permanent residency prevents the worker from speaking up against exploitation, harassment, and injustice. The episode in Box 1 above well illustrates a worker reluctant to complain about the wage theft and discrimination he experiences even when he is deprived of basic rights such as toilet breaks.

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**Box 1. Employer sponsorship for permanent residency facilitating migrant worker exploitation**

Tony (pseudonym) is a certified welder with years of experience. He and his spouse came to Australia in search for a better work-life balance. Tony's employer sponsored him for a four-year Temporary Skill Shortage visa (subclass 482) and promised to nominate him for a permanent Employer Nomination Scheme (subclass 186) visa if Tony showed him hard work.

There was a problem to Tony's Australian dream. However hard he worked, his employer was never satisfied and assigned him more work. Tony was often sent to various regional worksites on a tight schedule, which left him little time for lunch or toilet breaks. Tony often felt that he was doing the work of two employees.

He needed to be prepared with a test result of Competent English or higher for the day his employer would nominate him for a permanent visa, but he rarely had a chance to speak English at work and no time to study English after work. He barely had time to take care of his new born because he worked over 60 hours per week on average and often had to go to work on weekends.

One day, Tony overheard his Australian co-workers talking about overtime penalty rates. They were wondering how the employer could afford to pay Tony and other workers on temporary visas the penalty rates for all their weekend and overtime work. It was only then that Tony realised that his employer had been discriminatorily underpaying him and his fellow migrant workers.

He was upset about the discrimination and called the Migrant Workers Centre for advice. The consultation was done over several short phone conversations because Tony had time to talk to the Centre only during his short toilet breaks in the absence of the employer around. The Centre provided him with information about his workplace rights and offered help to resolve the discrimination and wage theft.

Reluctantly, Tony decided not to do anything about the exploitation and wage theft for fear his employer would not nominate him for a permanent visa. He was recently offered a higher paying job by a partner business but had to turn it down in order to complete the minimum three years' work with the current sponsoring employer required for the permanent Employer Nomination Scheme (subclass 186) visa application.

Tony has brought skills to Australia that are highly in demand and have the potentials of growing the economy. However, his skills were abused by his employer, who defeated competing businesses with non-compliance and distorted Australia's labour market with wage theft.

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- 3.8. Under the current system, businesses can sponsor offshore workers for both temporary and permanent visas and onshore workers on temporary visas for permanent visas. Their capacity to sponsor a worker for a permanent visa gives migrant workers the false impression that it is not the federal government but businesses that grant them entry to and continued residence in Australia. As a result, migrant workers cannot speak up when they experience or notice contraventions.
- 3.9. Australia can resolve the dilemma by replacing the employer sponsorship system for permanent visas (subclasses 186 and 187) with the state/territory government sponsorship system that is already in use for subclasses 190 and 887.
- 3.10. Some might argue against our recommendation, saying that migrant workers' employability cannot be guaranteed when they are not nominated by their employers. The concern is hardly justified. The employment outcome of state/territory-sponsored migrant workers is likely to be better than any other subgroups of migrant workers. ABS survey results show that migrant workers with no sponsoring employers (subclass 189) already record a significantly lower unemployment rate than citizens born in Australia (2.0% vs 4.7%).<sup>6</sup>
- 3.11. Of all, the Temporary Residence Transition stream of subclasses 186 and 187 deserves the Committee's immediate attention because the stream is not different from giving businesses a permit to exploit migrant workers on temporary visas. The stream allows businesses to nominate for permanent residency their own employees on temporary visas when the employment lasted for three years. In other words, migrant workers on temporary visas are at the mercy of their employers at least for three years because some employers use their nomination power to enslave the workers. Migrant workers often tell the MWC that their employers threaten them by saying that they can have the workers' visas cancelled and get them deported if they wished (see episodes in Box 2 and Box 3).
- 3.12. It is of utmost urgency to replace employer sponsorship with state/territory-government sponsorship for the Temporary Residence Transition stream of subclasses 186 and 187. As the stream ensures that a visa applicant has at least 3 years of local employment experience, the employment outcome of the visa holders in the stream is guaranteed to be better than any other subgroups of the population, be they Australia-born or skilled migrant workers, even after we replace employer sponsorship with state/territory-government sponsorship.
- 3.13. Some might still argue against our recommendation and say the sponsorship change will reduce the federal government's collection of the Skilling Australians Fund levy. This Committee has already recommended removing the levy requirement altogether.<sup>7</sup> Besides, employers utilising the Temporary Residence Transition stream of subclasses 186 and 187 have long complained about the burden of paying the levy twice: once to nominate a migrant worker for a temporary skilled visa and another to nominate the same worker for a permanent visa. Since the purpose of the levy is to make businesses share the cost of upskilling local workers when they fill skill shortages with overseas workers, charging the levy twice on the same worker is already unfair, especially when the worker is already in the country and has

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<sup>6</sup> ABS, 2020, Characteristics of Recent Migrants, Australia, Nov 2019.

<sup>7</sup> Joint Standing Committee on Migration, March 2021, Interim Report of the Inquiry into Australia's Skilled Migration Program. Recommendation 2.

made contributions to the economy through work and by transferring skills to their co-workers.

- 3.14. At the same time as reforming the sponsorship system, the wage justice system should be revamped to assist migrant workers with wage recovery. As shown in the episode in Box 1, it is exploitation that cuts wages not migration.
- 3.15. Courts and tribunals are too complex and costly for most ordinary workers. They should be reformed to enable fast and simple avenues for all workers to recover stolen wages.
- 3.16. It is particularly urgent to extend the Fair Entitlement Guarantee ('FEG') to migrant workers on temporary visas. The FEG is a federal government scheme to protect workers who are Australian citizens and permanent residents from employer bankruptcy. It is not offered to workers on temporary visas because the current version of FEG is designed as a social security measure than a workplace rights protection.<sup>8</sup> The federal government should protect the entitlements of every worker in the face of liquidation by amending the *Fair Entitlements Guarantee Act 2012* and extending the eligibility to make a claim under the Act to all, irrespective of their residency or visa status.<sup>9</sup> The same applies true to the expansion of access to Medicare as they make contributions to the national economy and share the cost of operating welfare schemes.
- 3.17. For migrant workers on temporary visas who are victims of workplace exploitation, harassment, or injury, a bridging visa with work rights should be established to enable them to access justice in court, compensation, or medical/psychological treatment. This visa for the victims of wage theft should be regarded as a qualifying substantive visa for another visa application.
- 3.18. When wage theft is brought to court by a migrant worker, no breaches of visa-specific work conditions suspected or identified should provide a ground for cancelling the worker's current visa or denying a subsequent visa. A clear and strong firewall between the Fair Work Ombudsman and the Department of Home Affairs should be created by reinforcing the existing Assurance Protocol to protect migrant workers who are victims of wage theft and whistle-blowers. The victims should be protected throughout their lifetime in Australia without having any negative consequences on their subsequent visa applications.

**RECOMMENDATION 1.** All holders of employer-sponsored temporary skilled visas should be given a clearer pathway to permanent residency as recommended by this Committee.<sup>10</sup> They should be allowed to combine local employment experience with different employers toward meeting the minimum three-year local experience required for the Temporary Residence Transition stream of subclasses 186 and 187.

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<sup>8</sup> Migrant Workers' Taskforce, 2019, "Report of the Migrant Workers' Taskforce" (Department of Jobs and Small Business), p.98.

<sup>9</sup> Senate Education and Employment References Committee, 2016, "A National Disgrace: The Exploitation of Temporary Work Visa Holders" (Parliament of Australia).

<sup>10</sup> Joint Standing Committee on Migration, March 2021, Interim Report of the Inquiry into Australia's Skilled Migration Program. Recommendation 10.

**RECOMMENDATION 2.** The employer-sponsorship system should be abolished or limited to an absolute necessity of temporary skilled visas. The Temporary Residence Transition stream of subclasses 186 and 187 should be reformed to allow holders of employer-sponsored temporary skilled visas to access it through a state/territory-government sponsorship instead of an employer sponsorship.

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**RECOMMENDATION 16.** The federal government should protect the entitlements of every worker in the face of liquidation by amending the *Fair Entitlements Guarantee Act 2012* and extending the eligibility to make a claim under the Act to all, irrespective of their residency or visa status. Access to Medicare should also be expanded to cover workers on temporary visas.

**RECOMMENDATION 17.** A national labour hire licensing scheme should be introduced to address the prevalence of exploitation of migrant workers through indirect engagement and to better protect their workplace rights by establishing a national licensing regime for labour hire firms by replicating and scaling up the best practice requirements of the Queensland and Victorian state schemes.

**RECOMMENDATION 18.** Employers and their directors with records of exploitation or contribution to exploiting migrant workers should be disqualified to sponsor migrant workers in the future. Employers knowingly influencing or coercing migrant workers into breaching their visa conditions should be regulated and sanctioned.

**RECOMMENDATION 19.** Criminal sanctions should be introduced against serious forms of wage theft. The onus of proof should be reversed when employers have breached payslip and record-keeping obligations. Falsifying or failing to keep employee records should also be criminalised. Additional penalties should be introduced against contraventions made disproportionately against migrant workers.

**RECOMMENDATION 22.** Courts and tribunals should be reformed to enable fast and simple avenues for all workers to recover stolen wages.

**RECOMMENDATION 23.** At federal, state, and local levels, no public contracts should be awarded to businesses that have any record of wage theft.

#### 4 PATHWAYS TO PERMANENT RESIDENCY

- 4.1. Australia has been moving toward a “two-step immigration” system that encourages migrant workers to enter the country on temporary visas and make contributions to the Australian economy before they could apply for permanent residency onshore.<sup>11</sup> To this effect, the federal government issues an unlimited number of temporary visas each year. The rationale for the temporary migration program is that Australia cannot foresee the need for migrant workers for a long term and hence can only invite them to come and ‘fill the gap in Australia temporarily’.
- 4.2. This seemingly economic logic has a fatal defect of incurring significant economic and social costs, which we have discussed in detail in our submission to the Senate Select Committee on Temporary Migration.<sup>12</sup> Most importantly, the temporary migration program normalises job insecurity in Australia by replacing ongoing engagements with short-term contracts. With a temporary visa, the best a worker can dream of is a four-year contract. When the visa expires, employers are free to choose between extending the worker’s contract and visa and replacing them with another worker, who in many cases is yet another migrant worker on a temporary visa as described in Box 2.
- 4.3. A migrant worker is ‘bonded’ to their employer while staying on a temporary visa because temporary skilled visas prohibit them from working for anybody else than their sponsoring employer. If the worker wished to leave the employer, they must leave the country in 60 days or find another employer to sponsor them. Leaving the current sponsoring employer is extremely difficult because their employment experience is set back to zero if the worker switches workplaces because permanent employer sponsored visas only count the number of years they have worked with their current employer.
- 4.4. The problem of depriving migrant workers of the freedom to switch workplaces was raised to the federal government as early as 2008 when Barbara Deegan submitted her independent integrity review of the temporary skilled visa scheme:
- “There is a major concern that employers of visa applicants at the lower end of the skills matrix prefer to retain those persons under temporary visas in order to increase the level of control over them. ... [t]he most vulnerable ... are exploited as a consequence of their lack of mobility, whether that lack is real or perceived”.<sup>13</sup>
- 4.5. More than a dozen years have passed since the federal government received the Deegan Report, and the MWC is still hearing from concerned workers on temporary skilled visas. Our experience concurs with the Deegan Report on that employers in the manufacturing, hospitality, and other labour-intensive industries are more likely to exploit migrant workers.

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<sup>11</sup> Robert G. Gregory, 2014, “The Two-Step Australian Immigration Policy and Its Impact on Immigrant Employment Outcomes” (IZA Institute of Labor Economics); Peter Mares, 2016, *Not Quite Australian: How Temporary Migration Is Changing the Nation* (Text Publishing); Leslyanne Hawthorne, 2010, “How Valuable Is ‘Two-Step Migration’? Labor Market Outcomes for International Student Migrants to Australia,” *Asian and Pacific Migration Journal* 19, no. 1: 5–36.

<sup>12</sup> MWC, 2020, Submission of the Migrant Workers Centre to the Senate Select Committee on Temporary Migration.

<sup>13</sup> Barbara Deegan, 2008, “Visa Subclass 457 Integrity Review” (Australian Government).

- 4.6. What has changed in the past years is that now highly skilled professionals are no longer immune from exploitation. The Global Talent Employer Sponsored program enables employers to sponsor professionals for a Temporary Skill Shortage (subclass 482) Global Talent Employer Sponsored stream visa even when their occupation is not shortlisted for nomination.<sup>14</sup> Professionals on this visa are at the mercy of their employers because they are not allowed to work for anybody else but their sponsoring employer and can only advance toward permanent residency through their employer's sponsorship.
- 4.7. An ongoing case of unfair dismissal at the Federal Court of Australia, for example, involves an established scholar on a 482 visa who migrated from Canada for a job at a prominent Australian university.<sup>15</sup> When this person made a bullying complaint against her supervisor, the university dismissed the worker with an excuse of restructuring and budget concerns. In doing so, the university is alleged to have breached an undertaking not to threaten the worker's ability to stay in Australia.
- 4.8. The same is true for workers on a temporary skilled visa through the labour agreement stream. They can gain a permanent visa only through their employer who holds a labour agreement with the DHA. It is alleged that some businesses delay nominating their migrant workers for permanent visas, sometimes keeping the workers on temporary visas for as long as 11 years.<sup>16</sup> The episode in Box 2 shows what happens to these workers when their employer decides to replace them with other workers on temporary visas instead of sponsoring them for permanent residency.

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<sup>14</sup> DHA, 20 Jan 2021, "Global Talent Employer Sponsored program".

<sup>15</sup> Federal Court of Australia (Western Australia Registry), 2020, WAD306/2020.

<sup>16</sup> AMIEU Newcastle and Northern Branch, 2015, The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.

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**Box 2. Employer replacing one temporary migrant worker with another**

Shiguo (pseudonym) and a few dozen compatriot meat process workers came to Australia in 2016 on a four-year Temporary Work (Skilled) visa (subclass 457). His employer, Midfield Meat International, had a labour agreement with the federal government and had been recruiting workers from overseas for the past decade. The employer promised Shiguo and his colleagues that it would sponsor them for permanent residency once they meet the minimum length of employment requirement as it had done for their predecessors in the past.

The year after Shiguo's arrival, the federal government announced the abolishment of the subclass 457 visa scheme. Shiguo's employer reassured him and his colleagues that the change would neither cancel their existing visas nor hinder their progress toward permanent residency. When it was time for Shiguo and his colleagues to apply for permanent residency through the Employer Nomination Scheme (subclass 186), however, they were told a different story. The employer claimed to have no labour agreement with the federal government any longer based on which to sponsor them for permanent residency.

There had been a lot of talks and news reports about Midfield Meat International becoming a party to new overseas worker recruitment schemes such as the DAMA (Designated Area Migration Agreement) and the PLS (Pacific Labour Scheme). Shiguo was proud he had contributed to the growth of Midfield Meat International and never suspected his employer was paving the road to replacing him with another temporary visa holder. The employer said it was satisfied with his work, and yet chose to let him go on the excuse of the federal government's immigration policies.

Shiguo's and his colleagues' visas got expired in the midst of the pandemic in 2020. Having no alternative on hand, they applied for a one-year Temporary Activity: Australian Government Endorsed Events (COVID-19 Pandemic event) visa (subclass 408). The visa was quickly issued because they worked in one of the designated critical sectors, but workers' anxiety about their uncertain future kept growing.

The true face of the employer was revealed when one of Shiguo's colleagues got beaten at work by his supervisor who misunderstood the worker's gesture as aggression. Shiguo and his colleagues felt unsafe to work around the supervisor. As the workers demanded a safer working environment, the employer responded: 'Your colleague is sacked. He will be charged and probably be removed from Australia. Australia does not want people like him'. The employer went on to threaten the workers by adding: 'I contacted the government. All our discussion about your visas is off. I personally rang the immigration minister yesterday'.

If the employer suffered from a genuine skill shortage, it should try its best to ensure job security and permanent residency for Shiguo and his colleagues. Instead of establishing a labour agreement under the Employer Nomination Scheme (subclass 186) and retaining existing workers, the employer invested on sourcing labour from all around the world. Despite having the skills needed in Australia and having worked hard for years, Shiguo and his colleagues must leave Australia unless they soon find a new employer who can sponsor them for another temporary visa.

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- 4.9. While the episode above names only one employer, which was widely covered by media due to the occupational health and safety risk discussed, the employer's strategy of replacing one migrant worker with another is adopted by many businesses across the country. Businesses find it to be a smart strategy to diversify their sources of skilled labour and reduce the risk of any disruption by potential skill shortages.
- 4.10. Migrant workers on temporary skilled visas should be given the same freedom as businesses. The restrictive conditions of temporary visas that hinder migrant workers from exercising their workplace rights and fighting against discrimination, exploitation, and harassment should be repealed. This Committee has made an interim recommendation in this vein that the visa conditions for sponsored skilled visa holders be adjusted to allow them to work for multiple employers without making applications for new visas.<sup>17</sup> In addition, the MWC believes that migrant workers on temporary skilled employer-sponsored visas should be provided with at least 90 days to find another sponsor in the event of termination of their original employer sponsorship. They should also be allowed to combine local employment experience with different employers toward meeting the minimum three-year local experience required for the Temporary Residence Transition stream of subclasses 186 and 187.
- 4.11. Ultimately, the skilled migration program should be redesigned to give every migrant worker a clear pathway to permanent residency. Most workers on temporary visas have skills in demand or have already made substantive contributions to our economy. Many of them have completed education and training in Australia. They find it increasingly difficult to gain permanent residency due to ever-changing occupation lists.
- 4.12. As shown in Table 1, migrant workers must have a skilled occupation suitable for a position nomination before applying for a visa, unless they apply for regional visas such as subclasses 191 (to be commenced on 16 Nov 2022) or 489 and 887 (to be phased out). The criterion of having a suitable skilled occupation is not within the control of migrant workers. The federal and state/territory governments consult businesses and create gazetted lists of occupations for nomination. Migrant workers often describe their migration journeys as a product of pure luck because the occupation lists update every now and then, and one's occupation can be listed one year and then removed the next.
- 4.13. Many of the long-term holders of temporary visas are those who have invested time and money to acquire skills in Australia and then were deprived of a chance to apply for a skilled visa because their occupations were suddenly removed from the gazetted lists. Some choose to wait for their occupations to be listed again while staying on yet another student visa and join the 'permanently temporary' population. It is a great loss to our economy if we leave their skills unutilised or let them have no option but to leave Australia. The DHA data shows that 45 per cent of temporary skilled visa entrants fail to get permanent residency and leave Australia over a period of 16 years since entry and 84 per cent of student visa entrants do so over a period of 24 years.<sup>18</sup>

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<sup>17</sup> Joint Standing Committee on Migration, March 2021, Interim Report of the Inquiry into Australia's Skilled Migration Program. Recommendation 4.

<sup>18</sup> CEDA, 2019, Effect of Temporary Migration.

- 4.14. There needs to be a permanent visa subclass that facilitates the settlement of the permanently temporary migrant workers who have contributed to the economy and made strong ties to Australia. We recommend utilising the subclass 191 of which the eligibility criteria are yet to be announced.

**RECOMMENDATION 3.** The new permanent visa (subclass 191) should be a pathway for long-term temporary migrant workers of all visa subclasses who have contributed to the economy and made strong ties to Australia.

**RECOMMENDATION 5.** Migrant workers on temporary skilled employer-sponsored visas should be provided with at least 90 days to find another sponsor in the event of termination of their original employer sponsorship.

**RECOMMENDATION 6.** The federal government should replace labour agreements with businesses that subordinate migrant workers to their employers with ones with regional governments that facilitate the settlement of temporary migrant workers and the development of regional Australia.

**RECOMMENDATION 10.** The federal government should establish a genuinely tripartite, independent, and transparent body with responsibility and commensurate funding that can provide objective evidence-based advice to the government on matters pertaining to skills shortages, training needs, workforce capacity and planning, and labour migration. The tripartite body should have a balanced representation from businesses, unions, and the federal government.

## 5 RECRUITMENT AND EMPLOYMENT PROCESSES

- 5.1. Unlike other countries, Australia does not adopt a government-to-government recruitment model and has no authorised representative overseas for migrant worker recruitment. Businesses recruit skilled migrant workers through their overseas networks or, if they don't have any, through those of their mediators. Overseas workers, not knowing how to find jobs in Australia or apply for a visa, trust what they are told by their employer and their mediators. They are likely to see "[t]he employer, the migration agent, and the host government ... as one and the same" and never doubt the validity of the information they receive.<sup>19</sup> In other words, migrant workers' dependence on their employers and mediators is a structural issue.
- 5.2. Once an employment contract is signed, the employer or their mediators would take care of all the administrative and logistic processes including the worker's visa application and international travel. In other words, the employer and their mediators become the worker's only source of information about the job, visa, or workplace rights in Australia. The limits to the quality of information are likely to have negative consequences for migrant workers' employment opportunities, living conditions, and prospects for permanent residency.<sup>20</sup>
- 5.3. Studies show that the complexity of Australia's skilled visa system and the challenges of looking for Australian jobs from overseas create loopholes that breed visa scams and labour exploitation. While the DHA website has essential information about how to apply for a skilled visa, it remains to be challenging for most migrant workers to navigate the skilled migration system. There are too many documents to prepare, too many jargons to learn, and too many lists to check.
- 5.4. There are largely three types of visa scams and labour exploitation. The first is where the employer recruits workers from overseas with the intention of exploitation. In Velayutham's study, migrant workers were presented with two contracts—one they signed overseas prior to departure and an amended one with far less favourable conditions they were forced to sign upon arrival in Australia.<sup>21</sup>
- 5.5. The second type of visa scam and labour exploitation involves a network of mediators including migration agents, labour hire providers, recruiters, brokers, and unauthorised individuals. The Filipina nurse in van den Broek and Groutsis' case study is representative. The nurse in the Philippines found a job opportunity in Australia through unauthorised individuals, who communicated with the Australian employer on her behalf. When the worker arrived in Australia, the job turned out to be below her skill level and exploitative. A migration agent advised her to move on to a student visa to improve her employability and

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<sup>19</sup> Fidelma Breen, 2016, "Australian Immigration Policy in Practice: A Case Study of Skill Recognition and Qualification Transferability amongst Irish 457 Visa Holders," *Australian Geographer* 47, no. 4: 491–509.

<sup>20</sup> Martina Boese and Kate Macdonald, 2017, "Restricted Entitlements for Skilled Temporary Migrants: The Limits of Migrant Consent," *Journal of Ethnic and Migration Studies* 43, no. 9: 1472–89, p.1482.

<sup>21</sup> Selvaraj Velayutham, 2013, "Precarious Experiences of Indians in Australia on 457 Temporary Work Visas," *The Economic and Labour Relations Review* 24, no. 3: 340–61.

scammed her again. The nurse had to pay all her mediators along the way for any information as she could not confront Australia's complex job search and visa application processes.<sup>22</sup>

- 5.6. The episode in Box 3 illustrates the last type of visa scam and exploitation where the employer and their migration agent team up to deceive the DHA and the migrant worker at the same time. To our knowledge, many chefs, store manager, and care workers experience this type of visa scam and exploitation.

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### **Box 3. Employer and Migration Agent teaming up for racketeering**

Fiona (pseudonym) came to Australia on a student visa with the intention of getting settled here permanently. After following her education agent's advice and paying over \$45,000 for a master's degree, she found out that the degree could only give her an access to a Temporary Graduate visa (subclass 485) but no pathway to permanent residency.

That's when a migration agent and a hair salon owner approached Fiona and proposed a permanent residency sponsorship arrangement. The plan was that the hair salon owner would nominate Fiona as a hair salon manager through the Regional Sponsored Migration Scheme's Direct Entry stream (subclass 187). The two had already succeeded in getting other people permanent residency in this way.

According to the hair salon owner, the only problem was that she needed to open a bigger salon to nominate Fiona as a manager. She asked Fiona to make a contribution of \$40,000 to the new salon. Fiona paid Josephine \$20,000 in cash. In the meantime, Fiona followed the migration agent's advice and acquired a Diploma of Salon Management, which cost her \$7,500. The migration agent advised the hair salon owner to put Fiona on the payroll. Fiona received weekly payments and payslips, but repaid the money back to her employer in cash.

After a year, the migration agent started processing the employer's nomination of Fiona to a hair salon manager position so that Fiona could apply for permanent residency after the nomination's approval. Fiona paid the migration agent for his service and all the associated cost the employer was responsible for such as the regional certifying body approval and the Skilling Australians Fund levy. The whole process cost Fiona over \$13,000.

Once the process began, the employer would call Fiona time to time and ask for more money. If Fiona resisted, the employer threatened her by saying: "I am an Australian citizen, and I have all the rights. You are still in Australia all thanks to what I am doing for you. I can withdraw your nomination anytime". Fiona paid the employer another \$20,000 in cash altogether.

The DHA did not approve the nomination of Fiona because it was not satisfied that "there is a genuine need for the nominator to employ a paid employee". Fiona later learned that the migration agent failed to submit supporting documents to the DHA on time.

All Fiona did was to follow advice given by an authorised education agent and a registered migration agent. After spending over \$100,000, however, she was not a step closer to her dream of getting settled in Australia.

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<sup>22</sup> Diane van den Broek and Dimitria Groutsis, 2017, "Global Nursing and the Lived Experience of Migration Intermediaries," *Work, Employment and Society* 31, no. 5: 851–60.

5.7. As shown above, the current lack of authority over overseas skills recruitment processes and the over-reliance on the private sector create room for corruption. The DHA is well aware of the risk. One of the subclass 482 eligibility criteria imposed on workers is that they have not “paid for visa sponsorship” (Box 4).

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**Box 4. Subclass 482 Eligibility**

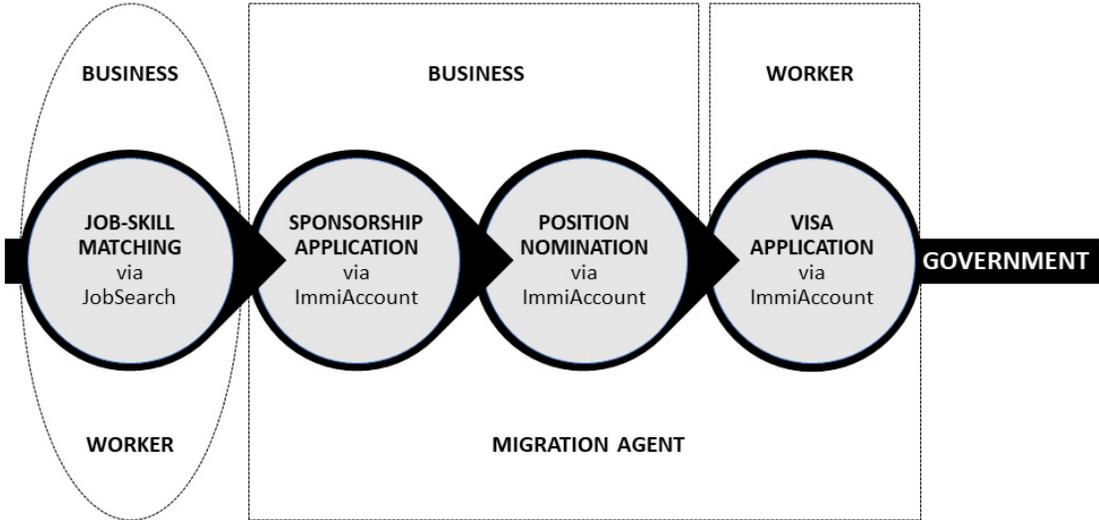
*For applicants:*

***Have not contravened ‘paying for visa sponsorship’ legislative provisions***

Paying for visa sponsorship refers to asking for, offering, receiving or providing a benefit in return for a sponsorship related event, whether the event occurs or not. You or any secondary applicants must not have, in the past 3 years, engaged in any such conduct. You may still satisfy this criterion if you have engaged in such conduct, and the Minister considers it reasonable to disregard it.

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- 5.8. This criterion only stops a non-complying worker from getting a visa and does not regulate businesses or migration agents. There is no measure to stop employers knowingly influencing or coercing migrant workers into breaching their visa conditions or sponsoring migrant workers in the future.
- 5.9. It is urgently needed to introduce measures to regularise overseas skills recruitment and limit the role of unauthorised mediators in the job-skill matching and migration processes and minimise the possibility of mediators dominating information and facilitating the abuse of the skilled migration program.



**Figure 2. Proposed model of skilled migrant worker recruitment**

- 5.10. We propose a revised model of overseas skill recruitment as illustrated in Figure 1 that prevents mediators' monopoly of information from the outset and keeps their roles to a minimum. This model utilises an overseas skill search portal website operated or commissioned by the federal government to facilitate job-skill matching. By promoting the overseas skill search portal website to aspiring migrants overseas, the federal government can help reduce businesses' and migrant workers' over-reliance on private mediators. If the system can utilise the federal government's existing JobSearch website (<https://jobsearch.gov.au>), it would significantly reduce businesses' recruitment burden because they are already required to post vacancies on the JobSearch website for the labour market testing.
- 5.11. The overseas skill search portal website should be integrated with the DHA's ImmiAccount website (<https://online.immi.gov.au>) so that migrant workers can be notified directly by the DHA of all the steps until they get issued a visa. Currently, most employer-sponsored visa applications are done by migration agents on behalf of migrant workers, and any messages from the federal government might not be delivered to migrant workers. Although migrant workers have the right to demand their migration agents to give them their visa application numbers and check the progress of their application, this leeway is rarely known to migrant workers and does not allow migrant workers to see the contents of the federal government's communication.
- 5.12. Lastly, the overseas skill search portal website can also help preventing labour exploitation. It should list vacancies together with links to the FWO's website and relevant unions' websites to better inform aspiring migrant workers of their workplace rights in Australia.

**RECOMMENDATION 7.** The federal government should explore the benefits of adopting a government-to-government mechanism for overseas skill recruitment.

**RECOMMENDATION 8.** The federal government should introduce an overseas skill search portal website integrated with the Department of Home Affairs' ImmiAccount website, the Fair Work Ombudsman's website, and unions' websites to prevent any loopholes of contraventions in the skilled migration program.

**RECOMMENDATION 9.** Building on this Committee's recommendation on improving visa process transparency, we recommend allocating more resources to visa processing and providing visa applicants with more frequent and detailed updates on visa processing via the Department of Home Affairs' ImmiAccount webpage.<sup>23</sup>

**RECOMMENDATION 14.** The federal government should proactively disseminate the message that the standards under the *Fair Work Act 2009* apply to every worker equally, irrespective of their residency or visa status. Information about workplace rights, including the right to access and join a union, should be delivered in community languages, upon issuing any visa with work rights.

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<sup>23</sup> Joint Standing Committee on Migration, March 2021, Interim Report of the Inquiry into Australia's Skilled Migration Program. Recommendation 3.

**RECOMMENDATION 15.** Local governments should facilitate migrant workers' follow-up education upon arrival in collaboration with trade unions and community legal centres to offer online or offline workplace rights workshops in community languages.

**RECOMMENDATION 16.** The federal government should protect the entitlements of every worker in the face of liquidation by amending the *Fair Entitlements Guarantee Act 2012* and extending the eligibility to make a claim under the Act to all, irrespective of their residency or visa status. Access to Medicare should also be expanded to cover workers on temporary visas.

**RECOMMENDATION 17.** A national labour hire licensing scheme should be introduced to address the prevalence of exploitation of migrant workers through indirect engagement and to better protect their workplace rights by establishing a national licensing regime for labour hire firms by replicating and scaling up the best practice requirements of the Queensland and Victorian state schemes.

**RECOMMENDATION 18.** Employers and their directors with records of exploitation or contribution to exploiting migrant workers should be disqualified to sponsor migrant workers in the future. Employers knowingly influencing or coercing migrant workers into breaching their visa conditions should be regulated and sanctioned.

**RECOMMENDATION 20.** Migration agents' adherence to the code of conduct should be actively regulated. Those knowingly facilitating fraudulent employment arrangements or labour exploitation should be disqualified.

## 6 SKILLS AND EXPERIENCE

- 6.1. DHA states that student visas and graduate visas are temporary visas for study and work experience. In reality, these visas make up the backbone of Australia's two-step immigration system discussed earlier. When evaluating permanent visa applications, the DHA gives a higher weight to degrees and certificates earned in Australia than to those from overseas and to local experience than to that from overseas.
- 6.2. This is why some education providers and their agents sell "PR pathway packages" to aspiring migrants. Education agents are not supposed to provide migration advice, but many actively do in the absence of any meaningful regulations.<sup>24</sup> As education providers pay them typically up to 30 per cent of the tuition as a commission, some education agents subcontract their recruitment work to individuals not authorised by education providers and compromise the quality of education advice international students receive.<sup>25</sup>
- 6.3. Once student visa holders finish their training, however, many of them are faced with a situation in which their degrees and certificates do not put them on a pathway to permanent residency. Their occupations may not be on any gazetted lists (as shown in Box 3), or there are simply too many migrants with the same degrees and certificates that they have a gambling chance of getting invited to apply for a permanent visa, the issuance of which is capped to a disproportionate minimum.
- 6.4. As shown in Table 1, all skilled temporary and permanent visas require visa applicants to have years of relevant work experience with the exception of subclass 491 discussed below and subclass 403 accessible for only the nationals of 10 PLS participant countries. Although most graduate visas are valid for 1.5 or 2 years, unless one has completed a masters by research or doctoral degree, the work experience one is required to demonstrate is 2 years for a temporary visa application and 3 years for a permanent visa application. Most graduate visa holders end up short of 6 months or more of experience to be eligible for any other visa applications. They end up joining the permanently temporary population. Leaving Australia is not an option for the majority of these workers because by this time they have already invested a lot of time and money in Australia and built stronger personal and professional networks in Australia than in their home countries.
- 6.5. Subclass 491 Skilled Work Regional visa is the only option for a skilled migrant worker including recent graduates to gain local work experience. This visa was introduced in November 2019 to encourage migrant workers to settle in regional Australia.<sup>26</sup> Workers on this visa must "live, study and work in a designated regional area" according to Condition 8578 and must provide evidence to the DHA when requested. The problem of this visa is that state/territory governments open and close their stream by discretion and that their occupation lists for nomination are extremely selective and volatile. The MWC hears from many migrant workers how hard it is to find skilled employment opportunities in regional Australia even

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<sup>24</sup> Australian Trade and Investment Commission, 2021, "Study Australia > How to apply > Education agents > Avoiding problems with education agents".

<sup>25</sup> The Age, 15 Mar 2021, "Private colleges pay student recruiters up to \$300,000 in bonuses".

<sup>26</sup> Currently, 2 out of 4 temporary visas and 3 out of 7 permanent visas are issued to migrant workers in regional Australia.

when government lists identify their occupations as shortages.<sup>27</sup> This is because state/territory governments use the state nomination system for fostering strategic sectors.

- 6.6. Education and migration agents would then advise these workers to apply for yet another student visa and wait onshore for a right time to come. Many migrant workers tell the MWC that their “over-education” is a product of Australia’s migration policies.<sup>28</sup> Some workers would look for an affordable and less demanding course as they want to continue working and building professional networks. Education agents recommend them to enrol at small and low-quality private institutions. These institutions are pejoratively called “visa colleges” as they require only once per month attendance and almost no assignments. This is why student visa holders make up the largest subgroup of temporary migrant workers in Australia excluding New Zealand citizens. Student visa holders are often exposed to exploitative work while striving to extend their stay.

**RECOMMENDATION 4.** Visa conditions and eligibility requirements should be designed to create organic pathways from temporary to permanent visas. As a matter of priority, subclasses 476 and 485 graduate visas should allow recent graduates to stay at least three years and gain required employment experience.

**RECOMMENDATION 11.** All gazetted occupation lists should accurately reflect Australia’s current employment challenges as recommended by this Committee.<sup>29</sup> State/territorial governments should invite businesses to register vacancies and develop occupation lists based on genuine skill shortages.

**RECOMMENDATION 21.** Education agents should be regulated not to provide migration advice or contribute to the exploitation of migrant workers. When found guilty of breaching the *Fair Work Act 2009* or the *Migration Act 1958* directly or indirectly through their education agents, education service providers should be deregistered from the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

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<sup>27</sup> ABC News, 25 May 2019, “Australia’s regional migration program failing both migrants and communities, expert says”.

<sup>28</sup> Sheruni de Alwis, Nick Parr, and Fei Guo, 2020, “The Education–Occupation (Mis)Match of Asia-Born Immigrants in Australia,” *Population Research and Policy Review* 39, no. 3: 519–48.

<sup>29</sup> Joint Standing Committee on Migration, March 2021, Interim Report of the Inquiry into Australia’s Skilled Migration Program. Recommendation 7.