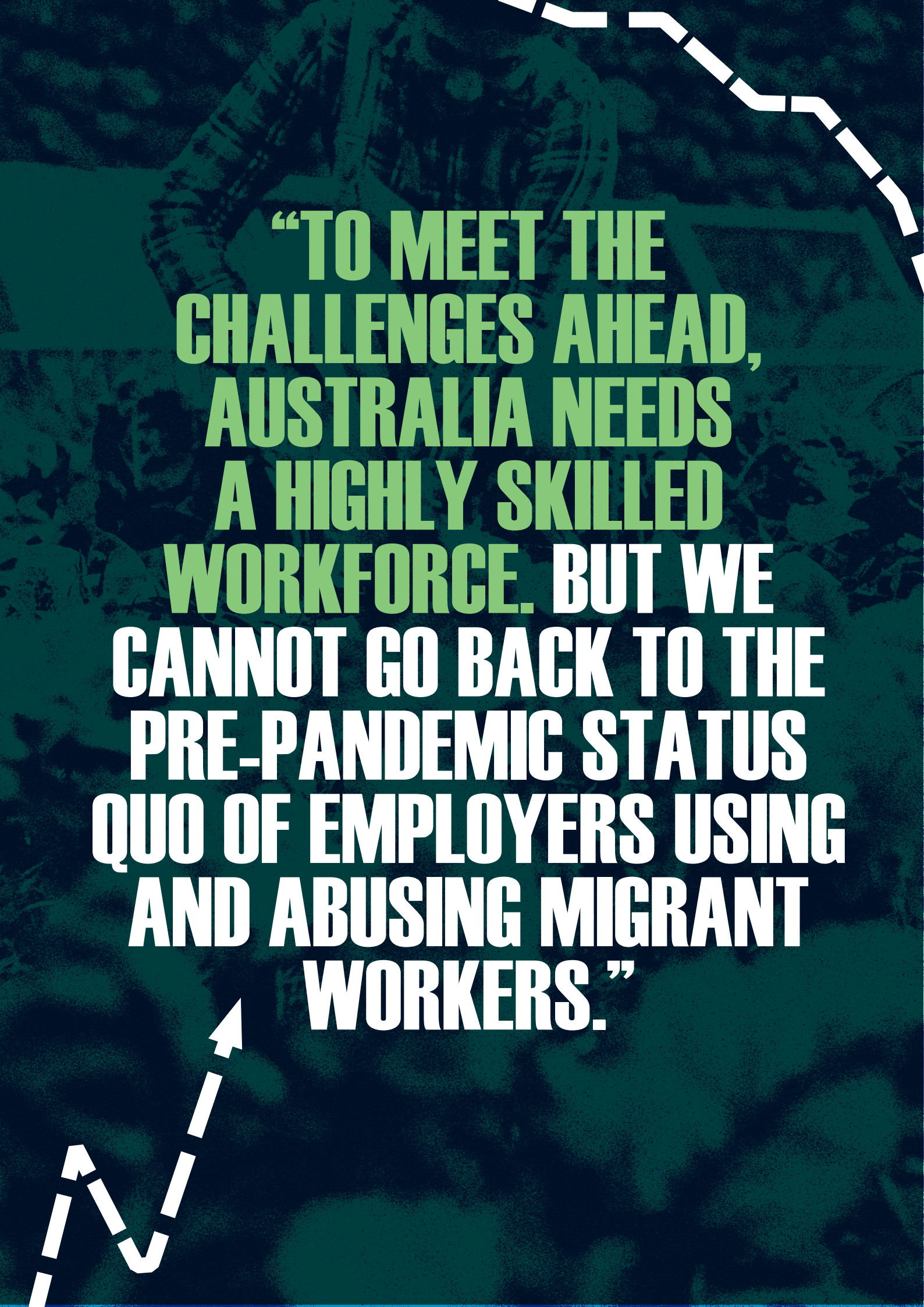


The background of the entire page is a dark teal, semi-transparent image of three diverse individuals. On the left, a woman with braided hair is smiling. In the center, a man is smiling and holding a pen to his chin. On the right, a man with a beard and a wide-brimmed hat is looking towards the camera. The overall tone is professional and inclusive.

SKILLING THE NATION

**Addressing Australia's skills and migration
needs now and into the future**



**“TO MEET THE
CHALLENGES AHEAD,
AUSTRALIA NEEDS
A HIGHLY SKILLED
WORKFORCE. BUT WE
CANNOT GO BACK TO THE
PRE-PANDEMIC STATUS
QUO OF EMPLOYERS USING
AND ABUSING MIGRANT
WORKERS.”**

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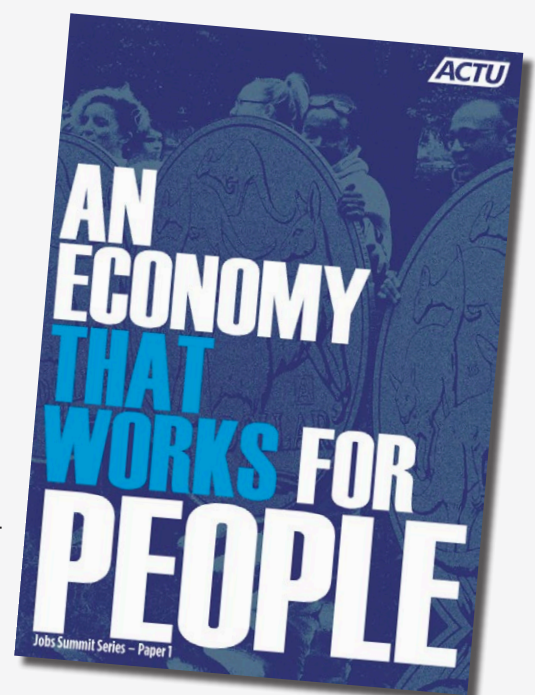
ABOUT THE JOBS SUMMIT SERIES

Everyone deserves the chance to work in a secure job with decent pay. While Australia has emerged from lockdowns in better shape than most, our wages are not keeping up with the sky rocketing cost of living, and insecure work is rife. Climate change, strains in the care economy, and the automation of work, are all also profoundly impacting upon the world of work.

The Jobs Summit in early September is the chance to chart a course towards full and secure employment for all. The Jobs Summit series – a series of papers released by the Australian Council of Trade Unions (ACTU) in the lead up – aims to provoke debate and build common ground on what that course could be.

Read more at www.australianunions.org.au/job-summit.

Authorised by Sally McManus, ACTU, 365 Queens St, Melbourne.



JS02 - August 2022

EXECUTIVE SUMMARY

The Jobs Summit is an opportunity to reset Australia's skills and migration systems to meet the needs of workers, employers, and the challenges ahead for our country.

Australia faces significant challenges we must work together to overcome: recovering from the devastating impacts of the Covid-19 pandemic; taking action to avert climate disaster; building resilient supply chains and investing in local industries; meeting the caring needs of an ageing population; and adapting to technological change.

To meet the challenges ahead, Australia needs a highly skilled workforce. But we cannot simply go back to the pre-pandemic status quo of employers using and abusing migrant workers to fill skills gaps while failing to offer jobs and training to local workers.

The Coalition Government left it to individual employers to set the course for skills and migration, with dismal results. Australia's economic future will suffer if we do not have a coherent long-term plan for our skills system that mitigates the damage caused over the last decade of wasted opportunities.

As a result of the Coalition Government's mismanagement, there is a lack of coordination between skilled migration and the Vocational Education and Training (VET) system.

The VET system, with TAFE at its heart, is fragmented after years of underinvestment, cuts and privatisation. The VET system does not meaningfully engage with unions and puts short-term business priorities over the long-term career objectives of workers. Our current system is unable to provide a holistic, economy-wide picture of skills needs, and lacks integration and coordination with industry policy, and the secondary and higher education systems. Urgent reform of the skills system is required to close the skills gaps and ensure Australia can respond effectively to the needs of industry and challenges ahead.

Too often employers claim labour and skill shortages when what's really going on is a shortage of secure jobs with fair pay and conditions. They look first to bringing in visa workers instead of providing skills and training to workers in Australia.

The current system of temporary migration does not recognise the contribution migrant workers make to this country. Instead, the system has turned Australia into a guest worker state, creating an underclass of temporary migrant workers who are highly vulnerable to exploitation. Australian Unions reject the current system of temporary migration that serves the needs of corporations while treating workers as disposable.

Australia's migration system must be reset to a system based on permanent migration, where migrant workers are given security, have their rights respected, and are able to settle here with their families and become a permanent part of our communities.

This report makes 18 recommendations to the Federal Government to build a skills and migration system that supports working people:

1. Ensure Jobs and Skills Australia, an independent body governed by a tripartite supervisory board, has sufficient resources to effectively:
 - » Carry out transparent skills shortage assessments and create a skilled occupation shortage list through rigorous analysis of labour market data and consultation with unions and employers in industry clusters to ensure that skill shortages are genuine.
 - » Determine if migration is a sensible response to an identified shortage, or if the shortage could be resolved in other ways, such as by offering improved wages and conditions. If migration is deemed the best course of action, initiate industry-sponsorship of migrant workers to meet the skills need and put in place an industry training plan to respond to medium- and longer-term needs. Employers will only be able to engage migrant workers if they have first proven they have offered improved wages and conditions.
 - » Carry out workforce planning, industry planning, apprenticeship and work-based training development, and identify, develop and deploy the jobs and skills required for the transition to net zero.
 - » Initiate and conduct inquiries and investigations regarding migration, skills, workforce development needs and the labour market and provide recommendations to Government.
2. Reform the Skilling Australians Fund (SAF) to become the responsibility of Jobs and Skills Australia. There must be transparency over where funds are spent, alignment between the industry and location the funds were raised and where they are spent, and the SAF must have national coverage. Unions, employers and government would work together to determine where the SAF Funds are spent within an industry. The scope of the fund could be broadened to provide

- training and skills in other areas of the economy that do not operate on an apprenticeship system. The SAF levy should be increased such that the cost of bringing in a temporary worker is commensurate with the cost of hiring and training a local worker.
3. Rebuild TAFE as the centre of Australia's VET system by guaranteeing a minimum of 70% of VET public funding for the TAFE system and rebuilding the TAFE workforce. This would include increasing the number of teachers and administrative staff, and establishing a workforce development plan that includes supporting the development of industry and pedagogically sound qualifications to ensure that the TAFE workforce has the skills and expertise to support the broader labour force.
 4. Support the uptake of apprentices in employment through a Commonwealth funded 50% wage subsidy for employed apprentices, with 25% of the subsidy to go to the apprentice as a retention bonus. There must be increased apprenticeship support funding overall along with targeted initiatives in energy, tech, care, health, and transport; wage support for young apprentices training in industry's foundational skill sets including technology; workplace rights and participation; minimum apprentice and trainee ratios for Commonwealth, State and Local Governments as employers, as well as targets for public procurement and Commonwealth regulated and funded sectors. The distinction between Junior and Adult apprenticeships must be amended to reflect adulthood at 18 years of age, rather than 21, to ensure that adult wage provisions apply to apprentices from 18.
 5. All tiers of Government must act as model employers and increase their investment in skills and workforce development for their employees and ensure that government-funded services are adequately funded to upskill workers and provide career paths.
 6. Set up systems to sit alongside migration to meet the longer-term need for skills, including that assist with social mobility, for example providing lower paid workers decent wages and conditions, including stable and predictable rosters, and professional development to enable workers to transition to higher skilled roles.
 7. Abolish visa conditions that tie workers to a single employer.
 8. Sponsorship of migrant workers should be industry based, not employer based. Preventing single employers from sponsoring visa workers, and instead introducing industry-sponsorship, would remove a key driver of exploitation by allowing workers mobility between employers.
 9. All visas should provide a clear, accessible, affordable, and self-nominated option to obtain permanent residency and access to Australia's social safety net including Medicare and Centrelink. The Australian Government should explore opportunities to offer permanency to more temporary migrants.
 10. Employers should be required to co-invest in domestic skills development by taking on at least one local trainee, cadet or apprentice.
 11. Tackle migrant worker exploitation by ensuring all migrant workers receive an on-arrival induction from a representative of the relevant unions and/or peak union body to provide them with information about their workplace rights and give them the opportunity to join the union.
 12. Increase the Temporary Skilled Migration Income Threshold (TSMIT) - the salary floor for temporary skilled migrants - to Average Full Time Weekly Earnings (approx. \$90,916.80 at November 2021) to be indexed annually by wage price index (WPI), with unions and FWO to have a role in monitoring and independent verification of salary levels of temporary migrant workers. Consider options to introduce a salary floor by industry or occupation, where the floor is set at 30% above the median pay rate.
 13. Provide migrant workers with visa security by introducing whistleblower protections for workers reporting exploitation, and ensure workers reporting exploitation can apply for new visas in the future without penalty.
 14. Crack down on employers who exploit migrant workers, including through prohibiting employers who have underpaid or exploited a migrant worker from engaging other temporary migrant workers, and introducing penalties for companies and company directors who exploit migrant workers, and penalties for companies failing to report or take action on modern slavery in their operations and supply chains.
 15. Ensure migrant workers have the same workplace rights as local workers, including access to the Fair Entitlements Guarantee scheme, and introduce an easy, cost effective and simple way to resolve wage theft.
 16. Review all visa classes to ensure visa conditions are fit for purpose, including ensuring the international student and Working Holiday Maker visas have adequate safeguards to protect the visa holders from workplace exploitation. Immediately abolish the 88-day work requirement for Working Holiday Maker visas by abolishing second and third year visas. Reform the visas available to Australian-resident New Zealand citizens such that they can be treated as permanent residents without the need to apply for permanent residency via another visa scheme and create new, affordable and effective pathways to Australian citizenship for New Zealand migrants.
 17. Immediately increase resourcing to the Department of Home Affairs to directly employ more APS employees to process visa applications, including prioritising those skilled migrant workers onshore who are currently in limbo on bridging visas and awaiting the processing of their permanent applications, such as those awaiting the processing of their 887 skilled regional visa applications.
 18. Increase the number of places in the permanent migration program to 200,000 conditional on:
 - » Structural adjustments to the economy that embed wage growth for all workers;
 - » Prioritising permanent places for those who are already here on temporary visas; and
 - » Implementing recommendations 1-17 above

THE PROBLEM

Through the course of the Covid-19 pandemic, approximately 500,000 temporary migrant workers (mainly international students and working holiday makers¹) left Australia. Now, as we rebuild after the economic shocks of the last two years many businesses are claiming an urgent need for gaps in the workforce to be filled by short-term migrant workers.

Despite this, evidence suggests that although Australia's borders have now reopened, migrant workers are not returning in large numbers. The reason is clear: the poor treatment many migrant workers have experienced in Australia has incurred significant reputational damage. This includes the lack of support for temporary migrants during the Covid-19 pandemic and the growing and systemic problem of migrant worker exploitation, both of which have damaged Australia's international reputation and made us a less desirable destination for migrant workers.² In addition, the temporary nature of many visas, the visa processing backlog for skilled migrant workers, long wait times for applications for permanency and to bring family members to Australia has led to extensive delays and lives lived in limbo. All of this makes Australia a less attractive place to settle.

Some employers are quoting Australia's low unemployment rate to argue that there is an urgent need to restart temporary migration. This is a short-sighted outlook that will not deliver the skills-based needed over the long term. It is true that there were 480,100 job vacancies in Australia in May, an increase of 13.8% from the then record high reached in February of 423,500.³ Australia's unemployment rate sits at 3.5%, a 48-year low, and the proportion of the adult population holding a job or actively looking for work has hit a record high of 66.8%. But these recorded rates can be deceiving. There are also 1.8 million people in Australia who are currently not working but want to work, including 139,800 who were prevented from working because of caring responsibilities or the cost of childcare – 125,100 of whom are women.⁴ Women are a significantly underutilised pool of labour, engaging in 43% less paid work than Australian men.⁵ This gender disparity in labour market access has grown notably worse in recent years.

Since 2006, Australia has dropped from 13th to 70th in the World Economic Forum's gender equality scorecard on female economic participation.⁶

While the catalyst for the current situation – where employers are claiming there are skill shortages while there are many people wanting more work – is the impact of Covid-19, the causes of the problem go much deeper:

- » The shift from an immigration system based on permanent migration, where previous generations of migrant workers brought their families and built lives in Australia, to a system based on temporary, employer-sponsored migration, where workers are on insecure short-term visas, in many cases tied to their employer.
- » A decade of stagnant wages.
- » An overreliance by particular industries and employers, including the public sector, on migrant workers to fill skills gaps instead of investing in developing a local workforce.
- » A failure to address the structural issues that are driving local workers out of industries, such as low pay and insecure work.
- » A failure to develop career paths and develop workers to take on higher-skilled roles within their industry.
- » The undervaluation of jobs traditionally done by women, for example jobs in the care economy.
- » Lack of industry planning and an ad-hoc approach to migration and skills development.
- » A decade of underfunding, cuts and marginalisation of TAFE, which has exacerbated skills gaps.
- » A lack of protection and a safety net for temporary migrant workers which leave them highly vulnerable to exploitation.

¹ Will Mackey, Brendan Coates, 'Don't fiddle with migration policy to try to fix short-term labour shortages', Grattan Institute, 5 May 2022, <https://grattan.edu.au/news/dont-fiddle-with-migration-policy-to-try-to-fix-short-term-labour-shortages/>

² The Government of Samoa suspended flights for their workers participating in the Pacific Australia Labour Mobility (PALM) scheme in March 2022 in response to claims of worker mistreatment, and the Government of Vanuatu initiated an inquiry in March 2022 in response to claims of worker exploitation under the PALM program.

³ Australian Bureau of Statistics (ABS), 'Job Vacancies Australia', February 2022, <https://www.abs.gov.au/statistics/labour/jobs/job-vacanciesaustralia/latest-release>

⁴ ABS, 'Potential Workers', February 2022, <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/potential-workers/latest-release>

⁵ Impact Economics and Policy and Chief Executive Women, 'Addressing Australia's Critical Skill Shortages: Unlocking Women's Economic Participation', April 2022, https://cew.org.au/wp-content/uploads/2022/05/Chief_Executive_Women_RESEARCH_REPORT.pdf p. 4.

⁶ Ibid.

Australia is at a pivotal moment, with a number of challenges before us: recovering from the devastating impacts of the Covid-19 pandemic; taking action to avert climate catastrophe; the need to build resilient supply chains and invest in local industries; meeting the caring needs of an ageing population; delivering a sustainable National Disability Insurance Scheme; and adapting to technological change. In addition, the need to tackle rising inflation, which as Treasurer Jim Chalmers notes, has been driven domestically in part by a decade of failure to invest in skills and local manufacturing capability that has seen productivity flatline and supply chains break.⁷ The National Skills Commission has projected that over the five years to 2026, the economy will require an additional 1.2 million jobs, with female-dominated industries experiencing the biggest increases, including healthcare and social assistance, education and training, and accommodation and food services.⁸

To meet the challenges ahead, Australia needs a highly skilled workforce. But we cannot simply go back to the pre-pandemic status quo of employers using and abusing migrant workers to fill skills gaps while shirking their responsibility to offer jobs and training to local workers.

Temporary migrant workers contribute to our community and our economy. Temporary migrant workers pay taxes and actively contribute to the Australian economy, although they are excluded from subsidies and welfare benefits. Urgent reform of the migration system is required to recognise the contribution migrant workers make to this country and ensure they are given permanency and their rights are respected.

We also call for action to increase the labour market participation of local workers: Government must take action to increase the labour market participation of women, who currently engage in 43% less paid work than Australian men,⁹ to ensure equal participation. A recent study has found that halving the current gap in participation rates between Australian men and women with post-school qualifications would represent the equivalent of an additional 509,000 FTE workers – more than enough to fill the current vacancies across the economy. If the gap between men and women was completely closed it would represent 1 million additional FTE, including over 800,000 with a diploma or above.¹⁰ In addition, more needs to be done to improve the labour market participation of marginalised and disadvantaged groups of workers and potential workers in our community, such as Aboriginal and Torres Strait Islander people, people with disabilities, youth, and the long-term unemployed.

Training and support pathways could be provided for refugees, asylum seekers and non-citizens residing in the community, including the more than 19,000 on Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs), and those on expired Bridging Visa E (BE) who are awaiting another visa to be granted

should be given work rights.¹¹ There are other cohorts of workers in the community, such as those on bridging visas awaiting the processing of their Skilled Regional Visa (subclass 887) applications, with valuable skills that are unable to find employment due to their precarious status.

We need to use this moment to fundamentally rethink our skills and migration systems so they work in the national interest for the long-term – not just the short-term interests of some big businesses. In the short term, Australia will need both migration and skills training to meet genuine labour market shortages. Government must play a leading role in ensuring our skills and migration systems deliver for our country now and into the future.

Successive Coalition Governments have undermined our skills and migration systems:

- » There is a lack of investment in skills training of local workers, and a lack of coordination between skilled migration and the VET system. The VET system is fragmented after years of underinvestment, cuts and privatisation, and the needs of industry – workers and employers – are not being met.
- » The migration system has shifted towards temporary, rather than permanent, migration; the exploitation of temporary migrant workers is endemic; and the methods for protecting the domestic labour market, including determining genuine skill shortages, labour market testing, and the temporary sponsored migration income threshold (TSMIT), are inadequate.

Australia's skills and migration systems are in need of urgent reform to:

- » Rebuild our TAFE and Vocational Education and Training (VET) system to close the skills gaps and ensure Australia is prepared to take on the big challenges ahead.
- » Closely link the migration and skills training systems, so that employers and industries engaging migrant workers to fill a skill shortage are required to make a longer-term investment in local skills development.
- » Stop the exploitation of migrant workers and rebalance the system away from insecure, temporary visas where workers are tied to an individual employer, to one where migrant workers can move between employers and settle here permanently with their families if they wish.
- » Ensure that temporary migrant workers are only engaged in the event of a genuine skill shortage based on data analysis and expert industry advice from unions and employers, after first offering improved wages and conditions to attract and retain local workers.

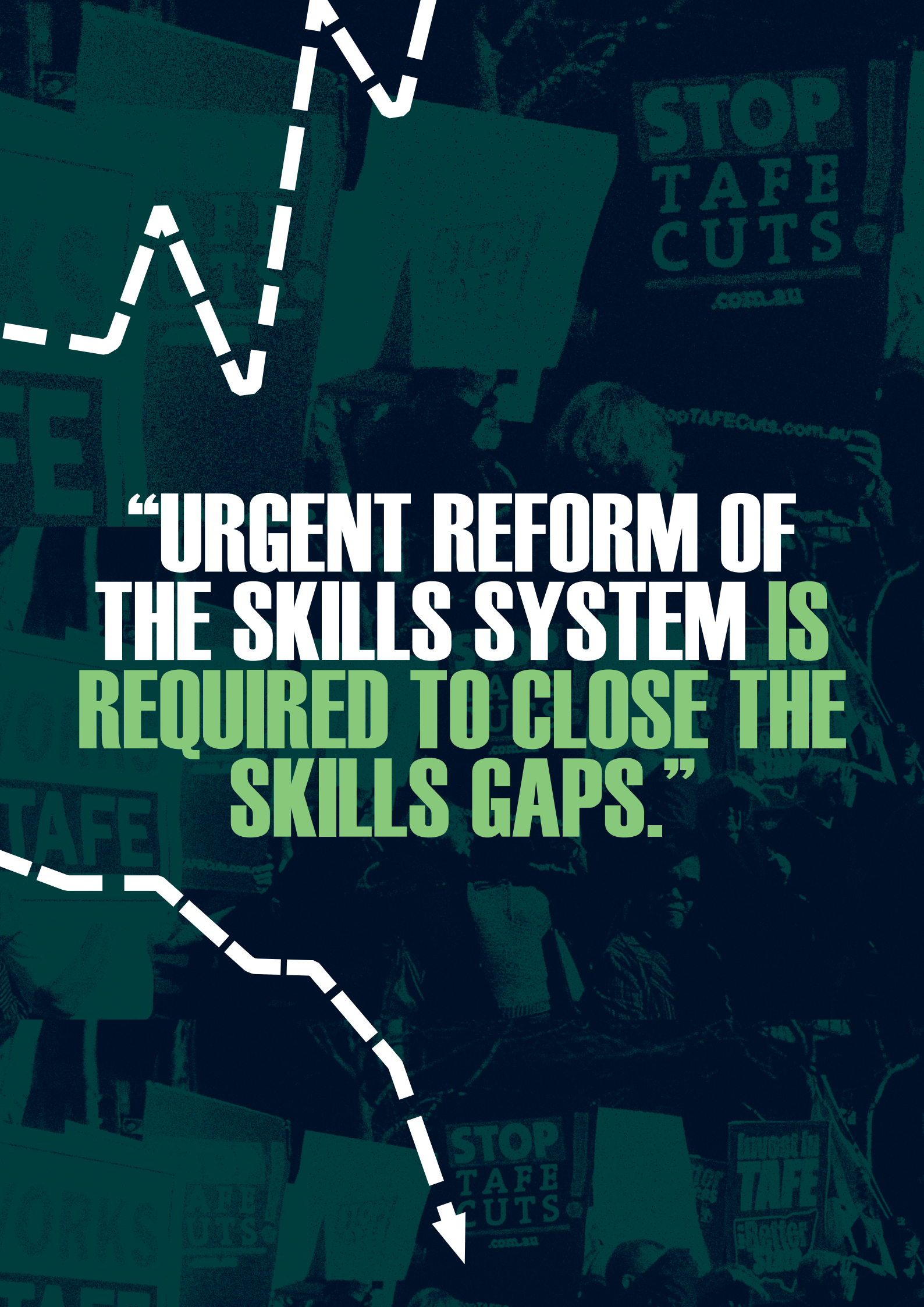
⁷ The Hon Dr. Jim Chalmers MP, 'Ministerial Statement on the Economy', 28 July 2022, <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/speeches/ministerial-statement-economy>

⁸ National Skills Commission, 'Projecting employment to 2026', 29 March 2022, <https://www.nationalskillscommission.gov.au/insights/projecting-employment-2026>

⁹ Impact Economics and Policy and Chief Executive Women, 'Addressing Australia's Critical Skill Shortages: Unlocking Women's Economic Participation', April 2022, https://cew.org.au/wp-content/uploads/2022/05/Chief_Executive_Women_RESEARCH_REPORT.pdf p. 4.

¹⁰ Ibid., p. 6.

¹¹ 2,437 as at December 2021: Refugee Council of Australia, 'Statistics on people seeking asylum in the community', July 2022, <https://www.refugee-council.org.au/asylum-community/6/>



**“URGENT REFORM OF
THE SKILLS SYSTEM IS
REQUIRED TO CLOSE THE
SKILLS GAPS.”**

THE COALITION GOVERNMENT'S LEGACY: A BROKEN SKILLS SYSTEM

A decade of Coalition Government cuts, underfunding and privatisation have decimated Australia's Vocational Education and Training (VET) system. The migration system under the Coalition has largely been a green light for employers to by-pass investing in local skills and in VET, by giving them broad access to using temporary migrant workers. Rather than the skilled migration system operating as a complement to the VET system, it has effectively been in competition with it. Along with a lack of public investment in skills development, employers have not been contributing their fair share to developing the skills they profit from.

Since 2013, over 70,000 apprenticeships and traineeships have disappeared from the Australian economy, resulting in tens of thousands fewer skilled workers entering the workforce each year and worsening the skill shortages faced in some industries. Completion rates for apprenticeships and traineeships are at their lowest level since 2013.

The VET system does not meaningfully engage with unions and puts short-term business priorities over the long-term career objectives of workers. Unions have been steadily shut out of VET bodies, and as a result, training is now unable to respond effectively to industry need. Moreover, there have been long-standing, persistent skill shortages in a range of occupations for many years, pointing to a lack of coordination between the VET system and the skilled migration system, and a lack of planning and investment in skills development. We need a VET system that delivers lifelong learning, enabling workers to retrain and upskill at various stages of their careers and to support workers transitioning between industries.

Finally, there is a lack of coordination between the VET sector and the higher education sector. The Covid-19 crisis exposed the fragile funding model of Australian universities. The ongoing erosion of public funding for universities has increased their reliance on private funding sources and international student fees, which undermines their role in delivering high quality education to develop the skills our workforce needs. The increasing shifting of costs onto students also places university education, and therefore entry into or progress within certain industries and occupations, increasingly out of reach for socially disadvantaged communities.

There is a need to better align the university and VET systems to ensure we are equipped to develop the skills and knowledge base to meet current and future challenges.

A BROKEN TAFE SYSTEM

The Coalition Government's decision to leave the provision of quality VET to the market has proved an utter failure, resulting in a system where many students do not receive the training they are paying for and where graduates are often not sufficiently skilled. Diverting public VET funding to private for-profit providers has funneled scarce public resources into the pockets of individuals and reduced the quality of education and trust in the VET system. Due to privatisation, declining funding, and the loss of students to private providers, TAFE is no longer the centrepiece of VET in many areas. In 1996, 83% of students undertaking publicly-funded VET were registered at TAFE institutes; by 2018, only 61% of publicly funded students were enrolled at TAFE.¹² Government funding for VET is insufficient, plunging from over \$3 billion in 2017 to \$2.6 billion in 2019 – a 15% reduction - and costs have been increasingly shifted on to students.

A decade of underinvestment, cuts and privatisation of TAFE has also decimated the TAFE workforce. Almost 10,000 TAFE FTE (full time equivalent) positions were cut between 2012-2020 across six states and territories, with the two largest TAFE systems – Victoria and NSW – the worst hit, with nearly 9000 FTE staff positions cut.¹³ Staffing cuts have led to increased workload pressure on existing employees, with the average TAFE teacher now performing an additional day of work per week unpaid.¹⁴ Cuts to the TAFE workforce have also impacted on TAFE's

¹² Alison Pennington, 'An Investment in Productivity and Inclusion: The Economic and Social Benefits of the TAFE System', Centre for Future Work at the Australia Institute, August 2020, https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/3339/attachments/original/1597213653/An_Investment_in_Productivity_and_Inclusion.pdf?1597213653, pp. 17-18.

¹³ Ibid. p. 18.

¹⁴ Ibid. p. 19.

role in skills planning: prior to the funding cuts, TAFE employed senior educators who were closely involved in future-proofing industries. Those educators would liaise with industry to help predict skill shortages up to 10 years ahead.¹⁵ Central to restoring TAFE must be rebuilding the TAFE workforce, including teachers and support staff, to ensure TAFE can deliver education outcomes and play a key role as the centre of Australia's VET system.

A report by the Centre for Future Work found that despite the chronic underfunding and failed market-led VET policies, Australia's historic investment in the TAFE system continues to generate an enormous and ongoing dividend to the Australian economy.¹⁶ The TAFE system supports \$92.5 billion in annual economic benefits through the direct operation of TAFE institutes, higher incomes and productivity generated by the TAFE-credentialed workforce, and reduced social benefit costs, including 48,000 jobs through the direct operation of TAFE institutes and the TAFE supply-chain. The other social benefits of TAFE, such as its role in regional economic development, social cohesion and tackling inequality through offering education pathways to disadvantaged groups, are less easy to quantify but are fundamental to the role a well-funded TAFE system plays in our community. The report notes that TAFE system is crumbling, however, and that if Australia wants to reap the benefits of TAFE, the damage must be repaired quickly. The importance of the VET system to workers, employers, our community and the wider economy must be matched by a level of public investment that reflects the true cost of delivering quality training and support services to students, including disadvantaged cohorts and training delivery in rural and regional areas.

FAILURE TO ADAPT TO A CHANGING JOBS LANDSCAPE

The existing VET system is not fit for a changing jobs landscape. Australia urgently needs to develop our skills base in order to successfully manage the energy transition, rebuild our domestic manufacturing to secure our supply chains, rebuild a strategic fleet to ensure our national security, and expand the care sector, just to mention some of the most urgent priorities. Our current system – fragmented and run down after years of outsourcing and cuts – is not set up to provide a holistic, economy-wide picture of skills needs and responding to the imperatives of decarbonisation, ongoing pandemic management and recovery, growing demographic pressures on aged and other social care sectors, and technological change. Australia needs long term industry policy that is integrated with our secondary, VET and higher education systems. In addition, the VET system has a fundamental role to play in providing workers with access to higher-paid, higher-skilled jobs, more fulfilling work and expanded future career opportunities.

SKILLING AUSTRALIANS FUND

The Skilling Australians Fund (SAF) is one policy measure that has attempted to link the migration and skills system; however its implementation has been flawed. The SAF was established in the 2017-18 budget, with the purpose of ensuring that businesses that benefit from employing migrant workers are also skilling Australians. The SAF was managed through the National Partnership on the Skilling Australians Fund, in operation from July 2018 – 30 June 2022.¹⁷ Under the National Partnership, the Fund assists in the delivery of state and territory projects as set out in individual bilateral arrangements. These projects aim to deliver improved employment outcomes by supporting Australians to obtain the skills and training they need in industries and occupations in demand, by increasing the uptake of apprenticeships and traineeships, pre-apprenticeships and pre-traineeships, and other employment-related training opportunities. Funds are not spent in the geographical locations and industries from which they are collected, however, for example Victoria and Queensland are not party to bilateral agreements with the Commonwealth, meaning funds raised in these states are not going to train workers in these states. The scope of the Fund is too narrow, meaning funds raised are only spent on industries operating on an apprenticeship system.

The principal mechanism for raising revenue for the SAF is the Levy, paid upfront by employer sponsors for the following visas:

- » TSS (Temporary Skill Shortage – subclass 482)
- » Employer Nomination Scheme (ENS – subclass 186)
- » Skilled Employer Sponsored Regional (Provisional – subclass 494)
- » Regional Skilled Migration Scheme (RSMS – subclass 187)

The Levy is payable at a rate proportionate to the size of the business and the number of years for which the overseas worker is nominated, ranging from about \$1,200 to \$7,200. The SAF Levy is supposed to serve as an incentive for employers to test the local labour market for suitably skilled Australian workers before lodging a nomination application, however as the cost of the SAF Levy is not commensurate with the cost of hiring and training a local worker, it does not serve as a disincentive for employers to use temporary visa workers instead of training and employing local workers. Further research is required regarding employer expenditure on skills and workforce development, to ascertain how much is being invested in nationally recognised training to determine the appropriate quantum for the SAF Levy to ensure that temporary migration is not a cheaper option than training the local workforce.

¹⁵ Margaret Paton, 'Solving the Skills Crisis', Australian Educator, Autumn 2022, https://www.aeufederal.org.au/application/files/5616/4783/5929/01_Educator_Autumn22_Singles.pdf p. 23.

¹⁶ Pennington, Centre for Future Work at the Australia Institute, 2020

¹⁷ National Partnership on the Skilling Australians Fund, https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2020-04/skilling_australians_fund_np.pdf

THE SOLUTION: A TRIPARTITE SKILLS SYSTEM AND RESTORING TAFE

The new Labor Government's Made in Australia Skills Plan provides an enormous opportunity for a reset on skills and workforce development.¹⁸ This expansive plan includes 465,000 Fee Free TAFE places (including 45,000 new TAFE places), \$100 million New Energy Apprenticeships, ensuring at least 70% of Commonwealth VET funding is for public TAFE, and the creation of the new body Jobs and Skills Australia (JSA). Australian Unions welcome these initiatives.

The JSA should have a tripartite governance structure – unions, employers and government – to ensure the skills system is closely aligned with the needs of workers and business. JSA should bring together a range of functions to coordinate and integrate the skills system and strengthen workforce planning with industry, including restoring a tripartite approach to skills assessments, licensing and occupational standards; apprenticeships development; addressing key national challenges such as the energy transition, an ageing population and digitalisation, among others; providing advice about regional economies; improving workforce participation and maximising employment services; promotion and advocacy; training product development and overall oversight of Commonwealth contracts, expenditure and investment in VET and skills.

JSA will have a key role in the independent verification of skills and occupations in shortage. JSA will take over the functions of the National Skills Commission (NSC), which include the creation of a list of skills and occupations in which shortages exist to better integrate the skills and migration systems. But rather than adopt the flawed methodology of the NSC, which determines an occupation is in shortage when employers have recruitment difficulties for positions offered at current rates of pay and conditions, the JSA should adopt a robust methodology and a transparent approach to ensure that employers can only sponsor temporary migrant workers where genuine skill shortages exist. The methodology to determine this should include rigorous analysis of quantitative data including national statistics and surveys, and stakeholder consultation that includes both unions and employers. Once an occupation or skill is determined through this analysis to be in shortage, there must be a tripartite process to determine if it is sensible to fill the shortage using temporary migration – as opposed to another method of attracting applicants, such as improving pay and conditions. Consideration should be given to tailoring visas to suit specific industries. The objective is not to create barriers for migrant workers

to come to Australia, but to create safeguards on the use of temporary visas to ensure that they are only used in circumstances where there is a genuine skill shortage. This will be accompanied by a strengthening of protections for migrant workers (these protections are outlined in the next section) to ensure they are not exploited at work and an expansion of the number of places in the permanent migration program.

A core output of JSA would be an evidence-based and actionable National Skills Plan that provides a set of priorities and a roadmap for the application of the nation's skills investment over a five-year time horizon. A workforce development strategy will supplement this national plan and will be reviewed and updated periodically. The Plan would provide the basis for a nationally consistent approach to training investment through consultation with States and Territories and based on an understanding of the jobs the economy requires and the skills to perform those jobs. JSA must be sufficiently resourced to carry out these functions.

Temporary migrant workers must also have access to our skills system. For example, there is a key role for JSA in clearly communicating licensing and qualification standards and assisting workers to meet those standards so they can utilise the skills they have gained in their home countries. It is also critical that employers offer quality training to workers on the Pacific Australia Labour Mobility (PALM) scheme so they can be provided with skills relevant to their work in Australia and that they can take back to their own countries – to ensure this program acts as a 'brain gain' as opposed to a 'brain drain' for Pacific countries. Funding provided to employers for training must be appropriately and transparently spent and acquitted, and spent on nationally recognised qualifications. Consideration should also be given to capitalising on the opportunity for temporary migrant workers and local workers to learn from each other and undertake place-based training together, with recognition of skills and training acknowledged for both parties.

¹⁸ Australian Labor Party, 'Fee Free TAFE and more Uni places', 2022, <https://www.alp.org.au/policies/fee-free-tafe-and-more-university-places>

Recommendations

1. Ensure Jobs and Skills Australia, an independent body governed by a tripartite supervisory board, has sufficient resources to effectively:
 - » Carry out transparent skills shortage assessments and create a skilled occupation shortage list through rigorous analysis of labour market data and consultation with unions and employers in industry clusters to ensure that skill shortages are genuine.
 - » Determine if migration is a sensible response to an identified shortage, or if the shortage could be resolved in other ways, such as by offering improved wages and conditions. If migration is deemed the best course of action, initiate industry-sponsorship of migrant workers to meet the skills need and put in place an industry training plan to respond to medium- and longer-term needs. Employers will only be able to engage migrant workers if they have first proven they have offered improved wages and conditions.
 - » Carry out workforce planning, industry planning, apprenticeship and work-based training development, and identify, develop and deploy the jobs and skills required for the transition to net zero.
 - » Initiate and conduct inquiries and investigations regarding migration, skills, workforce development needs and the labour market and provide recommendations to Government.
2. Reform the Skilling Australians Fund (SAF) to become the responsibility of Jobs and Skills Australia. There must be transparency over where funds are spent, alignment between the industry and location the funds were raised and where they are spent, and the SAF must have national coverage. Unions, employers and government would work together to determine where the SAF Funds are spent within an industry. The scope of the fund could be broadened to provide training and skills in other areas of the economy that do not operate on an apprenticeship system. The SAF levy should be increased such that the cost of bringing in a temporary worker is commensurate with the cost of hiring and training a local worker.
3. Rebuild TAFE as the centre of Australia's VET system by guaranteeing a minimum of 70% of VET public funding for the TAFE system and rebuilding the TAFE workforce. This would include increasing the number of teachers and administrative staff, and establishing a workforce development plan that includes supporting the development of industry and pedagogically sound qualifications to ensure that the TAFE workforce has the skills and expertise to support the broader labour force.
4. Support the uptake of apprentices in employment through a Commonwealth funded 50% wage subsidy for employed apprentices, with 25% of the subsidy to go to the apprentice as a retention bonus. There must be increased apprenticeship support funding overall along with targeted initiatives in energy, tech, care, health, and transport; wage support for young apprentices training in industry's foundational skill sets including technology; workplace rights and participation; minimum apprentice and trainee ratios for Commonwealth, State and Local Governments as employers, as well as targets for public procurement and Commonwealth regulated and funded sectors. The distinction between Junior and Adult apprenticeships must be amended to reflect adulthood at 18 years of age, rather than 21, to ensure that adult wage provisions apply to apprentices from 18.
5. All tiers of Government must act as model employers and increase their investment in skills and workforce development for their employees and ensure that government-funded services are adequately funded to upskill workers and provide career paths.
6. Set up systems to sit alongside migration to meet the longer-term need for skills, including that assist with social mobility, for example providing lower paid workers decent wages and conditions, including stable and predictable rosters, and professional development to enable workers to transition to higher skilled roles.

THE COALITION GOVERNMENT'S LEGACY: A BROKEN MIGRATION SYSTEM

Australia's migration system is currently based on temporary, employer-sponsored migration, driven by the short-term interests of business instead of the longer-term national interest. This has resulted in a series of scandals in which migrant workers have suffered hyper-exploitation.

Such a system has not always been in place. Prior to the election of the Howard Government in 1996, intakes were dominated by permanent migration, and there was very little scope for temporary migration.¹⁹ The shift from permanent to temporary migration was facilitated by a number of migration policy settings, including:

- » The establishment of the notorious 457 visa – now the Temporary Skill Shortage (TSS) Visa – which enabled employers to bring in temporary migrant workers with very little regulation, and has increasingly been used to fill lower-paid, lower skilled vacancies.²⁰ Workers under this visa are bound to their employers as a condition of their visa making them especially vulnerable to exploitative practices.
- » The expansion of the Working Holiday Maker (WHM) visa program and the increase in international student visas, from around 29,000 in 1990 to over 200,000 in 2019.²¹ Despite the purposes of these schemes not being labour migration, WHM visa holders have become a core source of labour in the horticulture industry,²² and international students make up an important share of the workforce in hospitality.
- » No independent verification of skill shortages claimed by employers, leading to occupations listed for temporary labour migration that are not genuinely in shortage.
- » Weak requirements to test the local labour market before bringing in temporary migrant workers, including a growing number of exemptions to labour market testing in trade agreements.

- » No requirement for employers to prove they have offered increased wages and improved conditions to attract local workers before accessing temporary migrant workers.
- » A low salary threshold for bringing in temporary migrant workers (the Temporary Skilled Migration Income Threshold – TSMIT), that has not been raised in almost a decade.
- » Changes to the 1973 Trans-Tasman Travel Arrangement (TTTA), introduced by the Howard Government in 2001. The original TTTA allowed Australian and New Zealand citizens to enter each other's country to visit, live and work, access social security and obtain Australian citizenship without first becoming permanent residents. The introduction of the non-protected Special Category visa (subclass 444) for those who arrived after 26 February 2001 allows New Zealand citizens to remain in Australia, but without permanent residency status, meaning they do not have access to social security payments and no pathway to citizenship without first obtaining PR status through another visa. New Zealand has continued to treat Australians as permanent residents with equal access to social security.

Moreover, successive Coalition Government cuts to staffing levels in the Department of Home Affairs have led to a backlog in the processing of visa applications,²³ leading to many of those onshore who are waiting for their applications for permanent visas to be processed to live in limbo on precarious bridging visa arrangements.

¹⁹ Chris F. Wright and Stephen Clibborn, 'Back Door, Side Door, or Front Door: An Emerging De-Facto Low-Skilled Immigration Policy in Australia', *Comp. Labor Law and Policy Journal*, Vol. 39: 165 (2017), p. 171.

²⁰ Grattan Institute, 'Fixing temporary skilled migration: a better deal for Australia', 2022, <https://grattan.edu.au/wp-content/uploads/2022/03/Fixing-temporary-skilled-migration-A-better-deal-for-Australia.pdf> p. 14

²¹ Department of Home Affairs, 'Student and temporary graduate visa program report', 31 December 2019, <https://www.homeaffairs.gov.au/research-and-stats/files/student-temporary-grad-program-report-december-2019.pdf> p. 7.

²² Joanna Howe, Alex Reilly, Diane van den Broek and Chris F. Wright, 'Working Holiday Makers in Australian Horticulture: labour market effect, exploitation and avenues for reform', *Griffith Law Review*, University of Adelaide Law Research Paper No. 2019-9 (2019), p. 3.

²³ Data released under FOI laws shows that 16,467 applications for the 887 regional skilled worker visas were awaiting processing in March 2022. The median short-term temporary skilled visa currently takes 83 days to finalise, up from 53 in March. One quarter of applications are taking at least one year to process, while the slowest 10% of TSS visas are taking 15 months to process.

MIGRANT WORKER EXPLOITATION

Temporary migrant workers are highly vulnerable to exploitation and modern slavery due to their temporary status which limits their bargaining power and agency. Despite employer claims that exploitation is the result of a few 'bad apple' employers, there is a strong body of evidence²⁴ that exploitative practices such as wage theft are endemic and widespread among migrant workers. It was not always this way, however. Academic experts Chris F. Wright and Stephen Clibborn note that a key factor in the relative degree of equality between migrant and non-migrant worker wages and conditions until the 1990s was Australia's official promotion of permanent settlement and the absence of temporary visas. They also note that another key factor was 'the presence of an effective labour enforcement regime spearheaded by trade unions with high membership coverage and supported by a strong and inclusive system of collective employment rights.'²⁵

In addition to their temporary status and the lack of an effective system of labour regulation and enforcement, other drivers of migrant worker exploitation include:

- » Visa conditions that tie workers to employer sponsors. Arrangements that tie workers to employers enhance employer power and increase the vulnerabilities of workers to exploitation. Workers on TSS visas only have limited time to find a new employer in order to stay in the country if their sponsorship is terminated, making them highly vulnerable. Research shows there is no sustained evidence of mistreatment of workers on permanent skilled visas; a key factor likely to minimise the scope for exploitation is that the visa conditions of permanent visa holders grant them unlimited mobility in the labour market, enabling them to exit exploitative employment arrangements.²⁶
- » No protection or guarantee that workers reporting exploitation will not suffer migration-related consequences, which means workers are more likely to continue in exploitative circumstances rather than report exploitation to authorities and risk being deported.
- » Lack of pathways to permanency that are not contingent on employer sponsorship.
- » Use of labour hire intermediaries and sham contracting arrangements.
- » Restrictive right of entry provisions that are a barrier to unions inspecting workplaces to investigate conditions and speak with workers.

SKILL SHORTAGES ARE NOT ALWAYS GENUINE

The current process for determining skill shortages is flawed. The National Skills Commission (NSC) – the body tasked with creating the lists of occupations where there is a skill shortage – defines a skill shortage as

when employers are unable to fill or have considerable difficulty filling vacancies for an occupation, or significant specialised skill needs within that occupation, at current levels of remuneration and conditions of employment, and in reasonably accessible locations.²⁷

The approach of the NSC, where the primary measure of an occupational shortage is the ability of employers to fill vacancies, is likely to substantially overestimate the number of genuine skill shortages. Evidence suggests that much of what employers are claiming as skill shortages could simply be overcome by employers increasing wages and improving conditions when faced with recruitment difficulties.

Employers are unlikely to take this approach, however, as illustrated by Wright and Andreea Constantin's research findings when they surveyed 1602 employers in Australia to analyse employer motivations for recruiting temporary skilled visa holders. Despite the vast majority of employers surveyed claiming to experience problems recruiting workers locally, less than 1% of employers surveyed claimed they would increase wages or provide other incentives to potential candidates to address their recruitment challenges. As Wright and Constantin note, 'this suggests that even if employers recruited temporary sponsored skilled migrants because of skills shortages that meet the generally accepted technical definition, the skills shortages that existed were not acute.'²⁸ They conclude:

...our findings indicate that the recruitment challenges facing the employers of temporary sponsored skilled migrants could be addressed more comprehensively through alternative long-term strategies, including higher pay, improving job quality, investing more in training, providing career development opportunities and other steps likely to produce greater commitment and retention among existing and prospective employees.²⁹

There is no independent verification of employer claims of skill shortages. Instead, approaches are based on the assumption that an employer does not have the incentive to lodge an application for short-term migrant workers in instances where domestic labour might be available.

²⁴ See for example, L Berg and B Farbenbum, 'Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey', UNSW Law, Sydney and University of Technology Sydney, 2017 <https://www.sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>; S Martin, '88 days a slave: backpackers share stories of farm work exploitation', The Guardian, 26/9/19, <https://www.theguardian.com/australia-news/2019/sep/26/88daysaslave-backpackers-share-stories-of-farm-work-exploitation>; I Campbell, 'Harvest Labour Markets in Australia: Alleged Labour Shortages and Employer Demand for Temporary Migrant Workers', Journal of Australian Political Economy, No. 84, pp. 46-88; Unions NSW and Migrant Workers Centre, 'Working for \$9 a day: wage theft and human rights abuses on Australian farms', 2021, <https://www.unionsnsw.org.au/wp-content/uploads/2021/06/piece-rates-report.2-2.pdf>

²⁵ Chris F. Wright and Stephen Clibborn, 'Back Door, Side Door, or Front Door: An Emerging De-Facto Low-Skilled Immigration Policy in Australia', Comp. Labor Law and Policy Journal, Vol. 39: 165, 2017, p. 170.

²⁶ Wright and Clibborn, 2017, p. 174.

²⁷ National Skills Commission, 'Skills Priority List Methodology', https://www.nationalskillscommission.gov.au/sites/default/files/2021-12/Skills%20Priority%20List%20Methodology_0.pdf p. 5.

²⁸ Chris F Wright and Andrea Constantin, 'Why recruit temporary sponsored skilled migrants? A human capital theory analysis of employer motivations in Australia', Australian Journal of Management, UNSW Business School, Vol 46(1), 2021, p. 168.

²⁹ Ibid., p. 169.

“LESS THAN 1% OF EMPLOYERS SURVEYED CLAIMED THEY WOULD INCREASE WAGES OR PROVIDE OTHER INCENTIVES TO POTENTIAL CANDIDATES TO ADDRESS THEIR RECRUITMENT CHALLENGES.”

As academic Joanna Howe points out, however, this is a simplistic notion that ignores a range of other motives employers might have to access temporary migrant workers: a reluctance to invest in training, attempts to avoid paying award pay and conditions, and deunionisation.³⁰

WEAK LABOUR MARKET TESTING

The current system of employer-conducted Labour Market Testing (LMT) is too weak and suffers from a lack of enforcement and too many exemptions. The aim of LMT is to ensure employers wishing to sponsor an overseas worker test the local labour market to first check if a suitable local worker is available for the role. Sponsors must provide information about their attempts to recruit local workers to the Department and demonstrate how they have determined that there is no suitably qualified and experienced Australian citizen or permanent resident to fill the position. The current system of LMT is ineffective because the requirements are not stringent enough, and it has been undermined by successive Coalition Governments through trade agreements that provide businesses with blanket exemptions to LMT.

TEMPORARY SKILLED MIGRATION INCOME THRESHOLD (TSMIT)

The Temporary Skilled Migration Income Threshold (TSMIT) is the minimum salary threshold for occupations eligible for temporary sponsorship. It is supposed to serve two functions: act as a determination of the eligibility of occupations for access to the scheme, and as an income floor to ensure that temporary skilled visa holders are paid an acceptable market rate and support themselves and that the visa program is not used to undercut the Australian labour market. The TSMIT has been frozen at \$53,900 since 1 July 2013, however, dropping from 72% of average weekly earnings down to 59%. As the Grattan Institute observe, the failure to index the TSMIT to prices or wages has meant that a growing share of Temporary Skill Shortage (TSS) visa holders are employed on low wages, with more than half of TSS visa holders today earning less than median full-time earnings (\$82,000 a year), compared to just 38% of temporary skilled visa holders in 2005.³¹

³⁰ Joanna Howe, 'Is the net cast too wide? An assessment of whether the regulatory design of the 457 visa meets Australia's skill needs', University of Adelaide: Adelaide Law School Research Paper No. 2014-19, p. 21.

³¹ Grattan Institute, 2022, p. 12.

THE SOLUTION: PERMANENT MIGRATION AND RIGHTS FOR MIGRANT WORKERS

Fundamental change is required to rebalance Australia's migration system in favour of permanent migration with accessible pathways to permanency, and fewer temporary visas where the fate of migrant workers is left in the hands of their employers.

Recommendations

7. Abolish visa conditions that tie workers to a single employer.
8. Sponsorship of migrant workers should be industry based, not employer based. Preventing single employers from sponsoring visa workers, and instead introducing industry-sponsorship, would remove a key driver of exploitation by allowing workers mobility between employers.
9. All visas should provide a clear, accessible, affordable, and self-nominated option to obtain permanent residency and access to Australia's social safety net including Medicare and Centrelink. The Australian Government should explore opportunities to offer permanency to more temporary migrants.
10. Employers should be required to co-invest in domestic skills development by taking on at least one local trainee, cadet or apprentice.
11. Tackle migrant worker exploitation by ensuring all migrant workers receive an on-arrival induction from a representative of the relevant unions and/or peak union body to provide them with information about their workplace rights and give them the opportunity to join the union.
12. Increase the Temporary Skilled Migration Income Threshold (TSMIT) - the salary floor for temporary skilled migrants - to Average Full Time Weekly Earnings (approx. \$90,916.80 at November 2021) to be indexed annually by wage price index (WPI), with unions and FWO to have a role in monitoring and independent verification of salary levels of temporary migrant workers. Consider options to introduce a salary floor by industry or occupation, where the floor is set at 30% above the median pay rate.
13. Provide migrant workers with visa security by introducing whistleblower protections for workers reporting exploitation, and ensure workers reporting exploitation can apply for new visas in the future without penalty.
14. Crack down on employers who exploit migrant workers, including through prohibiting employers who have underpaid or exploited a migrant worker from engaging other temporary migrant workers, and introducing penalties for companies and company directors who exploit migrant workers, and penalties for companies failing to report or take action on modern slavery in their operations and supply chains.
15. Ensure migrant workers have the same workplace rights as local workers, including access to the Fair Entitlements Guarantee scheme, and introduce an easy, cost effective and simple way to resolve wage theft.
16. Review all visa classes to ensure visa conditions are fit for purpose, including ensuring the international student and Working Holiday Maker visas have adequate safeguards to protect the visa holders from workplace exploitation. Immediately abolish the 88-day work requirement for Working Holiday Maker visas by abolishing second and third year visas. Reform the visas available to Australian-resident New Zealand citizens such that they can be treated as permanent residents without the need to apply for permanent residency via another visa scheme and create new, affordable and effective pathways to Australian citizenship for New Zealand migrants.
17. Immediately increase resourcing to the Department of Home Affairs to directly employ more APS employees to process visa applications, including prioritising those skilled migrant workers onshore who are currently in limbo on bridging visas and awaiting the processing of their permanent applications, such as those awaiting the processing of their 887 skilled regional visa applications.
18. Increase the number of places in the permanent migration program to 200,000 conditional on:
 - » Structural adjustments to the economy that embed wage growth for all workers;
 - » Prioritising permanent places for those who are already here on temporary visas; and
 - » Implementing all of the 18 recommendations of this report



ACTU

4/365 Queen Street
Melbourne VIC 3000

1300 486 466

australianunions.org.au