Temporary Migration – Changing Our System

Our Values

1. The Australian Union movement believes in a fair go for all workers – whoever you are and wherever you come from. We are a proudly multicultural movement, and our diversity is our strength. Australia has been built by successive waves of immigration, which have in turn built our union movement.

2. Congress acknowledges the enormous contribution made by migrant workers to our workplaces, our communities and our economies. Congress notes that the notion perpetuated by the right that 'immigrants take jobs away' is a myth – there is no evidence that migration harms the overall labour market outcomes of workers employed locally. Temporary skilled migrants pay taxes and actively contribute to the Australian economy, although they are excluded from subsidies and welfare benefits. It is estimated that by 2050, each migrant will be contributing a net 10 per cent more to Australia's economy than an existing resident.

3. Previous generations of migrant workers were able to build lives here in Australia with their families and become permanent members of our workplaces and our communities. But over the past decade we have seen our migration system shift to one based on temporary, employer-sponsored migration, where workers are on insecure short-term visas, and reliant on their employer for their ability to stay in the country.

4. Congress reaffirms the commitment of the Australian union movement to permanent migration.

5. Congress affirms the importance of ethical labour migration that ensures the adequate provision of services in source countries. Central to this is the involvement of unions in source countries in labour migration, skills development and industry planning.

How did we get here?

6. Australia has a proud history of migration, which until the 1980s, was largely based on permanent skilled, refugee and family reunion migration.

7. Australia's migration system under the previous Coalition Government was 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. The shift from permanent to temporary migration was facilitated by a number of migration policy settings, including:

    a. The establishment of the notorious 457 visa – which became the Temporary Skill Shortage (TSS) visa – enabled employers to bring in temporary migrant workers with very little regulation and has increasingly been used to fill lower-paid, lower skilled vacancies. Workers under this visa are bound to their employers as a condition of their visa making them especially vulnerable to exploitative practices.

    b. 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. Despite the purposes of these schemes not being labour migration, WHM visa holders have become a core source of labour in the horticulture industry, and international students make up an important share of the workforce in hospitality, retail, fast food, and the care and support sectors, namely aged care.

    c. No independent verification of skill shortages claimed by employers, leading to occupations listed for temporary labour migration that are not genuinely in shortage, yet remain on these lists for extended periods.

    d. 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.

e. No requirement for employers to prove they have offered increased wages and improved conditions to attract workers locally before accessing temporary migrant workers.

f. A low salary threshold for bringing in temporary migrant workers (the Temporary Skilled Migration Income Threshold – TSMIT), that had not been raised in almost a decade, until the Albanese Government took action to lift it in 2023.

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

9. Too often, employer claims of a 'skill shortage' are in fact caused by poor job quality – low wages and poor conditions. Wright and Constantin (2015) surveyed employers using the 457 visa scheme and found that 86% state that they have experienced challenges recruiting workers locally. Despite identified recruiting difficulties, the survey found that fewer than 1 in 100 employers surveyed had addressed 'skill shortages' by raising the salary being offered. Labour 'shortages' should first be addressed through increased wages. An inability to find workers to work at a specified wage rate, coupled with an unwillingness to offer higher wages, does not necessarily imply a skill shortage - particularly where workers living locally would be willing and able to work if the wage rate was lifted. This differs from a skill shortage in which there are simply not enough people with a particular skill to meet demand.

10. Inadequate enforcement and penalties act as an incentive for employers to exploit temporary workers when the benefit from doing so outweighs the cost of the penalty, or where the probability of being caught is sufficiently low.

11. Congress recognises there may be a role for temporary migration in some cases, but there must be a guarantee that every effort has first been made to fill a position locally with an Australian citizen or permanent resident. Employer-based labour market testing (LMT) requirements are currently so weak that they fail to prevent companies getting around them and it has been undermined by successive trade agreements that provide blanket exemptions to LMT.

12. 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 evidence that exploitative practices such as wage theft are endemic and widespread among migrant workers. There have been a range of abuses uncovered which have clearly shown that the entire system is broken. From 7-Eleven and Dominos to agriculture, construction, care industry, gig workers, food processing to Coles and Caltex, it is clear that the abuses occur in a number of visa classes whether they be students, working holiday makers or visa workers in skilled occupations.

13. These abuses include:

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

    b. Abuse ranging from psychological to physical;

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

    d. Being forced to live in sub-standard conditions.

14. It was not always this way, however: academic experts Wright and 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.'

15. 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:

    a. 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.

b. 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 losing their sponsorship or pathway to permanency.

c. Lack of pathways to permanency that are not contingent on employer sponsorship.

d. Use of labour hire intermediaries and sham contracting arrangements. Migration intermediaries have a vested interest in inflating demand. Australia has created a massive industry with many migration agents and education agents outside of our jurisdiction who cannot be prosecuted for breaches. This mushrooming “migration industry”- a complex and transnational web of agents, lawyers, labour recruiters, accommodation brokers and loan sharks – is currently largely unregulated. In addition, the growth of labour hire operators alongside the migration industry has led to companies seeking to sell temporary migrant workers to employers.

e. Restrictive right of entry provisions that are a barrier to unions inspecting workplaces to investigate conditions and speak with workers.

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

Reforming our migration system

17. Congress believes in and endorses the fundamental principle that Australian companies must not be allowed to run Australia’s migration system. Companies must not be able to pursue profits at the expense of wages, jobs for locals, and conditions of temporary workers our policies must change.

18. The legacy of successive Coalition Governments’ neglect of our migration system has been the rampant exploitation of temporary migrant workers and employers gaming the system to use temporary migration as a source of cheap labour, rather than investing in the skills and training up of workers who live locally and offering decent wages and conditions to attract and retain those workers. Congress commends the Albanese Government for taking action to change this by embarking on important reforms to Australia’s Migration System. In particular, Congress commends the following reforms:

    a. An evidence-based, tripartite approach to skilled migration where Jobs and Skills Australia will advise on labour market shortages based on rigorous analysis of data and evidence from unions and employers to ensure that shortages are genuine – rather than simply claimed by the employer in order to access the skilled migration system.

    b. Replacing the TSS visa with the new Skills in Demand visa which will enable workers mobility in the labour market and end the bonded nature of the TSS visa which ties workers to a single employer, which makes them heavily dependent on that employer not only for their livelihood but also to secure another temporary visa or a permanent visa that will enable them to stay in the country.

    c. Measures to end permanent temporariness and restore permanency to the heart of our migration program, through pathways to permanency.

    d. Measures to tackle migrant worker exploitation including supporting migrant workers to report exploitation by introducing protections against visa cancellation, and larger penalties for employers who exploit migrant workers.

19. Congress will campaign and advocate for the additional following measures to ensure all workers are protected.

Workers’ Rights

20. To be empowered to enforce their rights, temporary migrant workers must be provided with culturally-appropriate, in-language information about how to join trade unions and why collectively organising in unions is important and given the opportunity to join their relevant union. This is the only way we can ensure genuine equality between all workers.

21. The primary means in access to justice for temporary migrant workers is freedom of association. Unions play a key role in monitoring and enforcing workers’ rights and in preventing modern exploitation in Australia.

22. Congress supports the following:

    a. All temporary migrant workers must 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.

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

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

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

    e. Unions should be assisted to provide multilingual industrial advice to migrant workers.

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

    g. Visa conditions that could prevent temporary migrant workers from participating in industrial action must be reviewed.

Pathways to Permanency

23. We commend the Albanese Government for providing pathways to permanent residence for temporary skilled visa holders, existing Temporary Protection Visa (TPV) and Safe Haven Enterprise Visa (SHEV) holders, and a direct pathway to citizenship for eligible New Zealanders, who were the largest group of permanently temporary migrants in Australia.

24. All temporary migrant workers should have a clear, accessible, affordable, and self-nominated option to obtain permanent residency.

25. All temporary migrant workers should have access to Australia’s social safety net including Medicare and Centrelink.

26. Temporary migrant workers must have access to language services, job readiness programs, health services and paid parental leave.

27. We welcome the commitment in the Migration Strategy to explore reforming the points test, which is the process for selecting independent skilled migrants (not employer-sponsored) for permanency and call on the Government to ensure that pathways to permanency are fair and accessible.

28. Congress notes the importance of family reunion opportunities for migrant workers and urges the Government to create more places in the family program to enable family reunion.

Access to Justice for Temporary Migrant Workers

29. Congress calls for the following changes:

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

b. Temporary migrant workers subject to workplace exploitation must have a non-discretionary protection against visa cancellation.

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

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

e. The Government must introduce restrictions on information sharing between labour and migration regulators to encourage increased reporting of exploitation by migrant workers, and to support collaboration where appropriate to address the issue.

f. Penalties for Employers who Exploit Migrant Workers

30. Congress commends the Albanese Government for implementing harsher penalties to crack down on employers who exploit temporary migrant workers, including the ability to prohibit employers who have contravened provisions of the Fair Work Act, the Migration Act, or the Criminal Code from employing temporary migrant workers for 5 years. Whilst some penalties have increased recently, it is clear that more needs to be done. .

31. Congress calls for the following additional measures:

a. Community organisations, legal centres and unions must have a role in exposing employers who exploit migrant workers:

- The decision to declare an employer prohibited should be transparent and based on all available evidence: with these organisations given the opportunity to provide evidence setting out reasons why the Minister should/should not make the declaration.
- These organisations to have standing to bring an application for an employer to be prohibited.
- The grounds for prohibition should be broad to capture evidence of workplace exploitation that includes non-compliance with the Fair Work Act, Migration Act, Occupational Health and Safety laws, and the PALM Deed and Guidelines.

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

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

- delete subsection 557C subsection 2 to remove the ‘reasonable excuse’ provision so employers cannot escape their legal obligations.
- extending the provisions enacted by the Act dealing with responsible franchisor entities to entities who can be shown to be ‘controlling’ or ‘influencing’ entities within their supply chains, in parallel with the PCBU provisions under health and safety law.

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

Migrant women workers in the care economy

32. Congress recognises the growing demands on Australia’s health, care and support sectors. These demands are driven largely by changing demographics, including our ageing population, the implementation of the National Disability Insurance Scheme, and increasing women’s workforce participation. These workforces share demographics, namely that they are female dominated and employ a large portion of culturally and linguistically diverse people, including migrant women. Higher demand for health, care and support services has exacerbated the workforce pressures across the

entire health and social assistance industry that have been created by decades of employers refusing to address low pay and poor conditions.

33. Temporary migration has become an increasingly common 'answer' to the workforce shortages that are persistent and increasing in Australia's health, care and support sectors. It should not be relied upon to address shortages in health, care and support work and should instead be complementary to domestic workforce planning and development measures such as increased wages, job security and greater access to training and qualifications.

34. Gender shapes the placement of migrant women in Australian workplaces and the social and economic outcomes for both migrant and Australian working women. For migrants in professions such as nursing, midwifery, personal care and early childhood education, they often experience harmful social biases, such as the gendered undervaluing of caring professions, realised in low wages, barriers to training and upskilling, insecure work and poor working conditions. Policy must be carefully designed so it does not 'gender' migration pathways and entrench perceptions of health, care and support work as unskilled. Such perceptions have been harmfully used to justify low wages and poor conditions for both migrant and domestic workers.

35. Migration into the health, care and support sectors must occur in complement to domestic workforce development. For example, nursing features strongly in Australia's skilled migration programmes including the Temporary Skill Shortage visa (subclass 482) program (and the former subclass 457 program) as well as other temporary and permanent visa grants. While Congress supports migration of nurses and midwives, there are concerns about the potential negative impact of the temporary overseas workforce on the employment and training of domestic graduate and early career nurses and midwives who are often without paid employment at the completion of their studies.

36. Similarly, in the PALM aged care stream, migrant workers will complete a Certificate III in Individual Support as part of their participation in the program. This is an excellent feature of the PALM scheme and support to attain this qualification (or similar qualification) should be extended to all workers.

37. Congress calls for:

    a. Addressing the gender bias in temporary migration policy.

    b. Ensuring temporary migration is not used to promote harmful social biases that entrench low wages and poor conditions in female dominated work, such as health, care and support.

    c. Temporary migration should not be relied upon to address shortages in health, care and support work and should instead be complementary to domestic workforce planning and development measures such as increased wages, job security and greater access to training and qualifications.

    d. Qualifications and training offered to migrant workers in care and support must be mapped to genuine career pathways and like study in temporary migrant home countries, to ensure Australia is mitigating its contribution to brain drain and in recognition that care and support may be delivered in less formal, more community based settings in other countries.

    e. Family Accompaniment must be extended to all temporary migration programs, particularly those that have high representation of participants with familial and community caregiving responsibilities.

Jobs and Skills Australia's Role in the Migration System

38. Congress notes the current system of employer conducted Labour Market Testing (LMT) is not fit for purpose. Congress welcomes the establishment of Jobs and Skills Australia, which will have a role in the migration system to independently verify genuine labour market need.

39. JSA must be appropriately resourced to ensure skills and job opportunities are prioritised and the migration system is guided to areas of best use.

40. JSA will advise on labour shortages as inputs into the design and delivery of a targeted temporary skilled migration system. Congress calls on JSA to do this by ensuring:

    a. Robust evidence for listing – occupations or skills should only be listed on the strength of robust quantitative and qualitative data showing that the skill is in shortage. This should not be based solely

on employer surveys, As the Migration Strategy notes, JSA's role in the migration system will mature over time and look to take into account not just the 'what' and 'where', but also the 'why' and 'how' with respect to occupations in shortage. Unions see the 'why' shortages exist (causes) and 'how' they should be addressed (solutions) questions as critical for linking the education, training, and workforce planning agendas with migration. It goes to what strategies employers are using to recruit, and to what extent other solutions can address shortages before immigration pathways are created or expanded – e.g. Skills and training, improving pay and conditions, engaging under-utilised cohorts (e.g. women, unemployed and underemployed – including within the employer's own workforce by offering additional hours and job security).

b. Clearer information about the shortage – the list should include information regarding the shortage including its geographic spread and any areas of particular intensity.

c. Recommendations to resolve gender bias in application of targeted temporary skilled migration – such as, identifying current occupations or skill sets that have a gender bias, identifying international cohorts that could be targeted to improve gender representation within an occupation or skillset, eg. women in trades.

41. JSA should include information regarding the cause of shortages. This information is critical in shaping responses to shortages including (in the short term) migration decisions as well as training & education policy & planning or moves to address quality of work issues.

42. JSA must adopt a robust qualitative methodology drawing on evidence from social partners, and establish a qualitative research team.

Skills Assessments and Occupational Licensing

43. Skills assessments and occupational licensing are necessary to ensure workers have the necessary technical skills, qualifications and experience to meet the occupational standards needed in order to maintain professional standards and safety. Training and licensing obligations for skilled trades and other occupations must be maintained with skills testing required for particular industries and professions.

44. TRA skills assessments should be broadened to include electrical lines workers and other critical high-risk trades.

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

46. Where there is no occupational licensing or registration scheme in place, skills assessment authorities will have a particularly important role to play in verifying the work experience and previous relevant study of migrants.

47. Congress notes the skills assessment system is in need of reform. There are currently 39 skilled migration assessing authorities approved to undertake assessments for 650 occupations. Current skill assessment processes are expensive, complex, lack transparency, and prevent migrant workers from having equal employment opportunities. Due to the difficulty of having their qualifications and skills recognised in Australia, migrant workers are often employed in jobs well below their skill level: between 2013-2018, nearly one in four permanent skilled migrants worked in a job below their skill level, resulting in at least $1.25 billion in lost wages due to skills mismatch. There are also significant gaps between the services being delivered by some assessment authorities and industry expectations of the standard of skills assessment for workers.

48. Congress calls for the following reforms:

a. There must be oversight and regulation to ensure skills recognition is fair, transparent, accessible and consistent.

b. There must be a single, unitary system: all migrants who wish to have their skills assessed against Australian qualifications should use the same system that operates in the same way, regardless of their visa or whether they are onshore or offshore. Recognition of Prior Learning (RPL) should not be used outside of this process – even for partial recognition.

c. Fees must be affordable and transparent, and broadly linked to the potential earnings migrant workers may receive once qualified. Costs to users should be capped as part of the contract, and capacity to pay should be considered, with subsidies potentially forming part of the response. Consideration should be given to requiring not-for-profit status for assessment authorities.

d. Tripartism as the backbone: Skills assessment authorities should have the backing of the relevant Jobs and Skills Council (JSC). There must be a clearer linkage between industry standards and assessments standards undertaken by assessment authorities. The authority should be required to work with the relevant Jobs and Skills Council (JSC) to establish assessment standards for their occupation which would be reviewed by the JSC as required. Authorities should only refer migrants for additional training to industry-approved providers.

e. Robust and effective assessment: authorities must consider the course, provider, country and cultural context in which the training took place; how the qualification assessed skills and how that compares to Australian assessments; how qualifications which are not offered in Australia can be mapped to Australian qualifications, in appropriate. Effective practices in some industries, such as the use of compulsory industry-approved context gap training in the electrical industry following successful assessment, should be considered for use in other high-risk industries.

f. In cases where migrants do not meet assessment standards, assessment authorities must provide them with meaningful feedback about which criteria they do and do not meet, and how it can be rectified referral to induction modules or other information about how to address the gaps in their assessment.

g. Assessment authorities must be required to provide migrant workers with information about their relevant union(s).

h. Assessment authorities should participate in initiatives led by Government to educate employers on the benefits of hiring migrant workers.

i. The number of assessing authorities for a single occupation should be as low as is practical while ensuring national coverage and access to high quality assessment by all migrants. In principle, there should only be a single, high-quality provider for an occupation. The setting of the precise number of assessing authorities for an occupation and the endorsement of those authorities should be undertaken by the relevant JSC. This would ensure the providers are supported by industry.

Income Thresholds

49. Congress commends the Albanese Government for raising the TSMIT (Temporary Skilled Migration Income Threshold – the wage floor for temporary skilled migrant workers) after it was frozen for a decade by the Coalition Government. The TSMIT was raised to $70,000 as of 1 July 2023, which restores the threshold to approximately where it would have been if it had been indexed over the previous 10 years.

50. Congress welcomes the Government's commitment to index the TSMIT (to be renamed the Core Skills Threshold) and the new Specialist Skills Threshold annually through legislation.

Short Stay Specialist Visa (Subclass 400)

51. The introduction of subclass 400 visa (Temporary Work (Short Stay Specialist) (400) by the current Government was designed to provide an avenue for people to perform short-term, highly specialised, non-ongoing work, in limited circumstances, whereby they are to participate in an activity or work relating to Australia's interests. Applicants must be invited or supported by the employing organisation and, 'have specialist skills, knowledge or experience that is needed but cannot be found in Australia'. These 'highly specialised skills' are defined by the Department as those specialised skills, knowledge or experience that can assist Australian business, and cannot be reasonably found in the Australian labour market.

52. In the Australian offshore oil and gas industry, several interventions are required to adequately support workers and prevent misuse of temporary migration:

a. Operators are subverting the temporary migration system using the subterfuge that roles can be reclassified to a specialist category at the operator's whim and without provision of evidence. This is a deliberate subversion of the 400 visa scheme allowing employers to avoid employing local labour on Australian standard wages and conditions. Reform to prevent this practice is imperative.

53. Employers are exploiting visa workers in the negotiations of agreements. Workers must be advised of the rights to join a union and collectively bargain. Operators are bringing drilling rigs and offshore construction vessels into Australian waters already partly crewed with foreign workers, rather than employing an all-Australian crew. This is a clear subversion of temporary migration policy. Such vessels should be exclusively crewed by local workers by default, with any foreign workers carried supernumerary for the purpose of assisting local workers with familiarisation with the vessel. The job classifications contained in the non-union agreements being implemented are different to those in the union-industry negotiated offshore agreements. By way of example, where the non-union agreement has a 'chef manager', the union-industry standard offshore agreements have a chief cook classification. By reclassifying the chief cook role to include the word manager, the subject company is able to satisfy the 400-visa application requirement that the role is 'highly specialised', as defined and captured under Australian and New Zealand Standard Classification of Occupations (ANZSCO) Major Group 14, and which appear on the list of skills and occupations deemed to have a shortage of qualified, local labour available to fill them.

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

Maritime Crew Visa

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

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

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

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

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

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

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

57. Congress calls for the following changes to the Maritime Crew Visa system:

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

b. That the existing MCV be made more flexible for MCV holders, by enabling them to remain on the MCV for up to 30 days, once in any 3 year period, on ships that are 'imported' and 'entered for home consumption' under the Customs Act 1901 and are involved in the following specific types of shipping operations:

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

c. That the requirements for obtaining an MCV be strengthened for MCV applicants proposing to work on ships issued with a Temporary Licence (TL) under the CT Act to engage in coastal trading by improving the eligibility for an MCV requiring an applicant to submit to background checks equivalent to the security, character and identity checking required for an applicant for a Maritime Security Identity Card (MSIC) under the Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA).

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

e. That complementary amendments be made to the CT Act by (i) repeal of the s112 exemption from the application of the Customs Act provisions; and (ii) repeal of the s12 opt-in determination provision so the CT Act covers both interstate and intrastate voyages) to avoid a circumvention of the proposed new visa arrangements.

f. That the Customs Act be amended to specify that immediately a ship breaks a continuing international voyage and intends to (or applies) to undertake coastal trading and or is issued with a Temporary Licence under the CT Act to engage in coastal trading, the ship be determined as having interrupted a continuing international voyage; and be determined as being imported into Australia and entered for home consumption.

g. That the Australian Border Force Act 2015 (ABF Act) be amended to improve transparency around decisions to import ships and to approve visa classes; and

h. That the pre-2012 statutory requirement that ABF officers not clear a ship for departure until officers are satisfied that appropriate wages are paid to seafarers be reinstated.

International Students

58. The education industry is an important part of Australia's economy, but high rates of unemployment remain and youth unemployment in particular. Graduates are not finding work after coming out of university and can only find work in non-related occupations a year on from finishing their degrees. In addition, the damage done to the quality of our education system by private training providers in the VET system luring students to study courses by promoting the work rights aspect of their visa has led to international students paying for courses that are not delivered or whose content is poor. International students are often forced to work excessive hours and subsequently threatened with reporting of their visa breach if they want to make a complaint.

59. Congress calls for the following changes:

a. Education providers must enter into a memorandum of understanding with the relevant peak union body to develop educational strategies to inform international students about their workplace rights in Australia. These strategies must ensure union participation during orientation programs and other

student events, allowing unions to deliver rights at work workshops, distribute educational material, and promote union membership.

b. Education providers must provide international students with a list of union contacts per industry upon study commencement and set up student support services where they can access information through counsellors trained by unions.

c. Education providers must develop policies outlining their commitment to ensuring that all businesses that provide services on campus comply with workplace laws. The policy must also state unequivocally that education providers' contractors and tenants must uphold workplace laws, and that noncompliance will not be tolerated.

60. To ensure that international students have equal access to employment opportunities and reduce workplace exploitation, the Government should work with education providers, unions, and industry to develop programs that encourage greater work-integrated learning opportunities in educational courses. This will help international students gain local work experience in their field of study and build professional networks before they graduate. To support these programs, a review of visa conditions to improve work experience opportunities for students could be considered after extensive consultation with unions.

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

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

Working Holiday Visas

63. The Working Holiday visa (subclass 417) and the Work and Holiday visa (Subclass 462) (WHVs) is meant to be a temporary visa for young people who want to holiday and work in Australia. The requirement for WHV workers to work for 88 days in regional areas in order to qualify for a second year visa forces them into unpaid and exploitative work.

64. Congress welcomes the Migration Strategy commitment to evaluate in 2024 regional migration settings and the Working Holiday Maker program to ensure migration supports development objectives in regional Australia and does not contribute to the exploitation of migrant workers.
65. Congress calls for the following changes:

a. Requirements for Working Holiday Makers to undertake ‘specified work’, typically in regional areas, to extend their stay in Australia should be abolished.

b. The Working Holiday Visa program must be subject to tripartite oversight.

c. The Government must collect aggregated data regarding the number of WHV holders employed by an employer, the duration of their employment, their rates of pay, mode of employment, industries and occupations.

Pacific Australia Labour Mobility (PALM) Program

66. Congress supports the PALM program as an important development initiative that builds connections between Australian and Pacific Island and Timor-Leste workers, and enables workers to make a living and support their families and communities.

67. Congress asserts that the protection of workers’ rights must be central to the PALM program, noting there have been a number of cases of systemic and widespread abuse in the program, including wage theft, substandard living conditions, unfair deductions, low hours of work, and calls for better regulation and enforcement to uphold workers’ rights.. Careful planning and reform of PALM is particularly important as the scheme continues to expand, noting its growth in the aged care stream and possibility that it will be available in the NDIS in the future.

68. Congress commends the reforms made by the Albanese Government to the PALM program to improve worker protections, including the introduction of a minimum 30 hours of work per week for seasonal workers and pay parity. Congress commends the availability of family accompaniment for eligible PALM

workers and would like to see this extended for other streams of the scheme. Congress supports reforms to the program requiring employers to invite unions to worker inductions as a measure to inform workers about their rights and connect them with their union. However, reports of widespread non-compliance with this requirement are concerning. Government must be proactive in enforcing adherence among employers.

69. Congress calls for the following additional changes to improve worker protections in the program:

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

    b. Pacific unions should be consulted on worker mobilization by their governments to assist with skills planning and mitigating 'brain drain'.

    c. Workers must not face repercussions for exercising their rights such as fearing regarding loss of income from the early termination of a season, or exclusion from future seasons.

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

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

    f. The Department of Home Affairs must publish data regarding the number of PALM workers, their employer, their rates of pay, locations, industries and occupations.

    g. Accommodation standards in PALM must be improved and subject to enforcement. Congress also calls for employers to make a significant investment in the provision of fit-for-purpose accommodation for PALM workers as a priority, and before any further expansion of the program is contemplated.

    h. Accommodation costs must be reasonable and not exceed operating costs. Employers' or providers' capital investments and improvements should not be a cost born by PALM workers in the form of accommodation costs.

    i. The criteria for Approved Employers in the PALM program must be strengthened to ensure employers not able to meet its conditions and serve its objectives are not able to participate or remain in the program. Selection of Approved Employers must be transparent and regularly reviewed.

    j. All PALM workers should be given access to Medicare. PALM workers who bring their families to Australia under Family Accompaniment arrangements must have access to affordable education and child care.

    k. The specific characteristics of care and other work in aged care make it unsuitable for short-term visas as older persons in aged care require ongoing care and high skill levels. Care work is relational and high-quality care requires continuity and consistency, including in the relationships older people have with workers. In recognition of this, the seasonal worker program must not be extended to these sectors.

    l. Additionally, PALM aged care workers are required to complete a relevant Certificate III as part of their visa conditions. It is important that these workers have reasonable time to complete their studies, particularly as they will often be working full-time in conjunction with studying, as well as ample time to put their learning into practice and develop on the job skills and relationships with care recipients.

70. Congress calls for complementary skills development and training for workers working alongside PALM workers in aged care. As a mandatory minimum qualification is likely to be introduced in aged care, which Congress supports, it is important that all workers are supported to attain qualifications.

71. Congress notes that moves to expand the PALM program to additional occupations or sectors must be subject to JSA identifying a shortage, and given PALM workers may be particularly vulnerable to exploitation, any proposals to expand PALM to additional industries/occupations must be with the support of the relevant union(s).

72. Due to the central importance of promoting safe workplaces in the building and construction industry, and the necessity of all workers having the required skills and experience, PALM should not be expanded into the construction industry under any circumstances. Congress calls for all PALM operational functions to be provided directly by government, and not outsourced to private providers.

73. Congress calls for improved compliance and enforcement in PALM, including resources for unions to address exploitation.

74. To ensure workers do not make income tax payments exceeding their obligations, seasonal PALM workers should be supported to lodge tax returns – for instance, through a requirement that an employer prepares a draft return on each worker's behalf before they depart Australia.

75. To prevent wage theft, the scheme's employer deductions system should be simplified and reviewed to ensure only reasonable deductions are permissible.

76. To support workers to access their full financial entitlement, access to accrued superannuation for workers that have permanently departed Australia should be simplified.

77. Congress acknowledges the dual role of the PALM scheme as both a temporary migration and diplomatic program. As such, there are various Commonwealth Departments that oversee and administer the scheme. Congress calls for greater inter-departmental communication and transparency, and improved external stakeholder communication, to ensure the program operates in a consistent, efficient and effective manner.

78. Congress calls for a consistent approach to pathways to permanency in health, care and support programs of temporary migration, noting that the Aged Care Industry Labour agreement offers a pathway while the PALM does not'.

79. We acknowledge the changes to the Pacific Australia Labour Mobility Scheme to allow workers in essential roles and long-term via streams, such as aged care, to family accompaniment. Not only does this strengthen our ties to our important neighbours in the Pacific region and benefit participating workers and their families, it also affords continuity of care and quality care to our older persons.

80. Congress calls for a consistent approach to pathways to permanency in health, care and support programs of temporary migration, noting that the Aged Care Industry Labour agreement offers a pathway while the PALM does not.

Labour Agreements

81. Traditional Enterprise Migration Agreements (EMAs), Designated Area Migration Agreements (DAMA), Infrastructure Facilitation Agreements and other labour agreements are nothing more than attempts by employers to gain greater control of workers and deny them the right to collectively bargain for their wages and conditions with the help of their unions. Labour agreements are increasingly being used by employers as a way of getting around paying the TSMIT or conducting labour market testing. We welcome the commitment in the Migration Strategy to review DAMAs and regional migration settings.

82. Congress calls for the reform labour agreements to ensure:

    a. The relevant union/s are a party to the agreement and unions must be genuinely consulted. The employer has improved job quality (including pay, conditions, security) to attract workers to be employed locally before seeking to access the temporary migration system.

    b. All workers (local and migrant) are provided a paid induction meeting at the commencement of employment with the relevant union/s to ensure that they understand their rights and responsibilities at work.

c. They are not used to undercut minimum standards: labour agreements must not offer a ‘concession’ on the TSMIT, must not waive LMT, must not waive skills testing or other requirements or standards of the temporary migration program.

d. Labour agreements must not be offered nationally and must only apply to specified worksites or geographic areas. This ensures labour market testing is localised, current and appropriate to an employer’s specific operations.

Migration and Education Agents

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

84. Congress notes the Nixon Review conducted in 2023 examined allegations of sexual exploitation, human trafficking and other organised crime, and found evidence of these crimes being facilitated by education agents, registered migration agents and unlawful providers of migration assistance.

85. Congress welcomes the commitment in the Migration Strategy to better regulate migration agents and education agents through an expansion of OMARA, and exploring limiting the involvement of unregistered overseas providers in the migration system.

86. Congress calls for the following changes:

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

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

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

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

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

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

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

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

87. Congress asserts that visa assessment, processing and servicing work is a core Government function that should be delivered and managed by Government through properly funded public services.

Training

88. It is clear that many employers have abandoned their duty to train and skill Australian workers to ensure that skill shortages do not occur.

89. Congress calls for the following changes:

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

b. Where one or more temporary skilled visa workers are sponsored by the employer in trade and technical occupations, employers must be required to co-invest in domestic skills development by taking on at least one local trainee, cadet or apprentice for each visa worker employed.

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

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

e. A requirement on sponsors of temporary skilled visa workers to make payments into a dedicated training fund that is linked to broader training objectives for that sector or industry. A contribution which is based on the standard incentive payment an employer would have received if they had employed an apprentice through to completion is a recommended benchmark contribution.

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

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

Free Trade Agreements

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

91. Congress calls for the following changes:

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

b. If commitments on the temporary movement of people exist in current agreements, safeguards must exist to ensure that strict LMT criteria have been applied and that workers are protected from exploitation.

c. Skills testing and licensing requirements for industries and professions must be performed. Workers who require an occupational license or registration must successfully complete the relevant skills and technical assessments or registration standards, if applicable, before being granted a visa.

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