



# Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024

Submission by the Australian Council of Trade Unions to the  
Senate Legal and Constitutional Affairs Committee

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## Introduction

### About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 36 ACTU affiliates. They have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

### About the Bill

The *Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024* (the bill) would amend the *Migration Act 1958* to establish the Skills in Demand Visa, legislate income threshold requirements for skilled workers, and introduce a public register of approved sponsors.

The bill is a critical part of implementing the Government's Migration Strategy, released in December 2023. The Migration Strategy will be instrumental in repairing the Coalition Government's legacy of damage and neglect, which has seen rampant migrant worker exploitation and employers gaining the system to use temporary migration as a source of cheap labour.

The ACTU welcomed the important reforms in the Migration Strategy, in particular:

- Introducing for the first time 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;
- Engineering-out exploitation from our migration system, including by replacing the Temporary Skill Shortage (TSS) subclass 482 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, rendering them heavily dependent on that employer not only for their livelihood but for their ability to stay in the country;
- Measures to end 'permanent temporariness' and restore permanency to the heart of our migration program;
- Measures to tackle migrant worker exploitation and strengthen employer compliance, including:
  - supporting migrant workers to report exploitation by introducing protections against visa cancellation
  - increased penalties for employers who exploit migrant workers

- developing a public register of approved sponsors to enable monitoring and oversight
- legislating the indexation of wage thresholds, to ensure that temporary migrant workers can support themselves in Australia and are less vulnerable to exploitation.

## Recommendations

**Recommendation 1:** The Senate pass the bill.

**Recommendation 2:** The Government must expand the public register to include businesses that employ other temporary migrants to promote transparency and accountability.

**Recommendation 3:** The bill should be amended to delete the amendments proposed at 140GBA(3)(b)(ii) and 140GBA(4) that extend the validity of labour market testing from 4 to 6 months.

## Skills in Demand Visa

The Bill implements the commitment made in the Migration Strategy to introduce a new temporary skilled work visa to replace the Temporary Skill Shortage (TSS) visa: the new Skills in Demand visa, by legislating the income thresholds and indexation for the proposed streams of the new visa and a public register of employer sponsors to facilitate worker mobility.

The new Skills in Demand visa<sup>1</sup> is a 4-year temporary skilled worker visa that will give workers full mobility to change employers, meaning that workers will no longer be tied to their employer sponsor – thereby reducing a key element that contributes to the exploitation of temporary migrant workers. If the employment relationship with a sponsor ceases, visa holders will have 180 days to find another sponsor and can work during this period. The Skills in Demand visa and its approach to mobility will remove one of the key causes of migrant worker exploitation – conditions that bond temporary migrant workers to their employer sponsor, meaning the employer effectively controls a workers' pay cheque and their passport. Workers on the Skills in Demand visa will be free to leave exploitative situations or find a new employer offering better pay and conditions.

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<sup>1</sup> Australian Government, *Migration Strategy* (2023), <https://immi.homeaffairs.gov.au/programs-subsite/migration-strategy/Documents/migration-strategy.pdf>, p. 46.

The Skills in Demand visa will have clear pathways to permanent residency, including self-nominated pathways, and periods of employment with an approved employer will count towards residency requirements – ending another driver of exploitation. Unions are aware of many examples where workers have been ‘strung along’ by employers who promise sponsoring workers for permanency, effectively bonding workers to their employer and forcing them to accept exploitative conditions on the promise of a pathway to permanency – that sometimes does not materialise. This new approach to permanency will mean that employers can no longer use the threat of losing a pathway to permanency against workers on the Skills in Demand visa.

There will be three pathways within the Skills in Demand visa:

- Specialist Skills Pathway, for highly skilled specialists in any occupation (except trades workers, machinery operators and drivers, and labourers) earning above the Specialist Skills Income Threshold (SSIT)
- Core Skills Pathway, for skilled workers whose occupation is on the new Core Skills Occupation List and who will be paid a salary at or above the TSMIT (to be renamed the Core Skills Income Threshold [CSIT])
- Essential Skills Pathway, for workers with essential skills. This pathway is yet to be developed, but the Migration Strategy notes that the arrangements in this pathway would be ‘sector-specific, capped, embedded with stronger regulation and minimum standards and subject to further advice from Jobs and Skills Australia and its tripartite mechanisms.’<sup>2</sup>

The Bill amends the *Migration Act* to implement the Skills in Demand visa through legislating the two income thresholds that define the three pathways, and provides that the income threshold for the Essential Skills Pathway will be worked out in accordance with the Migration Regulations.<sup>3</sup>

## TSMIT (Temporary Skilled Migration Income Threshold) / CSIT (Core Skills Income Threshold)

The Temporary Skilled Migration Income Threshold (TSMIT) is the minimum salary threshold for skilled occupations eligible for temporary sponsorship. The TSMIT is supposed to serve a few key functions: act as an indicator that an occupation is sufficiently skilled to be eligible for the temporary skilled program, act as an income floor to ensure that temporary skilled visa holders are

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<sup>2</sup> *Ibid.*, p. 52.

<sup>3</sup> Explanatory Memorandum, [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7224\\_ems\\_26de2615-e479-4fe9-b5e5-0944b35da60d/upload\\_pdf/JC013557.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7224_ems_26de2615-e479-4fe9-b5e5-0944b35da60d/upload_pdf/JC013557.pdf;fileType=application%2Fpdf) p. 14.

paid an acceptable market rate and are able to support themselves, protect temporary migrant workers from exploitation by ensuring they receive fair remuneration, and ensure that the skilled visa program is not used to undercut the Australian labour market and displace local workers. Since it was introduced in 2009, the TSMIT was increased annually based on Average Weekly Earnings to reflect prevailing conditions and keep pace with the cost of living.<sup>4</sup> On 1 July 2013 the TSMIT was indexed and set at \$53,900, and in 2014 the Minister for Immigration and Border Protection used their discretion to not index the TSMIT<sup>5</sup>. This effectively froze the TSMIT at \$53,900 for the next decade, enabling employers to sponsor an increasing number of low-wage workers – the Grattan Institute noted in a 2022 report that the TSMIT of \$53,900 was lower than the wages earned by more than 80% of full time workers.<sup>6</sup> The Grattan Institute notes that as a result of the failure to index the TSMIT, an additional 500,000 full-time jobs in eligible occupations with salaries between \$53,900 and \$65,000 (the amount the TSMIT would have been in 2022 if it had been indexed), or an extra 5% of all full-time jobs, are now eligible for temporary sponsorship.<sup>7</sup> The eroding of the TSMIT led to the growth of sponsorship of low-paid temporary migrant workers who are highly vulnerable to exploitation, and undermined wages and conditions in the local labour market by enabling employers to sponsor temporary migrant workers rather than skill-up the local workforce or offer improved wages and conditions to attract local workers. The deliberate undermining of TSMIT by the Coalition Government enabled employers to game the system to use temporary migrant workers as a source of cheap labour.

The Albanese Government took the welcome step in response to the Migration Review of raising the TSMIT to \$70,000 from 1 July 2023, which restored the TSMIT to approximately where it would have been if it had been indexed over the previous decade. The Government committed in the Migration Strategy to rename the TSMIT to the Core Skills Income Threshold, to index it annually, and legislate the indexation of income thresholds to maintain system integrity.<sup>8</sup> Raising the TSMIT and indexing it annually is a key measure to restore integrity and trust and prevent the skilled migration system being undermined in the future.

The Bill implements that commitment by legislating the income threshold for the CSIT as \$73,150, to be indexed annually by AWOTE (Average Weekly Ordinary Time Earnings). Legislating indexation

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<sup>4</sup> John Azarias (2016), 'Review of the Temporary Skilled Migration Income Threshold (TSMIT): the future of TSMIT within a robust 457 program' [https://www.homeaffairs.gov.au/reports-and-pubs/files/tsmir\\_review\\_report.pdf](https://www.homeaffairs.gov.au/reports-and-pubs/files/tsmir_review_report.pdf) , p. 20

<sup>5</sup> *Ibid.*

<sup>6</sup> Grattan Institute (2022), 'Fixing temporary skilled migration: a better deal for Australia', <https://grattan.edu.au/wp-content/uploads/2022/03/Fixing-temporary-skilled-migration-A-better-deal-for-Australia.pdf> p. 12.

<sup>7</sup> *Ibid.*, p. 14.

<sup>8</sup> Migration Strategy, p. 52.

is critical to ensure that income thresholds cannot be frozen in the future, undermining the skilled migration system, undercutting wages, and contributing to the exploitation of migrant workers.

## Register of approved sponsors

The Bill provides for the creation of a register of approved employer sponsors who have nominated skilled workers for entry to Australia to be published on the Department of Home Affairs website. The register would include the employer's business name, their ABN, postcode, the number of individuals nominated under the sponsorship approval process and the occupations of nominated workers. The Explanatory Memorandum notes that the purpose of a public register of approved sponsors is to encourage transparency, monitoring and oversight, and enable temporary skilled migrant workers to find a new sponsor and check that a sponsoring employer is legitimate.

Unions have long called for a public register of employer sponsors to enable transparency and oversight of the temporary migration system. The register proposed in this bill is an important step, but must be expanded to require approved employer sponsors to also disclose how many other temporary migrant workers they engage by visa type, and in which occupations and postcodes, to enable improved oversight. The public register must also be expanded to cover employers that engage other temporary migrant workers, requiring them to disclose the same information required of approved employer sponsors, by visa type, as a measure to improve transparency and address worker exploitation.

**Recommendation 2:** The Government must expand the public register to include businesses that employ other temporary migrants to promote transparency and accountability.

## Labour Market Testing

The Bill amends the *Migration Act* to provide that labour market testing (LMT) be completed within 6 months (increased from 4 months) prior to the sponsor of a skilled migrant worker lodging a nomination.

Australian Unions are of the view that the current system of employer-conducted LMT is not fit for purpose, suffering from a lack of enforcement and too many exemptions. The aim of LMT is to ensure that employers wishing to sponsor temporary migrant workers test the local labour market to first check if a suitable local worker is available to fill 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 local worker to fill the position. The

current system of LMT has also been undermined through trade agreements that provide businesses with blanket exemptions to LMT.

In principle, we do not support a further weakening of LMT arrangements to provide that LMT is valid 6 months prior, rather than 4 months prior to a nomination. It is clear that the current system of LMT is not fit for purpose, however, and so we welcome the establishment of Jobs and Skills Australia and its role in the migration system in independently verifying skill shortages. The Migration Strategy notes that:

As Jobs and Skills Australia's role further matures, the Government will consider moving away from employer conducted labour market testing towards mechanisms for robust and genuine independent verification of labour market need.<sup>9</sup>

We look forward to JSA's role in independently verifying labour market need becoming more established, however until that time, we do not support any weakening of the current system of employer-conducted LMT.

**Recommendation 3:** The bill should be amended to delete the amendments proposed at 140GBA(3)(b)(ii) and 140GBA(4) that extend the validity of labour market testing from 4 to 6 months.

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<sup>9</sup> Migration Strategy, p. 53.



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