

## Chapter 2

### Overview of Australia's temporary skilled visa system

2.1 This chapter provides a brief overview of Australia's current temporary skilled visa system, including the various visa types that the system incorporates, requirements of employers and requirements of visa holders. The chapter outlines some of the broad issues raised in evidence to the inquiry concerning the current system, and concludes with the committee's view and recommendations.

2.2 Further detail on particular aspects of the current system is outlined in later chapters of this report.

#### Current temporary skilled visa system

2.3 The current temporary skilled visa system consists primarily of four different visa types:

- Temporary Work (Short Stay Specialist) (subclass 400) visa.
- Temporary Work (International Relations) (subclass 403) visa.
- Temporary Activity (subclass 408) visa.
- Temporary Skill Shortage (TSS) visa (subclass 482), which replaced the Temporary Work (Skilled) (subclass 457) visa in March 2018.<sup>1</sup>

2.4 Several other visas with work rights are open to temporary skilled migrants, with conditions. For example, the Temporary Graduate visa (Subclass 485) accepts recent international graduates of Australian institutions who have qualifications and skills relevant to an eligible skilled occupation. The Graduate Work stream allows stays of up to 18 months, and the Post-Study Work stream, for international students who have recently graduated with an Australian degree, allows stays for between two and four years.<sup>2</sup>

2.5 The Skilled Regional (Provisional) visa (subclass 489): Invited pathway allows skilled workers from outside Australia to live and work in a specified region of

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1 Joint submission from the Department of Home Affairs, Department of Jobs and Small Business, and Department of Education and Training (Joint Departmental Submission), *Submission 40*, pp. 8, 15–17; Department of Jobs and Small Business, *Consultation Paper – Methodology: Migration Occupation Lists – Update and Methodology*, September 2017, p. 1, [https://docs.jobs.gov.au/system/files/doc/other/1710\\_methodology\\_approach\\_final.pdf](https://docs.jobs.gov.au/system/files/doc/other/1710_methodology_approach_final.pdf) (accessed 26 February 2019); Department of Home Affairs, *Lists of eligible skilled occupations*, <https://archive.homeaffairs.gov.au/trav/work/work/skills-assessment-and-assessing-authorities/skilled-occupations-lists> (accessed 25 February 2019).

2 Department of Home Affairs, *Temporary Graduate visa: Subclass 485*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-graduate-485> (accessed 29 February 2019).

Australia, provided they are nominated by an Australian state or territory or an eligible relative.<sup>3</sup>

2.6 Other visa holders are permitted to work in Australia, such as international students and working holiday makers. However, these visas do not focus on skilled employment in areas of shortage.<sup>4</sup>

2.7 The skilled visa system is jointly administered by the Department of Home Affairs, the Department of Jobs and Small Business (DJSB), and the Department of Education and Training. Together, the three departments 'work as a collective', in areas such as 'determining skills shortages, assessing and testing skills, recognising trades, funding and providing training to Australians, assessing [labour market testing] and through the provision of... visa options and streams'.<sup>5</sup>

2.8 The Department of Home Affairs, Australian Border Force and the Fair Work Ombudsman are responsible for monitoring and enforcing workplace rights and conditions (see Chapter 6 for further detail).<sup>6</sup>

2.9 The Ministerial Advisory Council on Skilled Migration, which consists of industry, unions and government representatives, advises the Minister for Citizenship and Multicultural Affairs on Australia's temporary and permanent skilled migration programs. This advice includes the size of the programs, which occupations have skills shortages that cannot be met by the domestic labour force, and policies to ensure that Australia workers are given priority in the labour market.<sup>7</sup>

### ***Number of temporary skilled visa holders in Australia***

2.10 As at 30 June 2018, around 15 per cent of all temporary visa holders in Australia who had work rights were temporary skilled visa holders. The total figure of temporary visa holders with work rights includes temporary migrants who do not enter Australia under skilled migrant programs, such as international students and working holiday visa holders (see Figure 2.1).<sup>8</sup>

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3 Department of Home Affairs, *Skilled Regional (Provisional) visa: Subclass 489*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-regional-provisional-489> (accessed 13 March 2019).

4 Migration Council Australia, *Submission 7*, p. 8.

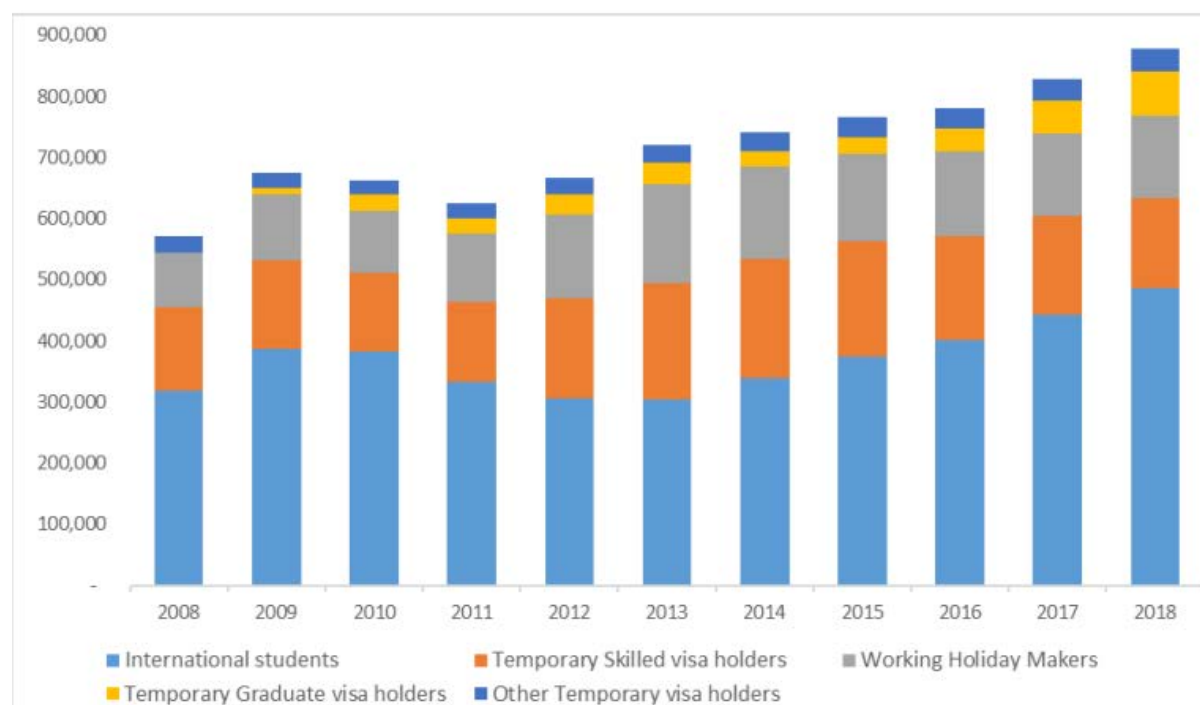
5 Joint Departmental Submission, *Submission 40*, p. 7.

6 Joint Departmental Submission, *Submission 40*, p. 7.

7 Australian Government Directory, *Ministerial Advisory Council on Skilled Migration*, <https://www.directory.gov.au/portfolios/home-affairs/department-home-affairs/ministerial-advisory-council-skilled-migration> (accessed 18 March 2019).

8 Professor Allan Fels and Professor David Cousins, *Report of the Migrant Workers' Taskforce*, March 2019, p. 19.

**Figure 2.1: Visa composition of temporary visa holders in Australia with work rights, 30 June 2008–2018<sup>9</sup>**



Note: Includes secondary visa holders. 'Other temporary visa holders' includes 29 visa subclasses such as Temporary Work (Short Stay Activity) and Temporary Work (Long Stay Activity) visas for visiting academics, entertainers, sportspeople, religious workers, and others.

2.11 As of February 2019 (see Figure 2.2 for more detail), the Department of Home Affairs had granted:

- 21 614 TSS visas;
- 28 613 Temporary Work (Short Stay Specialist) (subclass 400) visas; and
- 36 169 Temporary Activity (subclass 408) visas for 2018–19.

2.12 The previous 457 visas continued to be processed until 18 March 2018.<sup>10</sup>

9 Professor Allan Fels and Professor David Cousins, *Report of the Migrant Workers' Taskforce*, March 2019, p. 21.

10 Department of Home Affairs, Answers to written questions on notice, 8 March 2019 (received 25 March 2019), p. 10.

**Figure 2.2: Number of Temporary work visa primary grants from FY2016–17 to 28 February 2019<sup>11</sup>**

Visa Subclass	2016-17	2017-18	2018-19 at 28 Feb 2019
Temporary Skill Shortage visa (TSS) (subclass)		2,595	21,614
Temporary Work (Skilled) (subclass 457)	46,480	31,851	7,025
Temporary Work (Short Stay Specialist)	46,888	43,585	28,613
Temporary Work (International Relations)	4,914	9,553	8,355
Temporary Activity (subclass 408)	19,772	60,889	36,169

2.13 The Department of Home Affairs, the DJSB and the Department of Education and Training stated in their joint submission (Joint Departmental Submission) that 'on average across all industries and occupations, the number of primary TSS/subclass 457 visa holders in Australia represent less than one per cent of employed persons'.<sup>12</sup>

***Temporary Work (Short Stay Specialist) (subclass 400) visa***

2.14 The subclass 400 visa has existed since March 2013. It provides short-term, non-ongoing work rights for visa holders who have highly specialised skills, knowledge or experience. Visa holders are not permitted to engage in other, unrelated work activities. The expected period of stay is three months or less, but the visa allows for up to six months in exceptional circumstances.<sup>13</sup>

2.15 The subclass 400 visa does not require formal sponsorship. However, a 'proposer' (a registered Australian business) must provide the applicant with a letter of support and/or offer of temporary employment, which outlines the details of the position, its length, the applicant's role or duties, and why the applicant is needed in Australia.<sup>14</sup>

2.16 Labour market testing is not required for the 400 visa type, but the Department of Home Affairs requests that proposers provide information to clarify that there will be no negative impact on employment and training opportunities for Australians. Factors taken into account may include:

- whether the work is highly skilled;
- whether the applicant is being employed with the same remuneration and under the same conditions as an Australian would be employed;

11 Department of Home Affairs, Answers to written questions on notice, 8 March 2019 (received 25 March 2019), p. 10.

12 Joint Departmental Submission, *Submission 40*, p. 11.

13 Joint Departmental Submission, *Submission 40*, pp. 15–16.

14 Joint Departmental Submission, *Submission 40*, p. 16.

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- how many Australians are being employed on the project and/or by the business;
  - whether the employer has attempted to hire an Australian for the role, and arranged for an Australian to be trained to do the work over a longer period; and
  - evidence or concerns that the employer wishes to engage overseas workers to reduce costs by circumventing local labour standards and salaries.<sup>15</sup>

***Temporary Work (International Relations) (subclass 403) visa***

2.17 The subclass 403 visa allows a person to temporarily come to Australia if they meet the requirements of one of the six visa streams:

- Government Agreement stream, if there is a bilateral agreement in place between the Australian Government and another country;
- Foreign Government Agency stream, which is restricted to individuals in specific activity types, such as representatives of a foreign government agency;
- Diplomatic Worker stream, which allows individuals to engage in temporary full-time domestic work in the household of someone who holds a Diplomatic (Temporary) visa (subclass 995);
- Privileges and Immunities stream, which allows international representatives to stay in Australia if they have privileges or immunities under relevant legislation;
- Seasonal Worker Program stream, which is for workers engaging in the Seasonal Worker Program; and
- Pacific Labour Scheme stream, for participants in the Pacific Labour Scheme program.<sup>16</sup>

2.18 Costs and the period granted depend on the visa stream under which an applicant applies.

***Temporary Activity (subclass 408) visa***

2.19 The subclass 408 visa is for individuals who come to Australia to take place in an approved special program, such as youth exchange, visiting academics, major events such as the Commonwealth Games, cultural enrichment programs, entertainers,

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15 Joint Departmental Submission, *Submission 40*, p. 16.

16 Joint Departmental Submission, *Submission 40*, p. 17; Department of Home Affairs, *Temporary Work (International Relations) visa: Subclass 403*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-work-403> (accessed 27 February 2019).

sports people and religious workers. The visa allows a stay of between three months to two years, depending on the activity undertaken.<sup>17</sup>

### ***Temporary Work (Skilled) (subclass 457) visa***

2.20 The Temporary Work (Skilled) visa (subclass 457)<sup>18</sup> was introduced in August 1996, following recommendations by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists that a simplified visa regime for business people replace the previous system.<sup>19</sup>

2.21 The subclass 457 visa program went through several iterations. This was due to concerns about the exploitation of 457 visa workers by unscrupulous employers. Initially, the skill requirements for the 457 visa were required to reflect the Australian Bureau of Statistics' classification for mostly managerial, professional and trade occupations.<sup>20</sup> To qualify for the 457 visa program, sponsors had to demonstrate a record of training local workers and indicate how overseas workers would benefit Australia. Labour market testing was also required for occupations that required minimal skills or skilled occupations that were considered not essential to the sponsor's business.<sup>21</sup>

2.22 A number of reviews, including the 2008 Deegan review and the 2014 Azarias review, proposed changes to the 457 system. In response to criticisms that the 457 visa requirements were easy to side-step, the government made amendments to simplify the program and strengthen its integrity to prevent foreign workers from exploitation by employers and protect labour market conditions for local workers.<sup>22</sup>

2.23 On 18 April 2017, the Australian Government announced further reforms to the 457 visa program and the permanent employer sponsored Employer Nomination Scheme (subclass 186) and Regional Sponsored Migration Scheme (subclass 187) visa programs. As a result, the 457 visa was abolished and was replaced with the Temporary Skills Shortage Visa (TSS visa).<sup>23</sup>

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17 Joint Departmental Submission, *Submission 40*, p. 17; Department of Home Affairs, *Temporary Activity visa: Subclass 408*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-activity-408> (accessed 27 February 2019).

18 Also previously known as the Temporary Business Entry (Class UC) Business Long Stay (Subclass 457) visa. See Law Council of Australia, *Submission 36*, p. 21.

19 Law Council of Australia, *Submission 36*, p. 21.

20 Australian Standard Classification of Occupations (ASCO) levels 1–4. For semi-skilled occupations (ASCO levels 5–7), concessional sponsorship arrangements were available for particular regional or low population areas. See Law Council of Australia, *Submission 36*, p. 21.

21 Law Council of Australia, *Submission 36*, p. 21.

22 Law Council of Australia, *Submission 36*, pp. 21–23.

23 The Hon. Malcolm Turnbull, MP, Prime Minister, 'Putting Australian Workers First', 18 April 2017, <https://www.malcolmturnbull.com.au/media/putting-australian-workers-first> (accessed 25 February 2019); Law Council of Australia, *Submission 36*, p. 31.

### *Temporary Skill Shortage (TSS) visa (subclass 482)*

2.24 The new TSS visa, which replaced the 457 visa from March 2018, includes tighter English language requirements than the 457 visa for applicants, mandatory criminal checks and the requirement that candidates have at least two years' work experience in a relevant occupation. It also involves compulsory labour market testing, which employers must prove they have undertaken prior to employing someone under a TSS visa (see Chapter 4), as well as a market salary rate assessment.<sup>24</sup>

2.25 When announcing the introduction of the TSS visa, the then Prime Minister, the Hon. Malcolm Turnbull, stated that it would be:

...restricted to critical skills shortages [to]... ensure Australian workers are given the absolute first priority for jobs, while businesses will be able to temporarily access the critical skills they need to grow if skilled Australians workers are not available.<sup>25</sup>

2.26 The TSS visa has three streams. Visas issued under the Short term stream last for up to two years.<sup>26</sup> The Medium term stream has stricter English language requirements and provides visas for up to four years. Both of these streams are linked to specific lists of eligible occupations.<sup>27</sup> A third stream, the labour agreement stream, 'is for skilled workers nominated by an employer with a Labour Agreement' with the Australian Government.<sup>28</sup>

2.27 Table 2.1 outlines the key differences between the three streams. It should be noted that some occupations that require registration, licensing or membership in Australia may require a higher level of English than other occupations. Skills assessments are also required for some occupations.

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24 The Hon. Malcolm Turnbull, MP, Prime Minister, 'Putting Australian Workers First', 18 April 2017, <https://www.malcolmturnbull.com.au/media/putting-australian-workers-first> (accessed 25 February 2019).

25 The Hon. Malcolm Turnbull, MP, Prime Minister, 'Putting Australian Workers First', 18 April 2017, <https://www.malcolmturnbull.com.au/media/putting-australian-workers-first> (accessed 25 February 2019).

26 Visa holders may stay for up to four years if an International Trade Obligation applies. See Department of Home Affairs, *Temporary Skill Shortage visa: Subclass 482*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482> (accessed 25 February 2019).

27 These are referred to, respectively, as the Short Term Skilled Occupation List (STSOL) and the Medium to Long Term Strategic Skills List (MLTSSL).

28 The Hon. Malcolm Turnbull, MP, Prime Minister, 'Putting Australian Workers First', 18 April 2017, <https://www.malcolmturnbull.com.au/media/putting-australian-workers-first> (accessed 25 February 2019). Labour agreements are discussed further in Chapter 4.

**Table 2.1: Temporary Skill Shortage (TSS) visa streams**

	<b>Max. Length</b>	<b>Cost</b>	<b>Applicant requirements</b>	<b>Occupation list</b>
<b>Short term</b>	2 years	From \$1,175	IELTS <sup>29</sup> score of 5.0 with at least 4.5 in each test component  At least 2 years' work experience in relevant occupation	Short-term Skilled Occupations List
<b>Medium term</b>	4 years	From \$2,455	IELTS score of 5.0 with at least 5 in each test component  At least 2 years' work experience in relevant occupation	Medium and Long-term Strategic Skills List (MLTSSL); or  Regional Occupation List
<b>Labour agreement</b>	4 years	From \$2,455	Level of English specified in the labour agreement	Employer must have a labour agreement with the Australian Government

2.28 Holders of TSS visas may only work in the occupation for which their visa was approved, and only work for their approved sponsor.<sup>30</sup> Visa holders under the short term stream are only able to renew their visas onshore once, while those under the medium term stream may be eligible after three years for onshore visa renewal multiple times and for permanent residency.<sup>31</sup>

#### *Requirements of employers*

2.29 Employers wishing to sponsor a skilled worker for a TSS visa must apply to become a standard business sponsor, at a cost of \$420. Approved sponsors nominating an overseas worker for a position in their organisation are subject to a nomination fee of \$330.<sup>32</sup> Employers are required to:

- provide a written contract of employment, unless the occupation is exempt;
- provide evidence of labour market testing where required;
- notify the Department of Home Affairs if the visa holder ceases employment;

29 International English Language Testing System (IELTS).

30 Department of Home Affairs, *Check visa details and conditions*, <https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/see-your-visa-conditions?product=482-65#> (accessed 25 February 2019).

31 Joint Departmental Submission, *Submission 40*, p. 6.

32 Department of Home Affairs, *Temporary Skill Shortage visa (subclass 482)*, <https://archive.homeaffairs.gov.au/trav/visa-1/482-> (accessed 25 February 2019).



- ensure the visa holder only participates in the occupation for which the employer has nominated them;
- lodge a new application if the employer wishes to engage a visa holder in a different occupation;
- not recover, transfer or charge costs related to the recruitment of the person sponsored, sponsorship or nomination charges, or migration agent costs; and
- pay reasonable and necessary travel costs for the sponsored person and their sponsored family members to leave Australia.<sup>33</sup>

2.30 Sponsors employing visa holders under the short and medium term streams must also meet specified salary requirements. Sponsors are required to determine the salary that is, or would be, paid to an Australian performing the same role in the same location (known as the Annual Market Salary Rate).<sup>34</sup> This market salary rate must include a cash salary component that is equal to or greater than the Temporary Skilled Migration Income Threshold (TSMIT), which is currently set at \$53,900.<sup>35</sup>

2.31 Previously, employers of TSS/457 visa holders were also required to 'contribute to the training of Australians' by:

- spending at least two per cent of their payroll in payments to an industry training fund operating in the same or related industry; or
- spend at least one per cent of their payroll on training to Australian citizens or permanent residents employed in the business.<sup>36</sup>

2.32 From August 2018, these training costs were replaced by the requirement for employers nominating overseas skilled workers under the TSS visa to contribute to the Skilling Australians Fund levy.<sup>37</sup> Issues about the Skilling Australians Fund are outlined further in Chapter 5.

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33 Joint Departmental Submission, *Submission 40*, p. 13; Department of Home Affairs, *Temporary Skill Shortage (TSS) visa – Sponsorship obligations, monitoring and sanctions*, <https://archive.homeaffairs.gov.au/visas/supporting/Pages/482/sponsorship-obligations-monitoring-sanctions.aspx> (accessed 25 February 2019).

34 Law Council of Australia, *Submission 36*, p. 24.

35 Joint Departmental Submission, *Submission 40: Attachment 1*, pp. 1, 24; Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018, cl. 6.

36 Department of Home Affairs, *Temporary Skill Shortage (TSS) visa – Sponsorship obligations, monitoring and sanctions*, <https://archive.homeaffairs.gov.au/visas/supporting/Pages/482/sponsorship-obligations-monitoring-sanctions.aspx> (accessed 25 February 2019).

37 The Hon. Scott Morrison, MP, Treasurer of the Commonwealth of Australia, *Budget Speech 2017–18*, 9 May 2017, <https://www.budget.gov.au/2017-18/content/speech/html/speech.htm> (accessed 25 February 2019); Department of Home Affairs, *Employer Sponsored Skilled visas – Skilling Australians Fund (SAF) levy*, <https://archive.homeaffairs.gov.au/trav/work/empl/skilling-australia-fund> (accessed 27 February 2019).

### *Labour market testing*

2.33 Employers seeking to nominate a worker for a TSS visa or under a Global Talent Scheme visa are required to undertake labour market testing (LMT) to demonstrate that no suitably qualified and experienced Australian is readily available to fill the nominated position.<sup>38</sup> Exemptions to the LMT requirements apply in some specific circumstances, such as where LMT is precluded under Free Trade Agreements to which Australia is a party.<sup>39</sup>

2.34 To meet the labour market testing requirement, standard business sponsors must provide evidence when submitting the online nomination application 'to demonstrate that they have tested the local labour market within the four months prior to nominating a skilled overseas worker for a TSS visa, over at least four weeks'.<sup>40</sup>

2.35 Additional requirements for labour market testing arrangements are outlined further in Chapter 4.

### *Skills assessments*

2.36 Particular skills assessing authorities carry out skills assessments of overseas workers. The assessments carried out by these approved bodies then inform the decisions the Department of Home Affairs makes on skilled migration.<sup>41</sup> These skills assessments may be informed by the Australian and New Zealand Standard Classification of Occupations (ANZSCO) framework, which classifies occupations and jobs in the Australian labour market.<sup>42</sup>

2.37 Chapter 3 outlines skills assessment processes in greater detail.

## **Recent changes to the skilled visa system**

2.38 The skilled visa system has been subject to a number of significant changes over the last two years. These are outlined in Table 2.2.

2.39 On 20 March 2019, the Australian Government proposed further changes to the skilled visa system. The changes include:

- providing international students who have completed their study at a regional university access to an additional year in Australia on a post-study work visa;
- the introduction of two new regional visas for skilled workers, with 23,000 places, under which skilled migrants will:
  - be priority processed;

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38 Department of Home Affairs, *Nominating a position: Labour market testing*, <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-market-testing> (accessed 15 March 2019).

39 Joint Departmental Submission, *Submission 40*, p. 21.

40 Joint Departmental Submission, *Submission 40*, p. 21.

41 Joint Departmental Submission, *Submission 40*, p. 12.

42 Joint Departmental Submission, *Submission 40*, p. 13.

- have access to a larger pool of jobs on the occupation lists than skilled migrants living in major cities; and
- be able to access permanent residency after three years if they have lived and worked in regional Australia; and
- an increase in the number of employer sponsored skilled visa places, from 35,528 in 2017–18 to 39,000 places in 2019–20.<sup>43</sup>

2.40 These latest proposed changes were announced subsequent to this inquiry receiving evidence, and have not yet been implemented; as such, this report does not address them substantively.

**Table 2.2: Summary of recent changes to the temporary skilled visa system**

<b>Date</b>	<b>Change</b>	<b>Area</b>
April 2017	Australian Government announces that the 457 visa will be abolished and the new TSS visa will be introduced.	Skilled visa system
April 2017	Creation of the new Short Term Skills Occupation List, and Medium and Long Term Strategic Skills List, to underpin the short and medium-term streams of the temporary skilled visa system.	Skilled Occupation Lists
March 2018	Visa changes announced in April 2017 come into force, with 457 visas no longer available to new applicants, replaced by the TSS visa.  Further changes announced to the Skilled Migration Occupation Lists.	Skilled visa system
August 2018	Employers nominating overseas skilled workers are now required to pay a levy to the Skilling Australians Fund.	Skilling Australians Fund
August 2018	Employers are required to conduct labour market testing in the four months immediately prior to lodgement, for a minimum of four weeks, with the advertisement outlining required skills or experience.	Labour market testing
August 2018	Department of Home Affairs is able to verify the tax file numbers of visa applicants, visa holders and former visa holders to audit whether they are declaring income or being paid appropriately.	Enforcement
March 2019	Australian Government publishes changes to the skilled occupation lists, following a review.	Skilled occupation lists

43 The Hon. Scott Morrison, MP, Prime Minister of the Commonwealth of Australia, 'A Plan for Australia's Future Population', *Media release*, 20 March 2019.

### *TSS visa statistics and impact of recent changes*

2.41 The vast majority of 457 and TSS visa lodgements since 2016 have been for positions as Managers, Professionals, and Technicians and Trades Workers, although numbers for these positions have recently reduced (see Figure 2.3).<sup>44</sup> In the 2017–18 financial year, 23 per cent of successful applicants for TSS or 457 visas were Indian citizens, 17 per cent were UK citizens, 7.3 per cent were citizens of the Philippines, 5.1 per cent were US citizens, 4.9 per cent were Chinese citizens, and 4.3 per cent were citizens of the Republic of Ireland.<sup>45</sup>

**Figure 2.3: 457/TSS visa applications lodged in 2017–18 to 30 June 2018 by nominated occupation**<sup>46</sup>

Nominated Occupation	2016-17 to 30/06/17	2017-18 to 30 /06/18	% Change from 2016-17	2017-18 as % of Total
1 Managers	9,770	5,360	-45.2%	13.7%
2 Professionals	28,570	22,860	-20.0%	58.3%
3 Technicians and Trades Workers	13,630	9,130	-33.0%	23.3%
4 Community and Personal Service Workers	1,100	660	-39.4%	1.7%
5 Clerical and Administrative Workers	530	330	-38.7%	0.8%
6 Sales Workers	350	170	-50.1%	0.4%
7 Machinery Operators and Drivers	110	40	-66.7%	0.1%
8 Labourers	220	100	-52.1%	0.3%
Skilled Meat Worker	420	240	-43.4%	0.6%
Not Specified	130	340	168.0%	0.9%
<b>Total</b>	<b>54,820</b>	<b>39,230</b>	<b>-28.4%</b>	<b>100.0%</b>

2.42 The top three sponsor industries in 2017–18 for TSS and residual 457 visas were:

- Other Services (17.2 per cent of the total visa program);
- Professional, Scientific and Technical (14.6 per cent); and
- Health Care and Social Assistance (13.3 per cent).<sup>47</sup>

2.43 The top four occupations for applications granted during the same period were Developer Programmer (4.8 per cent), ICT Business Analyst (4.0 per cent), University Lecturer (3.9 per cent) and Cook (3.9 per cent).<sup>48</sup>

44 Joint Departmental Submission, *Submission 40*, p. 17.

45 Joint Departmental Submission, *Submission 40*, p. 20.

46 Joint Departmental Submission, *Submission 40*, p. 17.

47 Department of Home Affairs, *BR008: Temporary Resident (Skilled) Report*, 30 June 2018, pp. 1–2, <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-rpt-summary-30062018.pdf> (accessed 26 February 2019).

2.44 In the 2017–18 program year, 39 800 temporary skilled visa holders were granted permanent residence or a provisional visa. This represented a decrease of 21.4 per cent compared with the same period for the previous program year.<sup>49</sup>

*Overall impact of the TSS visa and other recent changes*

2.45 The Joint Departmental Submission argued that the 'TSS visa is proving to be more effective than the previous [457] visa, in targeting genuine skills shortages'.<sup>50</sup> It further contented that the use of TSS/457 visas 'has fallen in recent years in occupations where DJSB research and analysis shows skill shortages are no longer evident'.<sup>51</sup>

2.46 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division at the Department of Home Affairs, emphasised that the purpose of the reforms to the temporary skilled visa system 'was to provide Australian workers with first priority for jobs while allowing businesses to access the skills they need to grow when Australian workers are not available'.<sup>52</sup> Mr Johnson commented in particular that the creation of the short-term stream within the TSS visa subclass has made it significantly better targeted towards meeting genuine skills shortages:

I think also the structure of the TSS visa, vis-a-vis the 457 visa...and the way that it creates different occupation lists—the two-year occupation list, which is about an acute short-term need, means we've now got a product that allows us to bring in a person for two years with one right of renewal and then they leave. That's meeting very short term needs. The product is much more targeted now to the general issue [of addressing genuine skills shortages].<sup>53</sup>

2.47 Mr Michael Willard, Assistant Secretary, Global Mobility Branch at the Department of Home Affairs, told the committee that since the changes introduced in April 2017, one broad trend has been a decrease in the number of skilled visas granted in lower skilled occupations, with the stricter requirements having 'a big impact at that lower skill end of the market'.<sup>54</sup>

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48 Department of Home Affairs, *BR008: Temporary Resident (Skilled) Report*, 30 June 2018, p. 2, <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-rpt-summary-30062018.pdf> (accessed 26 February 2019).

49 Department of Home Affairs, *BR008: Temporary Resident (Skilled) Report*, 30 June 2018, p. 3, <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-rpt-summary-30062018.pdf> (accessed 26 February 2019).

50 Joint Departmental Submission, *Submission 40*, pp. 8–9.

51 Joint Departmental Submission, *Submission 40*, p. 11.

52 *Proof Committee Hansard*, 6 March 2019, p. 39.

53 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, p. 47.

54 Mr Michael Willard, Assistant Secretary, Global Mobility Branch, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, p. 46.

2.48 When asked whether the introduction of the TSS visa had materially lowered the overall number of temporary skilled visas being granted, departmental officials noted that it is difficult at this stage to determine what impact the new TSS visa has had on overall numbers, given the limited time that has passed since its introduction. It was noted, however, that there have been no 'spikes' in applications for other temporary visa classes since the introduction of the TSS visa.<sup>55</sup>

### **General issues raised about the current system**

2.49 General concerns raised about the current temporary skilled migration system in evidence provided to the inquiry included the following:

- the level of the Temporary Skilled Migration Income Threshold;
- length of visa streams and lack of permanency;
- limited pathways for international graduates of Australian courses;
- use of other visas to avoid the requirements of the TSS visa;
- visa processing times not matching industry needs;
- costs involved in sponsoring or applying for a temporary skilled visa;
- lack of a visa for intra-corporate transfers; and
- health assessments for skilled migrants or their family members with disability.

### ***Level of the Temporary Skilled Migration Income Threshold (TSMIT)***

2.50 Several submitters and witnesses raised significant concerns that the level of the TSMIT, currently set at \$53,900 per annum, is so low that it is not preventing Australian wages from being undercut by employers using the TSS visa system to hire overseas workers at cheaper rates than they can reasonably pay Australians.<sup>56</sup>

2.51 Mr Zachary Duncalfe, National Legal Officer at the Australian Workers' Union (AWU), told the committee that the TSMIT 'is incredibly low', and that 'in some circumstances, it would be cheaper for an employer to import a foreign worker than to train an apprentice'.<sup>57</sup>

2.52 The Australian Council of Trade Unions (ACTU) explained that when the TSMIT was introduced in 2009, its level was determined by reference to the

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55 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division, Department of Home Affairs, Mr Michael Willard, Assistant Secretary, Global Mobility Branch, Department of Home Affairs, and Mr Peter Richards, Assistant Secretary, Skilled and Family Visa Program Branch, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, pp. 46–47.

56 Australian Council of Trade Unions (ACTU), *Submission 11*, pp. 4, 5, 17–20; Australian Workers' Union, *Submission 48*, pp. 6–7; Electrical Trades Union of Australia, *Submission 49*, pp. 4–5; Mr Zachary Duncalfe, National Legal Officer, Australian Workers' Union, *Proof Committee Hansard*, 6 March 2019, p. 2.

57 *Proof Committee Hansard*, 6 March 2019, p. 2.

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average weekly earnings of Australians, with the intention that the TSMIT would be pegged to this marker 'because the Australian Government considered it important that TSMIT keep pace with wage growth across the Australian labour market'.<sup>58</sup>

2.53 The ACTU noted that between 2009 and 2013, the TSMIT was subject to annual indexation; however, since 2013, when the TSMIT reached its current level of \$53,900, that indexation has ceased and the TSMIT has remained frozen, resulting in a decline in the salary floor in real terms each year since 2013 as wage inflation occurs.<sup>59</sup>

2.54 The ACTU submitted that there is now a gap of more than \$26,000 between the salary floor for temporary skilled migrant workers and annual average salaries for Australian workers, meaning that the TSS visa 'can increasingly be used to employ temporary migrant workers in occupations that attract a far lower salary than that earned by the average Australian worker'.<sup>60</sup> The ACTU argued further that for some specific occupations, the current level of the TSMIT creates an incentive for employers to keep hiring overseas workers on TSS visas rather than investing in training local employees.<sup>61</sup>

2.55 Accordingly, the ACTU recommended that the TSMIT should be raised immediately 'to a minimum of at least \$62,000 with a view to lifting this rate higher to reflect genuine market based skilled wages'.<sup>62</sup>

2.56 The AWU argued similarly that the TSMIT should be 'at the very least lifted to a rate [that] reflects the average weekly earnings of Australians'.<sup>63</sup> It argued further that a tripartite body with equal representation from government, employee representatives, and employer representatives should be established and given responsibility for matters including: setting industry standard remuneration for the temporary skilled visa system; and undertaking a complete review of the TSMIT.<sup>64</sup>

2.57 The Construction Forestry Maritime Mining and Energy Union expressed support for the proposal that the Market Salary Rate levels for TSS applicants 'should be set in a tripartite manner and by agreement of the industrial parties'.<sup>65</sup>

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58 *Submission 11*, p. 17.

59 *Submission 11*, p. 18.

60 *Submission 11*, p. 18.

61 *Submission 11*, pp. 19–20.

62 Australian Council of Trade Unions, *Submission 11*, p. 5.

63 Australian Workers' Union, *Submission 48*, p. 12.

64 Australian Workers' Union, *Submission 48*, p. 12. See also: Construction Forestry Maritime Mining and Energy Union, *Submission 38*, p. 11.

65 *Submission 38*, p. 11.

*Submitter concerns that the TSMIT is too high in certain circumstances*

2.58 Some other submitters noted that the current level of the TSMIT is above the relevant award rate for some occupations, and argued that the TSMIT is too high in certain circumstances.<sup>66</sup> For example, Business SA claimed that requiring regional employers to pay the TSMIT instead of a market salary rate 'sets a wage floor which is above market salary for many skilled occupations required in South Australia'.<sup>67</sup> The Australian Chamber of Commerce and Industry argued that the TSMIT as an income floor should be set 10 per cent lower for roles undertaken in regional areas (outside the capital city metropolitan areas of all states and territories), to reflect lower market pay rates and cost of living in these areas.<sup>68</sup>

***Concerns about length of temporary skilled visa streams and lack of permanency***

2.59 Submitters and witnesses raised various concerns about the length of stay available under the TSS and other temporary skilled visa classes, and the lack of options to convert temporary skilled visa roles into permanent migration outcomes.

*Loss of talented skilled workers to the Australian workforce*

2.60 Some submitters posited that Australia may be losing highly skilled professionals who choose to take up offers from institutions in other countries because these countries offer longer visa terms.<sup>69</sup> Mr Daniel Gschwind, Chief Executive of the Queensland Tourism Industry Council, argued that in some instances, restricted permanent residency pathways 'are negatively impacting on the competitiveness of Australia when compared to countries, such as Canada, that provide greater opportunities in that regard'.<sup>70</sup>

2.61 Ms Jenny Lambert from the Australian Chamber of Commerce and Industry contended that the 'option of a pathway to permanency ensures the best and brightest talent is available and attracted to come to Australia'.<sup>71</sup>

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66 For example: Business SA, *Submission 16*, pp. 12–13; Australian Chamber of Commerce and Industry, *Submission 12*, p. 15; Australian Meat Industry Council, *Submission 21*, p. 8; RDA Orana, *Submission 31*, p. 1; Mr Glenn Cole, Director, Australian Skilled Migration, *Proof Committee Hansard*, 5 March 2019, p. 11, Cross Cultural Communications and Management, *Submission 44*, p. 7.

67 *Submission 16*, p. 13.

68 Australian Chamber of Commerce and Industry, *Submission 12*, p. 16.

69 Science & Technology Australia, *Submission 20*, p. 2; Group of Eight, *Submission 14*, p. 4; Universities Australia, *Submission 27*, pp. 3–4, 5. See also Migration Council Australia, *Submission 7*, p. 6; Australian Chamber of Commerce and Industry, *Submission 12*, p. 12; Dr Carina Ford, Deputy Chair, Migration Law Committee, Law Council of Australia, *Proof Committee Hansard*, 7 March 2019, p. 24.

70 Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 37.

71 Ms Jenny Lambert, Director, Employment, Education and Training, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 6 March 2019, p. 34.



2.62 Mr John Hourigan, the National President and Director of the Migration Institute of Australia, agreed that limited visa terms are a disincentive for people to choose to temporarily migrate to Australia:

Say they can come out for four years. So they uproot the family for four years only to uproot them again four years later to go back home, by which time they've got to then re-establish themselves back in their home country... So that's a big ask and a real disincentive for people to come out to Australia. We as migration agents hear this all the time as [to] why people just are not interested in coming out.<sup>72</sup>

2.63 The committee heard that the age limit of 45 at the time of application for permanent residency was also discouraging senior professionals from taking up shorter skilled visas that could later lead to permanent residency.<sup>73</sup> The Australasian Institute of Mining and Metallurgy explained that this age limit 'disincentivises older, experienced and senior management mining professionals from bringing their expertise to Australia, placing the nation at a competitive disadvantage'.<sup>74</sup>

#### *Attracting workers to regional areas*

2.64 The Federation of Ethnic Communities Council of Australia submitted that pathways to permanency are essential to attract migrants to rural and regional areas.<sup>75</sup> Ms Adrienne Rourke, the General Manager of the Resource Industry Network in the Mackay region, argued in favour of visa holders being able to stay longer in local communities to boost the regional economy:

The 400 visa [Temporary Work (Short Stay Specialist)]—the one that's only for about six months—is good, but I guess we want to see the people here for four years, because they're the ones actually living in our community. They're going to be renting here, spending their wages here, buying cars here and buying furniture here in our local community, and they're engaged in our local community. And that's what we would prefer, rather than people flying in and out for work.<sup>76</sup>

#### *Need to favour permanent migration pathways in the skilled visa system*

2.65 The Migration Council Australia outlined possible risks it considered inherent in a migration program predicated on temporary visas:

[N]ot enabling a pathway to permanent residence poses significant risks of producing a cohort of skilled workers living on the margins of Australian

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72 *Proof Committee Hansard*, 6 March 2019, p. 21.

73 Minerals Council of Australia, *Submission 3*, pp. 3, 5; Universities Australia, *Submission 27*, p. 4; Consult Australia, *Submission 28*, pp. 4–5, 6, 15; Law Council of Australia, *Submission 36*, p. 19; Joint University, *Submission 46*, p. 13; Dr Gavin Lind, General Manager, Workforce and Innovation, Minerals Council of Australia, *Proof Committee Hansard*, 7 March 2019, p. 11.

74 The Australasian Institute of Mining and Metallurgy, *Submission 30*, p. 3.

75 Federation of Ethnic Communities Council of Australia, *Submission 37*, p. 3.

76 *Proof Committee Hansard*, 5 March 2019, p. 2.

society who contribute to the economy and pay taxes but do not have a commitment to Australian society as they are effectively barred from contemplating a natural full integration. This does not align with Australia's immigration values and could run the risk of imposing pressures on the economy if suitable workers cannot be found.<sup>77</sup>

2.66 Mr Trevor Gauld, National Policy Officer from the Electrical Trades Union (ETU), contended that '[a]lmost unilaterally, temporary migration outcomes have not involved good experiences or collaborative experiences with employers'.<sup>78</sup>

2.67 The ACTU and other submitters outlined the benefits of a migration system that preferences permanent, rather than temporary, migration:

With permanent residency, migrants have a secure visa status. This makes them less susceptible (though not immune) to exploitation and less likely to generate negative impacts on other Australian workers in terms of wages, employment conditions and job and training opportunities.<sup>79</sup>

2.68 Mr Damian Kyloh from the Australian Council of Trade Unions warned that industry needs should not be determining Australia's migration intake:

We believe the current trend towards temporary employer sponsored migration is effectively outsourcing decisions about our national migration intake to employers and their short-term needs over the national interest and a long-term vision for Australia's economy and society.<sup>80</sup>

2.69 Numerous submitters and witnesses from across different industries, migrant advocacy groups, and employee representatives, were in favour of the Australian Government introducing increased pathways to permanency through Australia's skilled migration program.<sup>81</sup> The ACTU recommended:

The current weighting of Australia's skilled migration program towards temporary and employer-sponsored pathways should be re-evaluated, with greater emphasis given to the permanent, independent stream as the 'mainstay' of the skilled migration program.<sup>82</sup>

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77 *Submission 7*, pp. 6–7.

78 *Proof Committee Hansard*, pp. 31–32.

79 *Submission 11*, p. 13. See also Construction, Forestry, Maritime, Mining and Energy Union, *Submission 38*, p. [15]; Victorian Trades Hall Council, *Submission 22*, p. [5]; Shop Distributive and Allied Employees' Association, *Submission 2*, p. 2.

80 Mr Damian Kyloh, Associate Director of Economic and Social Policy, Australian Council of Trade Unions, *Proof Committee Hansard*, 7 March 2019, p. 5. See also Australian Council of Trade Unions, *Submission 11*, p. 1.

81 See, for example: Minerals Council of Australia, *Submission 3*, p. 5; Migration Council Australia, *Submission 7*, pp. 6–7; Housing Industry Australia, *Submission 10*, pp. 4, 7; Victorian Trades Hall Council, *Submission 22*, p. 5; Tourism & Transport Forum, *Submission 41*, p. 1; Fragomen, *Submission 50*, p. 6.

82 *Submission 11*, p. 5.

### ***Pathways for graduates into TSS visas***

2.70 Several submitters and witnesses were concerned that the skilled visa system does not easily allow international graduates of some Australian courses to gain subsequent visas.<sup>83</sup> Applicants for TSS visas must have at least two years' work experience to be eligible, but the Temporary Graduate visa – Graduate work stream is only granted for 18 months. This does not usually apply to international students who have a degree from an Australian institution and hold a Temporary Graduate visa – Post-Study Work stream, which is usually granted for 2–4 years.<sup>84</sup>

2.71 Mr Gschwind from the Queensland Tourism Industry Council, provided an example of this being problematic in practice for one industry:

There are additional challenges with the current migration program for chefs. The minimum two-year full-time work experience requirement means that a chef who has studied... in Australia can get a graduate 485 visa and work for an employer for a year in a regional area but cannot meet the two-year work experience requirement on their 485 visa, which is granted for 18 months... Industry has found it's almost impossible to meet the two-year minimum under the new system.<sup>85</sup>

### ***Use of other visas to avoid requirements of TSS visas***

2.72 Some evidence highlighted that while the TSS visa program has stringent requirements, employers may be using other visas to legally employ migrants while avoiding the costs, processing times and stricter conditions imposed on sponsors of TSS visa holders.<sup>86</sup> For example, Mr Gauld from the ETU argued that:

[I]n particular, the new subclass 400 visas appear to allow employers to simply say: '...this work [is] so highly specialised that Australian people can't do it...' It plays out in the workplaces when these workers are brought over, and it's apparent that what they're doing is routine electrical work which most apprentices would learn in their third or fourth year of their

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83 Ms Carol Giuseppi, Chief Executive Officer, Tourism Accommodation Australia, *Proof Committee Hansard*, 6 March 2019, p. 29; Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Industry Association, *Proof Committee Hansard*, 6 March 2019, p. 28; Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 37; Restaurant & Catering Australia, *Submission 32*, p. 6; Minerals Council of Australia, *Submission 3*, p. 5.

84 Department of Home Affairs, *Subclass 485: Temporary Graduate visa*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-graduate-485> (accessed 15 March 2019); Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Industry Association, *Proof Committee Hansard*, 6 March 2019, pp. 29–30.

85 Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 37.

86 Construction Forestry Maritime Mining and Energy Union, *Submission 38*, p. 9.

apprenticeship and they are not highly specialised technical specialists at all; they are literally cheap labour.<sup>87</sup>

2.73 Mr Gauld further noted that working holiday visas do not 'require employers to demonstrate that they've done local labour market testing prior to employing those workers'.<sup>88</sup>

2.74 RDA Orana expressed the view that employers were using subclass 417 working holiday visa holders to fill what were actually permanent positions because of a 'lack of recognition of an actual skill shortage in an identifiable region'. This had resulted in a high rotation of workers and was 'leading to pressure' on the longer Pacific Islander Scheme stream in the 403 visa program.<sup>89</sup>

2.75 Similarly, Payne's Farm Contracting argued that because of a lack of recognition of the need for horticultural workers in Australia's current skilled temporary migration program, farmers were 'being forced to take up programs such as the Pacific Islander Worker Scheme to service the Government's own agenda, not necessarily because it suits the needs of farmers themselves'.<sup>90</sup>

2.76 Business SA proposed that 'the Federal Government should be careful not to make one visa subclass falsely more attractive than another, either by way of fees, processing times or visa conditions'.<sup>91</sup>

### ***Visa processing times***

2.77 The committee heard significant concerns about the length of time required to sponsor a TSS visa, from initial LMT to arrival and employment of the visa holder.<sup>92</sup> Mr Gschwind from the Queensland Tourism Industry Council argued that compared

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87 Mr Trevor Gauld, National Policy Officer, Electrical Trades Union, *Proof Committee Hansard*, p. 30.

88 Mr Trevor Gauld, National Policy Officer, Electrical Trades Union, *Proof Committee Hansard*, pp. 28, 34.

89 RDA Orana, *Submission 31*, pp. 3, 4–5.

90 Payne's Farm Contracting, *Submission 47*, p. 2.

91 Business SA, *Submission 16*, p. 11.

92 For example, Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 41; Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Industry Association, *Proof Committee Hansard*, 6 March 2019, p. 28; Ms Sarah Miotto, Spannerman Autocare, *Proof Committee Hansard*, 5 March 2019, p. 4; Motor Trade Association of South Australia, *Submission 24*, pp. 7, 17–18; Business SA, *Submission 16*, p. 11; Australian Chamber of Commerce and Industry, *Submission 12*, pp. 13–14; Tourism Accommodation Australia, *Submission 42*, pp. 15–16; Science & Technology Australia, *Submission 20*, pp. 3, 4; Restaurant and Catering Australia, *Submission 32*, p. 20; Migration Institute of Australia, *Submission 33*, p. 7; Cross Cultural Communications and Management, *Submission 44*, pp. 5, 6–7.

to the previous 457 visas, applications for TSS visas are 'extremely lengthy now. It takes much longer than previously[.]'<sup>93</sup>

2.78 Consult Australia also drew attention to 'lengthy and inconsistent visa processing application times', but noted that there had been 'significant improvements' since October 2018 in visa processing from the Department of Home Affairs.<sup>94</sup>

2.79 Similarly, Mr Glenn Cole, Director of Australian Skilled Migration, was of the opinion that recent visa processing times had been relatively quick:

Over the last 10 years I've seen visas take as long as 15 months to be approved. Right at the moment, they're actually being processed quite quickly. On the internet it says up to 44 days, but it's not uncommon to have somebody approved in a week... [T]he actual processing time currently of the TSS visa is as fast as it's been for a very long time.<sup>95</sup>

2.80 Another concern raised was lack of communication between the Department of Home Affairs and businesses who have applied to sponsor temporary migrants. Mr Cole outlined this in further detail:

One of the frustrations that businesses feel is that there's no communication available [with] the Department of [Home Affairs] regarding their status updates of their workers. I understand why they've done this, because people are inquiring and inquiring, but in real terms, when you're talking about small business and it's real people, it's a very stressful time when you've got no indication of a reason or a time frame. So it can be really stressful on businesses to not know and not have any access to any information.<sup>96</sup>

### *Visa costs*

2.81 The committee heard that the costs involved in applying for a visa—both by visa applicants and a sponsoring employer—are in some instances prohibitive, particularly for small businesses.<sup>97</sup> Mr Gschwind from the Queensland Tourism

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93 Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 41.

94 Consult Australia, *Submission 28*, p. 4.

95 Mr Glenn Cole, Director, Australian Skilled Migration, *Proof Committee Hansard*, 5 March 2019, pp. 11, 13. See also Tourism Accommodation Australia, *Submission 42*, p. 14.

96 Mr Glenn Cole, Director, Australian Skilled Migration, *Proof Committee Hansard*, 5 March 2019, p. 13.

97 Mr John Hourigan, National President and MIA Director, Migration Institute of Australia, *Proof Committee Hansard*, 6 March 2019, p. 19. See also, for example, Housing Industry Association, *Submission 10*, p. 6; Australian Chamber of Commerce and Industry, *Submission 2*, pp. 13–14; National Farmers' Federation, *Submission 13*, pp. 16–17; Business SA, *Submission 16*, p. 8; Motor Trade Association of South Australia, *Submission 24*, pp. 6–7, 15; RDA Orana, *Submission 31*, p. 3; Tourism & Transport Forum, *Submission 41*, p. 3; Tourism Accommodation Australia, *Submission 42*, p. 14; Australian Pork Limited, *Submission 43*, p. 14; Cross Cultural Communications and Management, *Submission 44*, p. 12; Dr Gavin Lind, General Manager, Workforce and Innovation, Minerals Council of Australia, *Proof Committee Hansard*, 7 March 2019, p. 15.

Industry Council stated that sponsors may pay 'tens of thousands of dollars in lawyers, fees and visa applications, only to have the visa declined. This is an incredible stress on a small business'.<sup>98</sup>

2.82 Ms Juliana Payne, Chief Executive Officer of the Restaurant and Catering Industry Association, gave the following example of the impact of costs on a small business:

A restaurant in Perth, WA... with a single owner-operator and a small profit margin of two per cent—wanted to get one foreign national as a chef to enhance their offering and their creativity. All the other staff are Australian citizens. The restaurant applied for the sponsored visa. Due to the high cost, the business owner didn't pay himself wages for six weeks so that he could afford to pay the training levy and the visa fees... In the meantime, the businesses are in limbo while we wait for those processes to be finalised.<sup>99</sup>

2.83 Tourism Accommodation Australia pointed to research it had carried out indicating that Australian 'visa fees are among the least competitive...when compared to...other destinations'.<sup>100</sup> Some evidence also questioned why sponsors were not refunded certain costs associated with visa applications if an application was unsuccessful.<sup>101</sup>

2.84 However, Mr Richard Johnson from the Department of Home Affairs argued that costs involved in applying for a TSS visa are about 'striking a balance' between meeting business needs and ensuring businesses are attempting to find Australian workers first.<sup>102</sup>

2.85 Mr Greg Rose from Community Solutions noted that the current system provides benefits for employers who try employ Australians rather than skilled migrants:

It is quite a costly exercise to employ a migrant to come over and be in Australia for whatever period of time. I think it is far cheaper and there are a lot more government incentives to employers to be able to skill up somebody who already lives here.<sup>103</sup>

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98 Mr Daniel Gschwind, Chief Executive, Queensland Tourism Industry Council, *Proof Committee Hansard*, 5 March 2019, p. 38.

99 *Proof Committee Hansard*, 6 March 2019, p. 28.

100 Tourism Accommodation Australia, *Submission 42*, p. 15.

101 See, for example: Ms Juliana Payne, Chief Executive Officer, Restaurant and Catering Industry Association, *Proof Committee Hansard*, 6 March 2019, p. 28; Business SA, *Submission 16*, p. 7. Chapter 5 discusses the refund provisions for the Skilling Australians Fund levy in more detail.

102 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy Division, Department of Home Affairs, *Proof Committee Hansard*, 6 March 2019, p. 42.

103 *Proof Committee Hansard*, 5 March 2019, p. 44.

2.86 Dr Carina Ford, the Deputy Chair of the Migration Law Committee at the Law Council of Australia, suggested that 'consideration be given to conducting research into the economic impact' of changes to the temporary skilled visa system, particularly whether these changes had affected the ability of businesses to grow.<sup>104</sup>

### ***Intra-corporate transfers***

2.87 A number of submitters and witnesses expressed support for an intra-corporate transfer visa for transnational companies. In particular, attention was drawn to intra-corporate visas in other jurisdictions, such as the United States, Singapore and Canada.<sup>105</sup> The Law Council of Australia proposed 'an approach that would see visa pathways to facilitate intra-corporate transfers decoupled from Australia's general work visa program' because, it argued, LMT, skills assessments, a training levy and attempts to limit skilled migrant access to occupations based on labour market forecasts are not relevant.<sup>106</sup>

### ***Health assessments for skilled migrants with disability***

2.88 Dr Jan Gothard, a Health and Disability Specialist from Estrin Saul Lawyers and Migration Specialists, outlined concerns that applicants for skilled visas were assessed as failing to meet health requirements if they or a sponsored family member had a particular health condition or disability. She stated that this has occurred because of an assessment that medical costs to treat the disability could exceed \$40,000 to Commonwealth and state/territory governments.<sup>107</sup>

2.89 Mr Chris Spentzaris, a member of the Migration Law Committee at the Law Council of Australia, also noted skilled visa applications where a 'very senior, capable expert who we've wanted in Australia ... [had] been refused because a family member has a disability and potentially could be a cost to the Australian community'.<sup>108</sup>

2.90 Dr Gothard argued that the assessment that a visa applicant with a health condition or disability could cause costs to accrue to taxpayers is based on costs that would accrue to a generic Australian citizen or permanent resident with the same health condition or disability, but who would be entitled to access all Australian community and health services. She stated that current policy requires Commonwealth Medical Officers to make this assessment, despite temporary visa applicants not being eligible to access Medicare, the National Disability Insurance Scheme or other government-funded health and social services.<sup>109</sup>

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104 *Proof Committee Hansard*, 7 March 2019, p. 24.

105 For example, Ms Carol Giuseppi, Chief Executive Officer, Tourism Accommodation Australia, *Proof Committee Hansard*, 6 March 2019, pp. 26, 32; CSL Limited, *Submission 18*, p. 2; Cochlear, *Submission 19*, p. 3; Tourism Accommodation Australia, *Submission 42*, p. 12.

106 Law Council of Australia, *Submission 36*, p. 18. See also: Fragomen, *Submission 50*, pp. 5–6.

107 *Proof Committee Hansard*, 7 March 2019, p. 17. See also Estrin & Saul Lawyers and Migration Specialists, *Submission 5*.

108 *Proof Committee Hansard*, 7 March 2019, p. 26.

109 *Proof Committee Hansard*, 7 March 2019, p. 17.

2.91 In response to the question of whether these temporary visa holders would subsequently apply for a permanent visa, which would then lead to them becoming eligible for public services, Dr Gothard stated that they would be subject to a further, perhaps even more rigorous, health assessment as part of the subsequent application, which would then consider whether costs would accrue. She suggested that the current solution, in which all members of a family are granted a skilled visa except the family member with disability, was not 'a good solution'.<sup>110</sup>

### **Committee view**

2.92 This inquiry received at times conflicting evidence about the effectiveness of the current temporary skilled visa system, with stakeholders from different sectors putting forward a range of perspectives on the recent changes to the system.

#### ***General impact of the introduction of the TSS visa and other recent reforms***

2.93 Given that the TSS visa has only been in place since March 2018, with a further suite of reforms commencing in August 2018, it is still too soon to state with certainty how these changes will impact on the overall number of temporary skilled work visas being sought and granted. As such, the committee suggests that the Australian Government continue to monitor the effects of the changes to the temporary visa system over the next six months, with a view to making any necessary adjustments to the overall settings for this visa subclass in 2020.

2.94 The committee notes concerns from a range of submitters and witnesses that the current temporary skilled visa system does not allow for appropriate pathways to permanent residency. The committee agrees that ongoing government consideration of the system should include a re-evaluation of the current weighting of Australia's skilled migration program, with greater emphasis given to the permanent, independent stream as the mainstay of the skilled migration program.

### **Recommendation 1**

**2.95 The committee recommends that the Australian Government continue to monitor the trajectory of visa applications and grants under the Temporary Skills Shortage (Subclass 482) visa over the next six months, with a view to making any necessary adjustments to the overall settings for this visa subclass in 2020.**

2.96 With this overarching view in mind, the committee does still consider that some specific aspects of the temporary skilled visa system can be improved in the short term. These issues are dealt with in subsequent recommendations in this chapter and the remaining chapters of this report.

#### ***Temporary Skilled Migration Income Threshold***

2.97 The committee notes the significant concerns raised during the inquiry about the level of the Temporary Skilled Migration Income Threshold (TSMIT), which is currently set at \$53,900 per annum and has been frozen at that level since 2013.

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110 *Proof Committee Hansard*, 7 March 2019, pp. 19, 21.



2.98 The TSMIT was designed to protect Australian wages from being undercut and to ensure that employers are sponsoring skilled workers to meet genuine shortages, rather than as a mechanism to bring in overseas workers as cheap replacement labour. In the committee's view, the indexation freeze implemented in recent years has undermined the operation of the TSMIT and must be overturned.

2.99 The committee considers that the TSMIT must be increased in line with average full time earnings of Australian workers, and subject to annual indexation in line with the Wage Price Index.

### **Recommendation 2**

**2.100 The committee recommends that the Australian Government increase the Temporary Skilled Migration Income Threshold (TSMIT) to a minimum of at least \$62,000, and mandate that the rate of the TSMIT be indexed annually in line with the average full-time wage.**

2.101 The committee notes that the Market Salary Rate framework will continue to operate as a core component of the temporary skilled visa system in cases where wages are set above the minimum TSMIT. The committee considers that, in order to ensure that decisions around the market salary rate for various occupations and locations are being made fairly, a tripartite body should be established to make recommendations in this area.

2.102 The establishment of such a tripartite body to advise government on issues including the Market Salary Rate framework is discussed further in Chapter 3.

#### *Health assessments for temporary skilled migrants with a disability*

2.103 The committee is concerned that the Department of Home Affairs may be rejecting temporary skilled visas on the basis that an applicant or a family member with a health condition or disability would cause undue health and social services costs to accrue to the Commonwealth and state or territory governments. Evidence to the inquiry suggested that these costs could not possibly accrue, given that temporary visa holders are unable to access these government-funded services. Should temporary visa holders apply for permanent residency, they would be required to pass another health assessment to determine whether these costs would accrue if the person were granted permanent residency, making health assessments an unnecessary barrier to obtaining a temporary visa.

2.104 As a result, the committee considers that the Department of Home Affairs must review and update its policies in this area to ensure that temporary visa applications will not be rejected on health grounds in cases where there is no possibility of health and social services costs accruing to government.

### **Recommendation 3**

**2.105 The committee recommends that the Department of Home Affairs review and update its policies regarding health assessments of temporary visa holders, to ensure that visa applications will not be rejected on health grounds in cases where there is no possibility of health and social services costs accruing to the Commonwealth or state and territory governments.**

