

# Chapter 1

## Introduction

### Inquiry terms of reference

1.1 On 24 March 2015, the Senate referred the following terms of reference to the Education and Employment References Committee for inquiry and report by 22 June 2015:

The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders, with particular reference to:

- a. the wages, conditions, safety and entitlements of Australian workers and temporary work visa holders, including:
  - i. whether the programs 'carve out' groups of employees from Australian labour and safety laws and, if so, to what extent this threatens the integrity of such laws,
  - ii. the employment opportunities for Australians, including:
    - A. the effectiveness of the labour market testing provisions (the provisions) of the *Migration Act 1958* in protecting employment opportunities for Australian citizens and permanent residents, and
    - B. whether the provisions need to be strengthened to improve the protection of employment opportunities for Australian citizens and permanent residents and, if so, how this could be achieved,
  - iii. the adequacy of publicly available information about the operation of the provisions, and
  - iv. the nature of current exemptions from the provisions and what effect these exemptions have on the reach and coverage of labour market testing obligations and laws regarding wages, conditions and entitlements of Australian workers and temporary work visa holders;
- b. the impact of Australia's temporary work visa programs on training and skills development in Australia, including:
  - i. the adequacy of current obligations on 457 visa sponsoring employers to provide training opportunities for Australian citizens and permanent residents,
  - ii. how these obligations could be strengthened and improved, and
  - iii. the effect on the skills base of the permanent Australian workforce;
- c. whether temporary work visa holders receive the same wages, conditions, safety and other entitlements as their Australian counterparts or in accordance with the law, including:

- i. the extent of any exploitation and mistreatment of temporary work visa holders, such as sham contracting or debt bondage with exorbitant interest rate payments,
  - ii. the role of recruitment agents, and
  - iii. the adequacy of information provided to temporary work visa holders on their rights and obligations in their workplace and community, and how it can be improved;
- d. whether temporary work visa holders have access to the same benefits and entitlements available to Australian citizens and permanent residents, and whether any differences are justified and consistent with international conventions relating to migrant workers;
- e. the adequacy of the monitoring and enforcement of the temporary work visa programs and their integrity, including:
- i. the wages, conditions and entitlements of temporary work visa holders, and
  - ii. cases of 457 visa fraud, such as workers performing duties outside or below the job classification of the visa;
- f. the role and effect of English language requirements in limited and temporary work visa programs;
- g. whether the provisions and concessions made for designated area migration agreements, enterprise migration agreements, and labour agreements affect the integrity of the 457 visa program, or affect any other matter covered in these terms of reference;
- h. the relationship between the temporary 457 visa and other temporary visa types with work rights attached to them; and
- i. any related matter.

That in conducting the inquiry, the committee shall review the findings and recommendations of previous inquiries into such matters, including the Legal and Constitutional Affairs References Committee's report, *Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements*.<sup>1</sup>

### **Conduct of the inquiry**

1.2 Notice of the inquiry was posted on the committee's website. The committee also advertised the inquiry in *The Australian* and wrote to key stakeholder groups, organisations and individuals to invite submissions.

1.3 The committee received 64 submissions as detailed in Appendix 1.

1.4 The committee held ten public hearings:

- 18 May 2015 in Melbourne;
- 12 June 2015 in Brisbane;

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1 *Journals of the Senate*, No. 88—24 March 2015, pp 2374–2376.

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- 19 June 2015 in Melbourne;
  - 26 June 2015 in Sydney;
  - 10 July 2015 in Perth;
  - 14 July 2015 in Adelaide;
  - 17 July 2015 in Canberra;
  - 24 September 2015 in Melbourne;
  - 20 November 2015 in Melbourne; and
  - 5 February 2016 in Canberra.

1.5 A list of witnesses who gave evidence at the public hearings is detailed in Appendix 2.

### **Extension to the inquiry**

1.6 During the course of the committee's inquiry, media investigations raised serious concerns about the exploitation of temporary work visa holders in Australia (see the background section in chapter 2). Against a background of continuing revelations relevant to the committee's terms of reference, the committee sought approval to extend the timeframe for its own inquiries into these and related matters.

1.7 The Senate agreed to five extensions to the inquiry reporting date. On 14 May 2015, the Senate agreed to extend the reporting date to 19 August 2015.<sup>2</sup> On 11 August 2015, the Senate agreed to extend the reporting date to 14 October 2015.<sup>3</sup> During this period, the committee focused largely on matters related to the 457 and 417 (Working Holiday Maker or 'backpacker') visa programs.

1.8 Following revelations of the exploitation of international students on temporary visas working across the 7-Eleven network of stores, the committee agreed to inquire into these matters as well. On 7 September 2015, the Senate agreed to extend the inquiry with the final report due on 11 February 2016.<sup>4</sup>

1.9 The committee held a hearing in Melbourne on 24 September 2015 related to the employment conditions of temporary migrant workers employed at 7-Eleven. Prior to the hearing, the committee invited specific submissions from those witnesses attending the hearing. The committee held further hearings on these matters on 20 November 2015 in Melbourne and 5 February 2016 in Canberra.

1.10 On 30 November 2015, the Senate agreed to extend the reporting date to 25 February 2016.<sup>5</sup> On 22 February 2016, the Senate agreed to a further extension of the reporting date to 17 March 2016.<sup>6</sup>

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2 *Journals of the Senate*, No. 94—14 May 2015, p. 2601.

3 *Journals of the Senate*, No. 104—11 August 2015, p. 2898.

4 *Journals of the Senate*, No. 111—7 September 2015, p. 3039.

5 *Journals of the Senate*, No. 131—30 November 2015, p. 3518.

## Scope and structure of the report

1.11 Although a range of varied and specific matters were raised during the course of the inquiry, certain themes run across one or more of the temporary visa programs. The report is therefore divided into five parts:

- Part I provides an overview of the temporary visa programs;
- Part II considers the impact of temporary visa programs on employment opportunities for Australians and permanent residents;
- Part III considers the impact of temporary visa programs on the training and skills development of Australians and permanent residents;
- Part IV considers issues of vulnerability and exploitation including the wages, conditions, safety and entitlements of temporary visa holders; and
- Part V considers issues of information, education, regulation and compliance.

1.12 The report chapters are structured as follows:

- **Part I: Overview**
  - Chapter 2 Overview of the temporary visa programs. The chapter provides an overview of the temporary work visa programs and labour agreements. It then outlines various reviews and reforms, and finishes by considering the interactions between the various temporary visa programs.
- **Part II: Employment opportunities**
  - Chapter 3 Impact of the 457 visa program on employment opportunities, including:
    - the responsiveness of the 457 visa program to changes in domestic labour supply;
    - the displacement of Australian workers by 457 visa workers;
    - the role of 457 visa workers in rural industries;
    - the 'market salary rate';
    - the Temporary Skilled Migration Income Threshold;
    - the Skilled Occupation List and Consolidated Sponsored Occupation List;
    - the technical competency of foreign workers; and
    - labour market testing.
  - Chapter 4 Impact of the Working Holiday Maker (WHM) (417 and 462) visa program on employment opportunities. The chapter looks at both the WHM visa program and the Seasonal Worker program. It

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considers the role of WHM visa workers in horticulture; labour agreements and enterprise agreements in the meat processing industry; and the impact of WHM visa workers on enterprise agreements and on employment opportunities for local workers in the meat processing industry.

- **Part III: Training opportunities**

- Chapter 5 Impact of temporary visas on training and skills development. The chapter looks at the impact of temporary visas on training and skills development, graduate employment, and future workforce capacity. It then assesses the effectiveness of the current training obligations and considers alternative training obligations.

- **Part IV: Vulnerability and exploitation**

- Chapter 6 Wages, conditions, safety and entitlements of 457 visa holders. The chapter considers the factors that contribute to the vulnerability of 457 visa workers. The chapter also examines the extent to which temporary visa workers are 'carved out' of Australian labour and safety laws and the barriers that temporary visa workers face in seeking access to justice. The chapter includes case studies of exploitation from the construction and nursing sectors.
- Chapter 7 Wages, conditions, safety and entitlements of WHM visa holders. The chapter considers the additional factors that contribute to the vulnerability of WHM visa holders in the workforce and the role played by 417 visa workers in horticulture and fruit picking. The role of certain labour hire companies in the exploitation of temporary visa workers is examined with a particular focus on the labour hire arrangements at Baiada's poultry processing plants in New South Wales.
- Chapter 8 Wages, conditions, safety and entitlements of international students. The chapter begins by considering the additional factors that contribute to the unique vulnerability of international students and undocumented workers in the workforce. The bulk of the chapter examines the exploitation of international students working at 7-Eleven.

- **Part V: Information, education, regulation and compliance**

- Chapter 9 Information, education, regulation and compliance. The chapter examines the provision of information and education to temporary visa workers and other stakeholders. The responsibilities of lead firms such as major supermarkets are considered in helping ensure compliance with workplace law down the supply chain. The role and powers of the Fair Work Ombudsman are examined, along with a range of regulatory and compliance measures under the *Fair Work Act 2009* including the penalty regime and the sham contracting and accessory liability provisions. The issue of the regulation of labour hire companies is also considered.

## **Acknowledgements**

1.13 During the course of the inquiry, the committee has benefitted greatly from the participation of many individuals and organisations located throughout Australia. The committee thanks all those who assisted with the inquiry, especially the witnesses who put in extra time and effort to answer written questions on notice and provide further valuable feedback to the committee as it gathered evidence.

1.14 But most of all, the committee acknowledges the many temporary visa holders that appeared before the committee to recount their experiences. Many of these individuals placed themselves in jeopardy in order to expose appalling and often systemic exploitation. The committee has formed the view that these individuals were motivated by a desire to see positive change in Australia's system of temporary visa programs and to ensure that other temporary visa holders would not endure the exploitation they had experienced. Without their personal accounts, the committee would not have been able to fully appreciate the need for a sufficiently robust regulatory and compliance framework to deliver a temporary visa program that is mutually beneficial for both Australia and for temporary visa holders.

## **Note on references**

1.15 References to the committee Hansard are to the official Hansard with the exception of 5 February 2016 which is the proof Hansard. Page numbers may vary between the proof and official Hansard transcripts for 5 February 2016.