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MIGRANT WORKERS CENTRE

Lives In Limbo:

The Experiences Of Migrant
Workers Navigating Australia's
Unsettling Migration System

About This Report

This report summarises the findings of the research on migrant workers' experience of the Australian migration system conducted by the Migrant Workers Centre and a team of volunteers (alphabetically by last name, Ms Vivian Lu, Ms Leah Monk, Mr Enrico Moscon, Mr Fergus Peace, and Mr Josh Subra). The research team thanks all the migrant workers who participated in the project for their time and valuable contribution. Questions about the report should be directed to Dr. Hyeseon Jeong, Research and Policy Officer, at hjeong@migrantworkers.org.au.

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The Migrant Workers Centre

The Migrant Workers Centre is a non-profit organisation open to any workers in Victoria who are born overseas. We help migrant workers connect with one another, understand their rights, and get empowered to enforce their rights. The Migrant Workers Centre assists workers from emerging communities to address problems they encounter at workplaces and collaborates with unions and community partners to seek long-term solutions to the exploitation of migrant workers. It organises workshops, conducts research, develops policy recommendations, and bridges language barriers that limit workers' access to information. Our ultimate goal is to fix the system of labour exploitation in this country.

Acknowledgement of Country

The Migrant Workers Centre respectfully acknowledges the Wurundjeri people of the Kulin Nations, the traditional owners and custodians of this land on which we stand. We pay our respects to their elders past and present and acknowledge that sovereignty was never ceded.



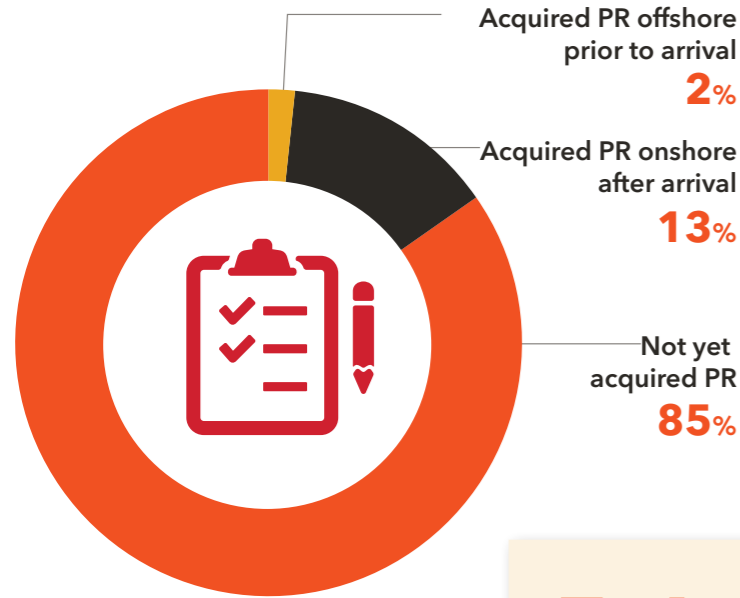
The Migrant Workers Centre is supported by the Victorian Government

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Executive Summary

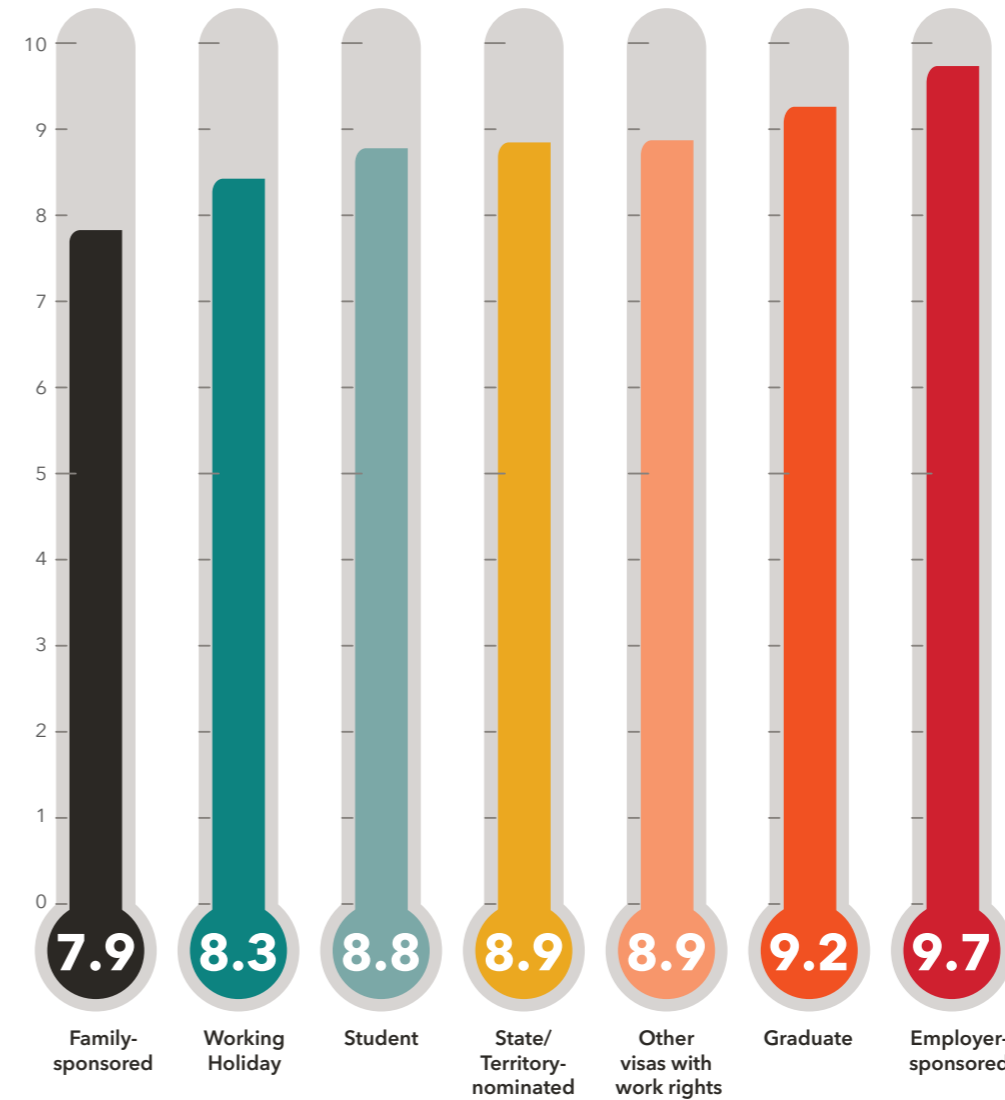
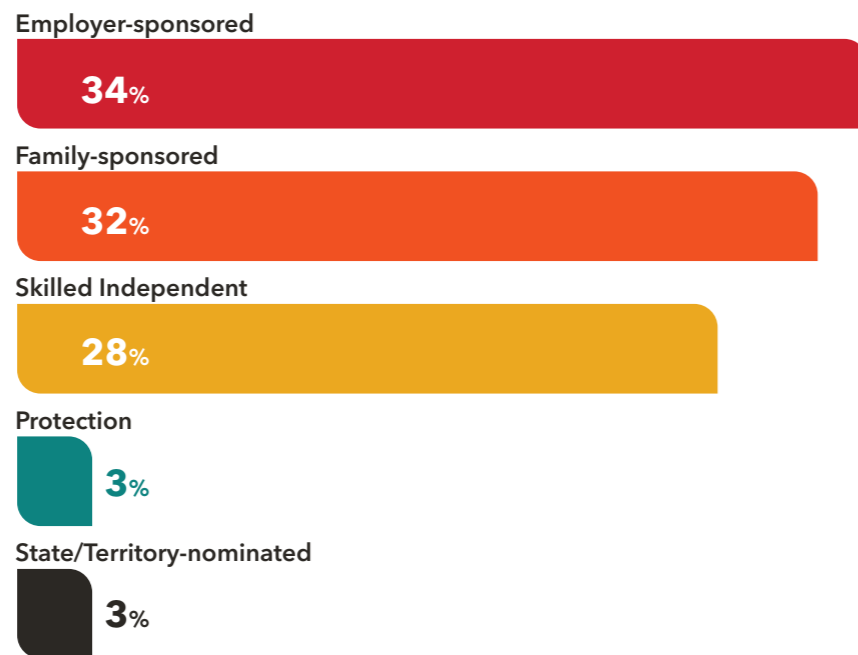
The Migrant Workers Centre conducted an online survey and in-depth interviews on migrant workers' experience with Australia's migration system in mid-2021. 734 survey responses and 57 follow-up interviews informed our analysis.



The growth of temporary migration programs since the 1990s has turned Australia into a guest worker state. Almost eight per cent of the population stay on temporary visas, and it is becoming increasingly difficult to settle permanently. Only 1.9% of our survey participants succeeded in acquiring permanent residency prior to leaving their homelands. 13.5% managed to acquire permanent residency after arrival. It took them 5.1 years on average. The longest it took for one to acquire permanent residency onshore was 13 years.

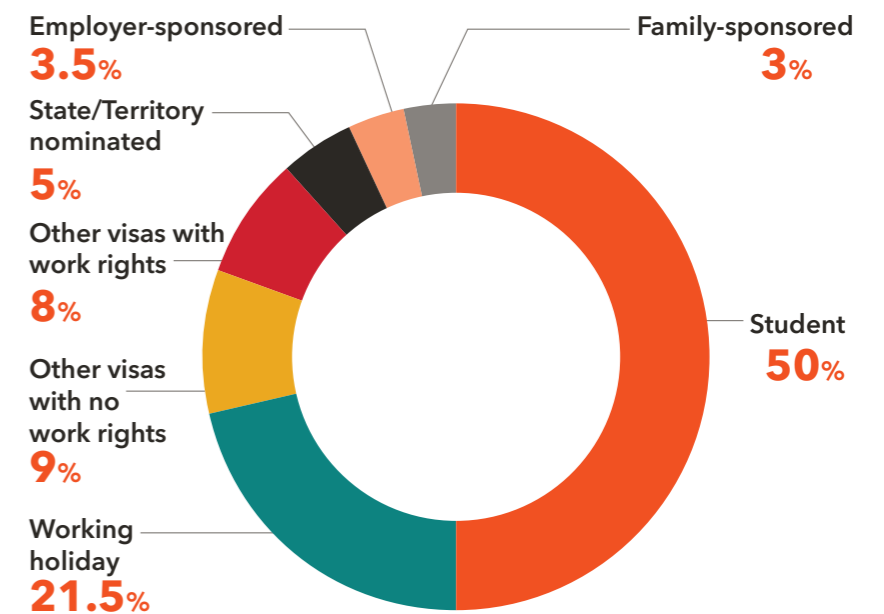


Australia does not offer migrant workers automatic progression from temporary to permanent residency. When we exclude family sponsorship, employer-sponsored visas and the Skilled Independent visa were the two most popular pathways to permanent residency.

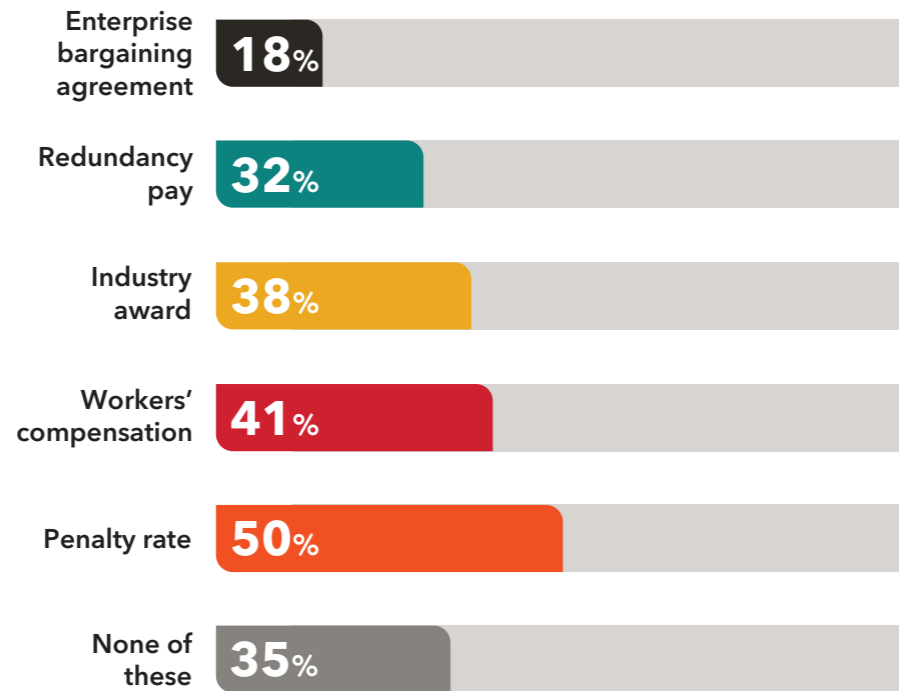


The survey results suggest that migrant workers on a temporary employer-sponsored visa undergo the highest level of stress (9.66 out of 10) due to their insecure migration status. These workers can progress towards permanent residency when their employer decides to sponsor them for the transition. On the other hand, when the employer terminates the employment, migrant workers lose their visa and livelihood in Australia.

Australia's migration policy encourages migrant workers to sign up for Australian education. Although Australian education does not guarantee permanent residency, the more education one receives, the better chances they have through progressing to another temporary visa and earning points for permanent residency. Interview participants unanimously stated that the Student visa was the most approachable visa as long as one could afford the tuition fee. Half (50.0%) of the survey participants came to Australia on a Student visa even though most (84.6%) of them had already completed vocational or tertiary education before coming to Australia.



Our survey revealed that migrant workers were not familiar with some basic Australian industrial relations terms despite all the education they received in Australia. As much as 35.0% of the survey participants had never heard of penalty rate, workers compensation, industry award, redundancy pay, or enterprise bargaining agreement.

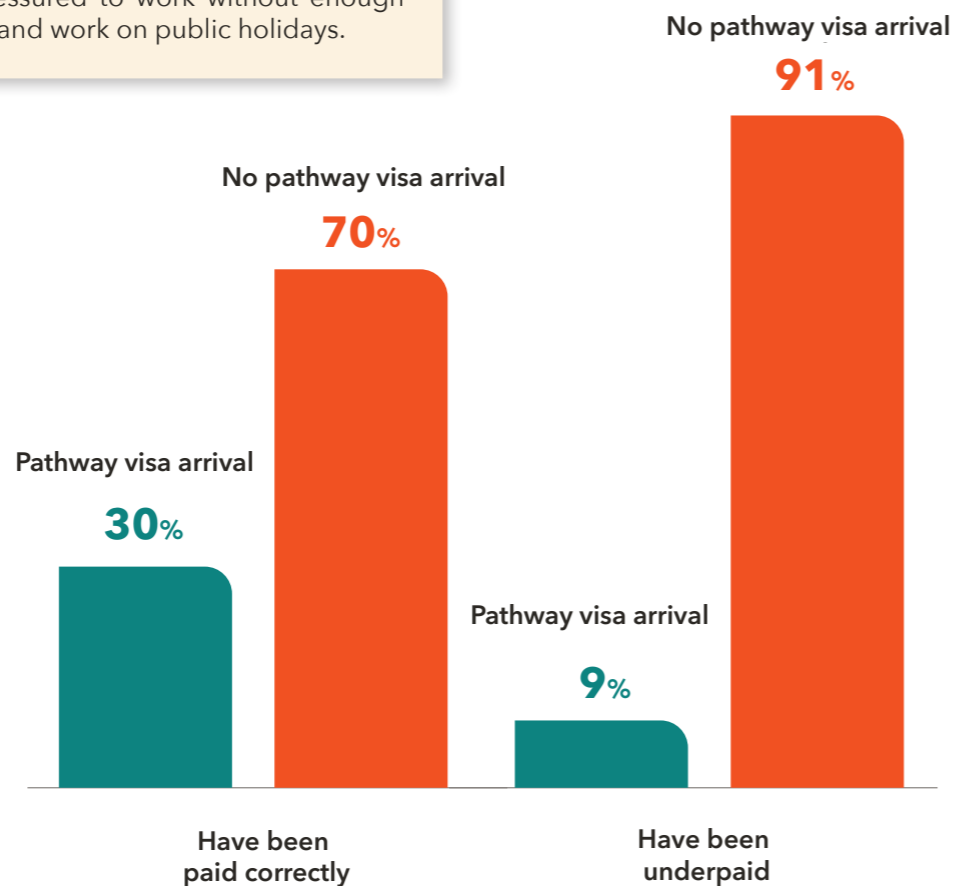


65%
had their wages stolen

1-in-4
experienced other forms of labour exploitation

64.8% of the survey participants on temporary visas experienced wage theft while working in Australia. One in every four migrant workers experienced being pressured to work without enough breaks, perform overtime work, and work on public holidays.

Survey results show a positive correlation between migrant workers' original entry visa types and their experience of exploitation. 90.9% of migrant workers who experienced wage theft in Australia had first arrived on a temporary visa that had no pathway to permanent residency such as the Student visa or Working Holiday visa.



Australia's migration regime has lost balance. The Government issues an unlimited number of temporary visas while tightly controlling the number of permanent visas issued. As a result, most migrant workers are forced to hop from one temporary visa to another until exhaustion. Our research shows that a majority of migrant workers experience wage theft while working with a temporary visa and that one is more likely to fall victim to wage theft when coming to the country on a visa with no pathway to permanent residency. We demand the Government urgently fix the migration system and better protect migrant workers from wage theft and labour exploitation.

1. Increase the proportion of permanent visa issuance within the migration system

6. Provide settlement assistance in collaboration with local communities

2. Introduce a maximum waiting time to visa processing

7. Give locally-educated migrant workers protection of workplace rights and a fair chance to permanent residency

3. Value migrant workers' contributions to Australian society

8. Provide information about workplace rights

4. Adjust and monitor employer sponsorship programs to protect against labour exploitation and visa system manipulation

9. Improve access to justice, compensation, and treatment

5. Enable onshore migrant workers to replace employer sponsorship with state/territory sponsorship for permanent residency

10. Protect whistle-blowers



Chapter 1: Introduction

As much as it is of our nature to be territorial—about our own sides of the bed, our own homes, and our own neighbourhoods—we all leave our comfort zones at some point. Every history of human settlement begins with migration, and through migration it continues to be part of the history of humanity. Australia is not an exception. The history of Australia throughout the nineteenth and twentieth centuries was shaped by gold rushes and assisted migration. In the twenty-first century, before COVID-19 hit the world, an average of a million people would leave Australia every month, and about the same number would arrive.

Although our territorial instinct may give us security in times of conflict, it can also be politically mobilised for the benefit of the privileged. In Australia, this has created an elitist, racially-stratified, and business-oriented system of migration and border management. The system gives the Government and businesses the power to 'choose' whom they want to allow into Australia as if they know who fits Australia best. It test-runs migrant workers as if they were a kitchen appliance or new car and gets a change-of-mind return on them years after. The system also gives the Government the authority to lock up innocent people indefinitely or keep them in a limbo of so-called 'temporary protection' and uncertainty of future settlement as if moving away from danger and hunger and reaching out for help and friendship was a crime.

This report investigates the experiences of migrant workers who cannot find peace in Australia due to their temporary visa status. Many of them have been extending their stay for over a decade by hopping from one temporary visa to another. The report reveals how difficult it can be while holding a temporary visa to get a decent job, protect your workplace rights, and access help. It also shows that Australia's migration policy has structurally brewed their migration and job insecurity and deliberately maintained this population of precarious workers in a large number. We discuss these issues now because the pandemic-induced closure of Australia's border to migration provides an unprecedented opportunity to take a step back and re-evaluate Australia's migration policy. When we open the border again, we should welcome migrant workers to a better Australia.

To hear the voices of migrant workers, we conducted in-depth interviews with long-term holders of temporary visas and migrant community organisations. We also executed an online survey of people who have ever stayed in Australia on a temporary visa. Details of our methods and the demography of our participants are discussed in Chapter 2. In the rest of the report, we discuss the characteristics of Australia's temporary migration programs (Chapter 3); barriers to permanent residency and vulnerability to labour exploitation embedded in the points-test system (Chapter 4) and in the employer sponsorship programs (Chapter 5); and challenges against regional settlement (Chapter 6). The report concludes with a list of top ten policy recommendations for migration reforms (Chapter 7).

We thank all the migrant workers who participated in the project for their time and valuable contribution. Some of the issues they have raised beyond the scope of this report will be discussed in subsequent reports.



Chapter 2: Research Methods



This report is based on research conducted in the second half of 2021, including a literature review, an online survey, and in-depth interviews. The project could not have been possible if it were not for all the migrant workers who made valuable contributions to the survey and the interviews.

The survey and interview questionnaires were developed based on the literature review and data collected from preliminary interviews with migrant workers. They asked questions about participants' migration history, barriers to permanent residency, familiarity with terminologies associated with Australia's workplace rights, hardship experienced at work and in life while holding temporary visas, and demographic characteristics.

The online survey was administered on Survey Monkey from 9 July to 11 September 2021. It took 7 minutes on average to complete the survey. Participants were able to complete the survey anonymously and, if they wanted, volunteer to participate in a follow-up in-depth interview with the research team.

The survey was distributed and shared via emails and social media—Facebook and Instagram (Figure 1). 1,004 responses were collected. Our analysis did not include data entered by participants who arrived in Australia after the pandemic broke out, those who completed less than 10 per cent of the survey, or those who submitted inconsistent answers. Altogether, 734 responses, including 621 temporary visa holders and 113 permanent visa holders, informed our analysis. Our target sample size for statistical analysis with a confidence level of 95% and a margin of error of 5% was 384 people on all temporary visas excluding Special Category visa.

While migrant workers from every state and territory participated in this project, 52.6% of our survey participants were based in Victoria. This geographical bias could have been introduced by the fact that the Migrant Workers Centre is better exposed to migrant workers in the state due to its physical location in Melbourne, Victoria. Nonetheless, a majority of our interviewees informed us they had been exposed to the survey via social media and had not used the Migrant Workers Centre services before taking the survey.

The online survey was offered in English only and exclusively included multiple-choice questions in order to prevent any linguistic interference. Speakers of 58 different primary languages responded to the survey (Figure 2). English (18.5%) was the most popular language, followed by Spanish (15.7%) and Mandarin Chinese (10.1%).

Figure 1. Online survey promotion on facebook.com



Figure 2: Language spoken by survey participants

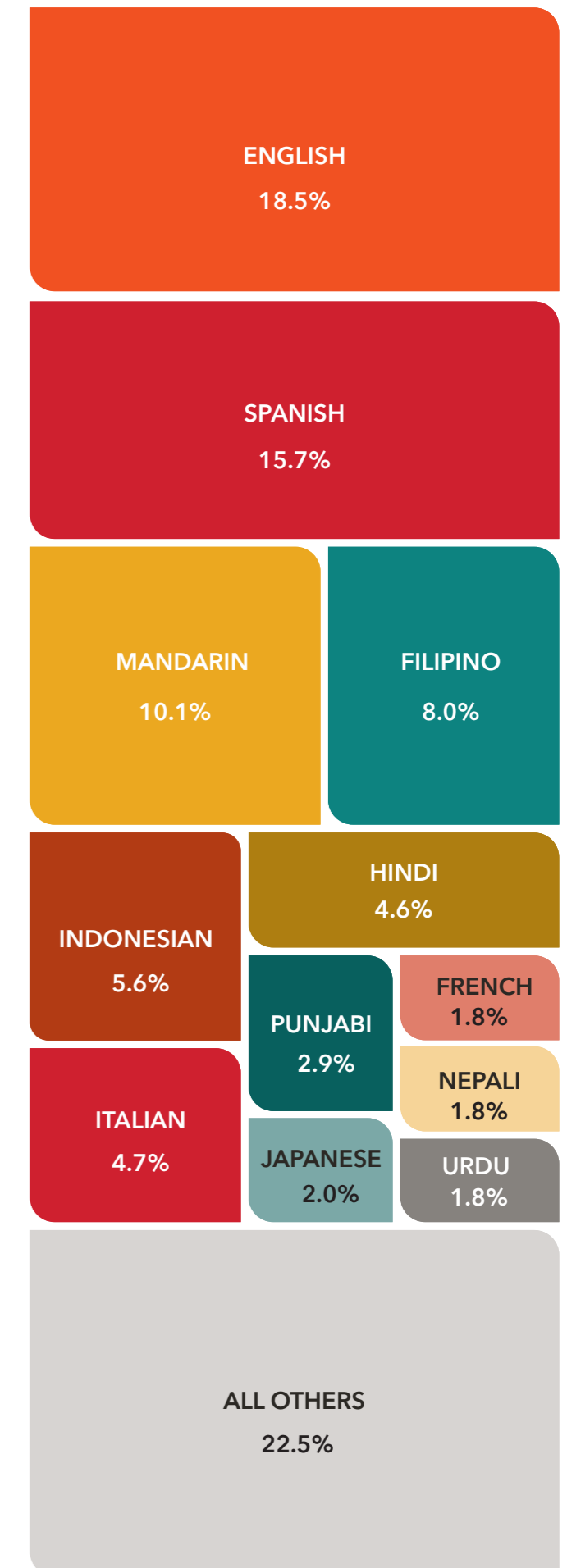
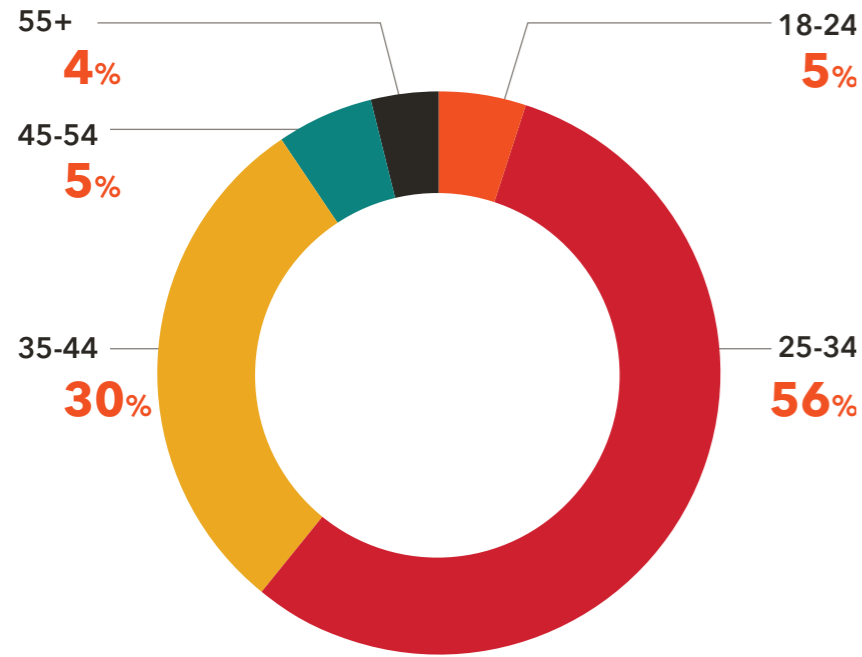


Figure 3. Survey participants by age group



Many of Australia's visa programs are designed to recruit healthy people in their prime working age. In most cases, one must be aged under 45 when they apply for a visa. As a consequence, 90.8% of our survey participants were between 18 and 44 years old (Figure 3). More than half (56.1%) of the participants were aged between 25 to 34.

When the pandemic broke out in early 2020, the Government closed the border. Migrant workers on temporary visas could leave the country if they wanted and could secure an outbound flight, but were not allowed to return to Australia once they were out of the country. When their original temporary visa expired, many migrant workers applied for whatever visa was available to them. The Student visa was one of them, and the Temporary Activity visa (subclass 408) was another. In order to understand migrant workers' migration status before the pandemic disrupted their lives, the survey asked participants' migration status on 3 April 2020 when the Government advised people on temporary visas to leave Australia.

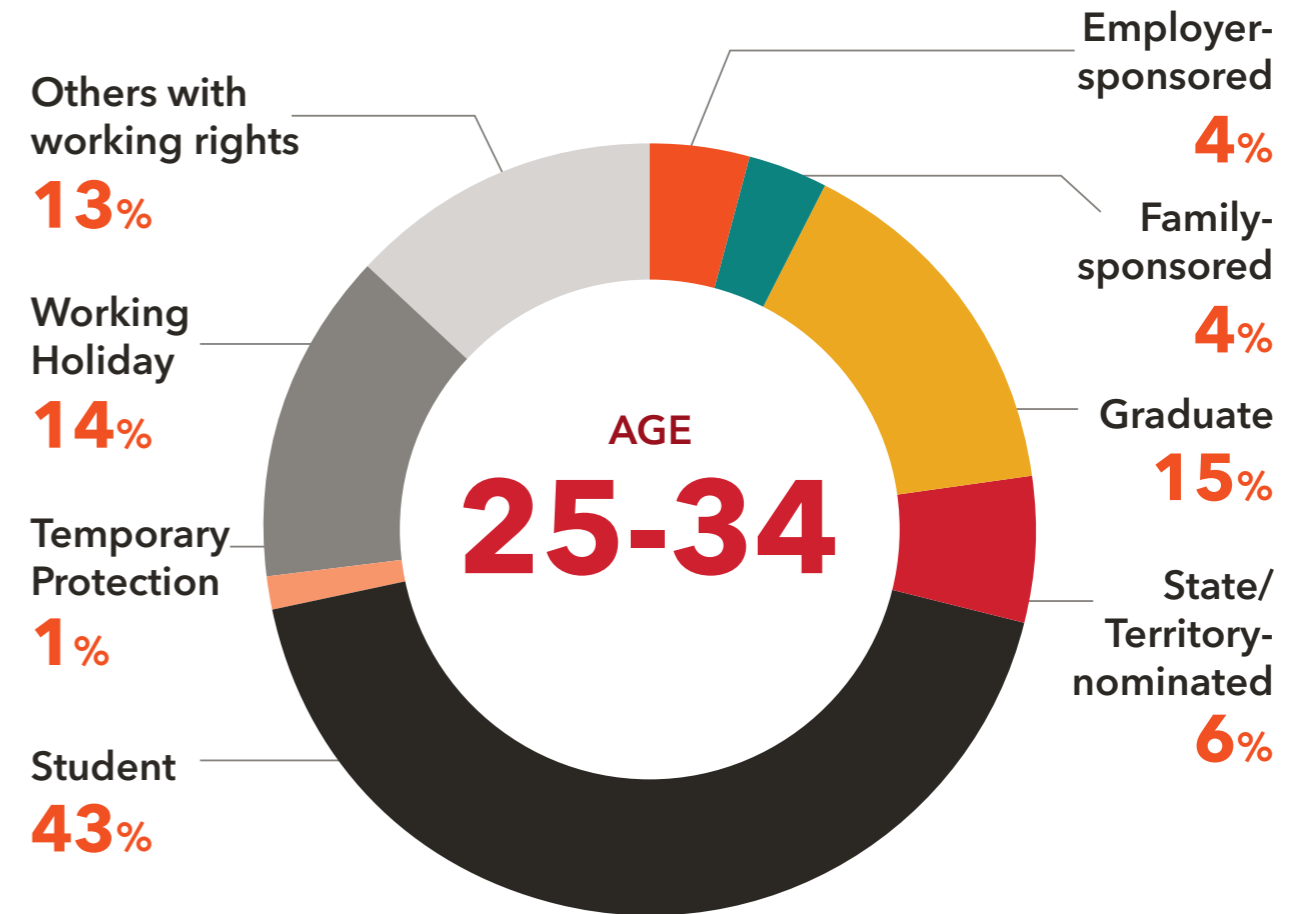
Figure 4 shows the types of temporary visas migrant workers aged between 25 and 44 held before the pandemic. For the 25-34 age group, which comprised the majority of the participants, the Student visa was the most frequently used visa (42.9%), followed by the Graduate visa (15.2%). This suggests that many young migrant workers spend their 20s and early 30s to acquire Australian education and gain local work experience.

For the 35-44 age group as well, the Student visa was the most popular one (27.7%). Almost one in four people in this group indicated that they held a visa with work rights that did not belong to one of the popular categories. In-depth interviews suggested that most of the 'other' visa holders were on a bridging visa, waiting for a next substantive visa such as a state/territory-nominated visa (16.1%), the Graduate visa (12.4%), or an employer-sponsored visa (11.7%).

A total of 223 survey participants volunteered to talk to the research team after completing the survey. The Migrant Workers Centre emailed them individually and invited them to an in-depth interview with a member of the research team. 57 migrant workers participated in a follow-up interview between July and September 2021.

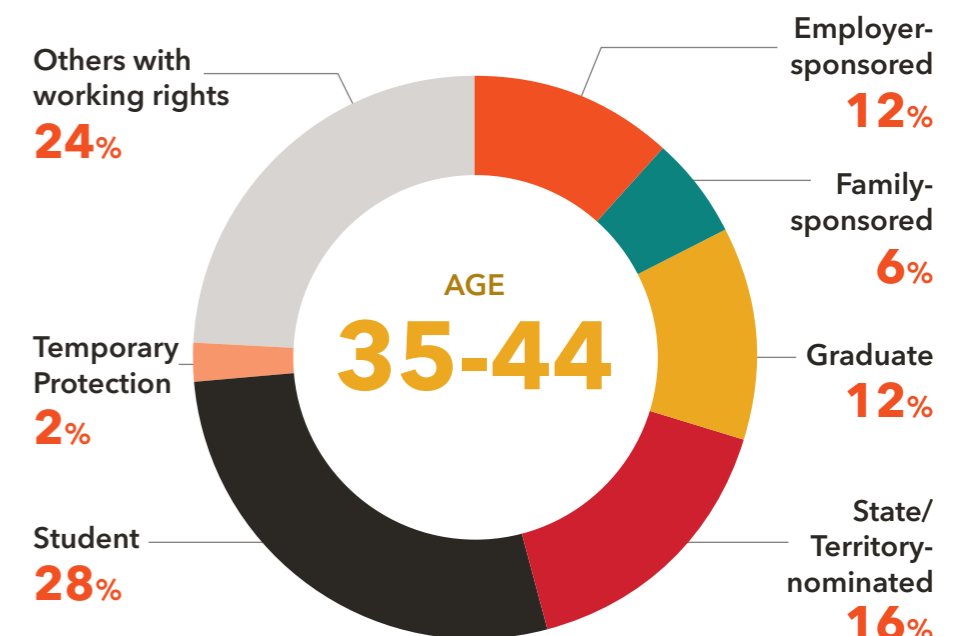
To minimise COVID-19 risks, most interviews were conducted virtually via either Zoom or Google Meet. A few were conducted over the phone due to technical issues or according to interviewees' preference. Interviews lasted up to an hour each. Participants were given an opportunity to discuss their concerns before an interview and withdraw the interview afterwards. They did not receive any compensation for the interview.

Figure 4. Temporary visas held by migrant workers aged 25-34 and aged 35-44



Interviews were conducted in English by the members of the research team, which included both native speakers of English and those who use it as a second language. Interview participants spoke 19 different languages. Similar to the survey participants (18.5%), 19.0% of the interview participants were native speakers of English. Mandarin Chinese speakers had a higher interview participation rate (19.0%) than the survey participation rate (10.1%). The third largest group of interview participants was Spanish speakers (10.3%).

70.7% of the interview participants were women. This makes a stark comparison to the rate of women among the survey participants (57.4%). It is not easy to produce a gender-based generalisation after only 57 interviews. Some men refused to participate in the interview once they learned it could take up to an hour, whereas other men came along to their wives' interviews.



Chapter 3. Uncertainty as National Policy



Table 1 lists major changes the Government made to permanent and temporary migration programs in the last three decades. There have been countless minor changes between the events listed. These changes all point in the same direction: replacement of family migration with skill migration, reduction of permanent migration intake, and growth of temporary migration.

The growth of temporary migration programs turned Australia into a nation with almost eight per cent of the population staying on

temporary visas.⁶ The Government issues an unlimited number of temporary visas to boost the economy through migration. On the other hand, the number of permanent visas made available each year is tightly controlled. As a result, temporary migration has become the first step towards permanent settlement in Australia. Today, one in two of permanent visas is granted to someone who initially entered the country on a temporary basis.⁷

Table 1. Major migration policy changes (1996-2021)

The Australian economy is heavily reliant on the skills and labour migrant workers bring into the country, and today almost one in three people in Australia were born overseas.¹ However, Australia does not reciprocate them with a chance to get settled. The only way migrant workers can get permanent residency is by demonstrating their economic value and competing against one another, unless they are recognised as a refugee or have an immediate family member who has Australian citizenship or permanent residency rights.

The history of the immediate post-war era shows that competition has not always been the characteristic of Australia's migration programs. Under the flag of 'Populate or Perish', the Displaced Persons Program (1947-1952) accepted 170,000 refugees from Europe and placed them in unskilled jobs.² When the Program came to an end, the Government's immigration policy switched to identifying and responding to the needs of businesses.³ Migration policies were concocted as a means to build a labour force for Australia's manufacturing industries, although parliamentarians elucidated the White Australia Policy on the basis of its ability to uphold labour practices by reducing the competition of 'coloured' labour. Even though racial discrimination remained central to it, however, Australia's migration policy continued to be focused on permanent settlement, although on increasingly less generous terms as it evolved. This remains the case, until the reforms in the 1980s we discuss further on.

One of the most significant changes to Australia's migration regime is the growth in temporary migration in recent decades. The pivot to temporary migration was rooted in the broader socio-economic changes Australia was making in the late twentieth century. Globalisation and trade liberalisation in the 1980s and 1990s justified the need to facilitate cross-border mobility of flexible labour. The Government took a marked turn from a post-war migration policy that long favoured permanent settlement and opened a new era characterised by the exponential growth of temporary long-term migration. In the name of boosting a declining economy, the 1980s saw the introduction of a broad reform agenda that focused on labour market deregulation, removal of tariffs, and international competitiveness. These initiatives critically precipitated industry demands for both labour market flexibility as well as the liberalisation of visa rules so businesses could have better access to skills overseas.

Such a backdrop was crucial in setting the stage for the establishment of the Temporary Work visa program by 1996. Since then, the number of people entering Australia on a temporary long-term basis—who stayed for at least one year—has exceeded the number of people arriving for permanent settlement.⁴ As a result, migrant workers who arrived prior to the pivot to temporary migration enjoyed higher levels of bargaining power and agency than those who followed them since 1996.⁵

Year	Change
2021	Announcement of introduction of Australian Agriculture visa
2019	Expansion of Working Holiday visas to a third year
2018	Replacement of Temporary Skilled Work visa with Temporary Skill Shortage visa; Removal of permanent residency pathway for short-term stream Introduction of Pacific Labour visa
2014	Elimination of eight visa subclasses in family migration programs
2009	Commencement of Seasonal Worker visa trials
2008	Revision of Student visa program for automatic grant of working rights
2007	Introduction of Temporary Graduate visa
2005	Expansion of Working Holiday visas to a second year
2003	Expansion of Working Holiday visas (subclass 417 and subclass 462)
1999	Introduction of Temporary Protection visa for boat arrival asylum seekers (which was later repealed and then reinstated)
1998	Provision of \$21 million funding for international promotion of Australian education
1996	Introduction of Temporary Skilled Work visa

Figure 5. Migrant workers on temporary visas by year of arrival

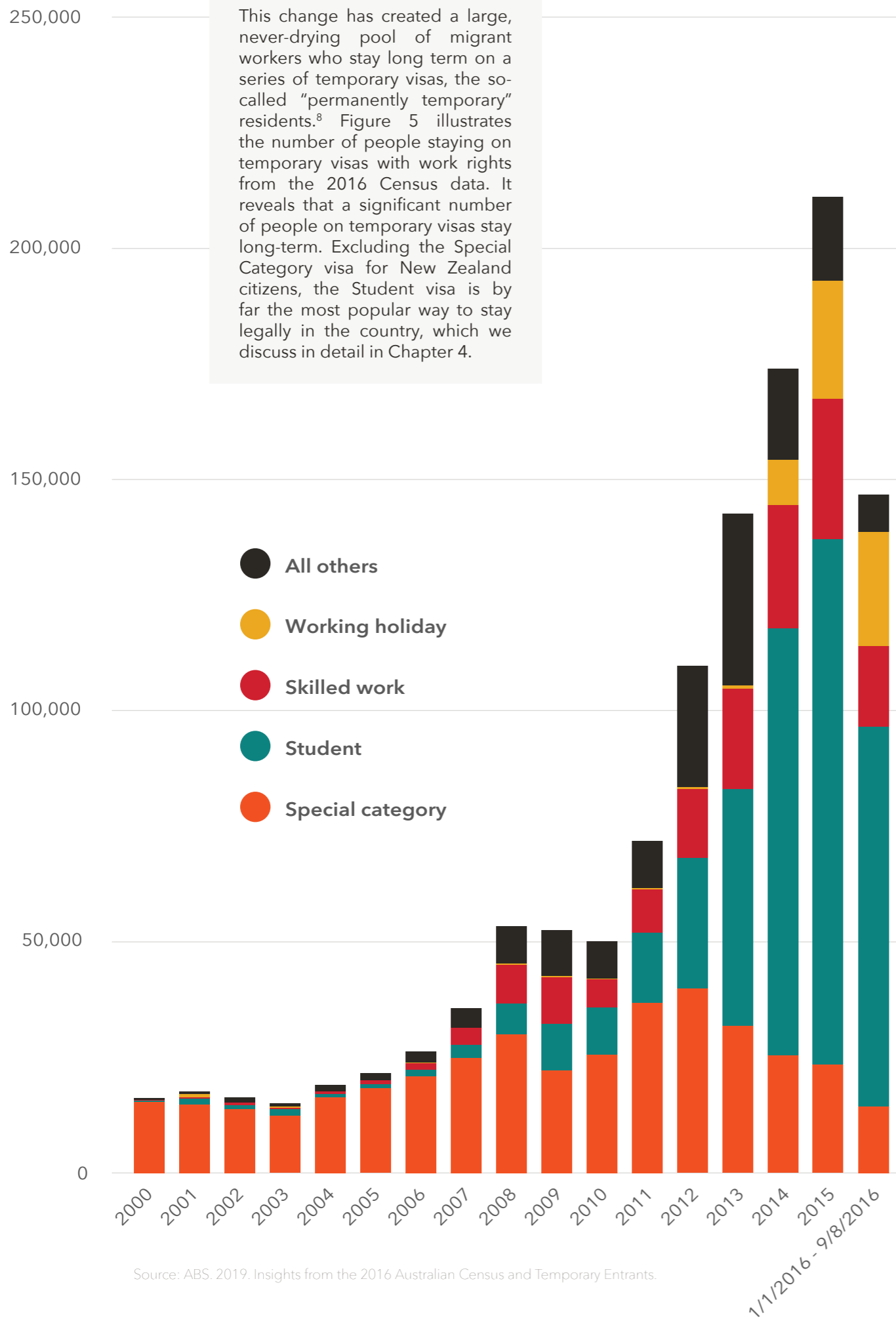
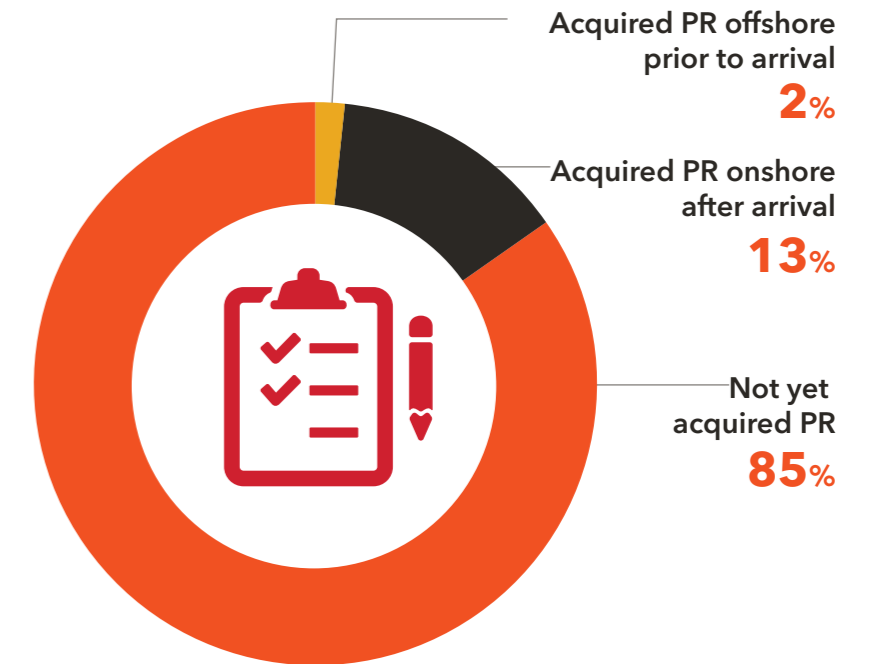


Figure 6. Survey Participants by Migration Status

98.1% of our survey participants came to Australia through one of the temporary migration programs (Figure 6). Only 13.5% managed to acquire permanent residency after arrival. It took them 5.1 years on average if we exclude those who arrived in Australia on a provisional spouse visa. Our interview participants who belonged to this group considered themselves lucky even if they struggled for so many years, as long as they acquired permanent residency in the end. Many migrant workers struggle for a considerably longer period before they lose hope of settling in Australia and leave the country for good. Among our survey participants, the longest it took for one to acquire permanent residency onshore was 13 years. During the years, the participant had to see numerous fellow migrant workers packing up their dreams, selling their household goods, and wishing them good luck.

Our in-depth interviews with migrant workers identified multiple problems with temporary migration programs. The two most cited issues were: (a) the difficulty in planning a future due to short visa expiries and frequent changes to the migration policy and (b) the vulnerability to labour exploitation while staying on temporary visas. These issues are closely related because getting sponsored by one's employer is one of the fastest ways to acquire permanent residency. Below we focus on the uncertainty and insecurity experienced by migrant workers and reserve the issue of migrant workers' vulnerability to labour exploitation for Chapters 5 and 6.

Most interviewees told the research team that they had been encouraged to come to Australia by their relatives or migration agents who said that the country was known to have jobs for migrant workers and offer ways to settle permanently. When they arrived in Australia, however, they had to witness the Government closing doors to permanent residency one by one.



The Temporary Skill Work visa (subclass 457) is the primary example. In 1996, the Government opened the era of two-step migration by making 640 out of 998 ABS-listed occupations available for the visa program and enabling the visa holders to progress towards permanent residency.⁹ The abolition of the visa program in 2018 and the subsequent creation of the Temporary Skill Shortage visa (subclass 482) resulted in leaving only 164 occupations eligible for a transition to permanent residency.

Another good example is the Working Holiday visa (subclass 416). In the past, Working Holiday Makers could apply for a three-year-long Skilled Regional Sponsored visa (subclass 487) if they had a skilled occupation and had stayed in regional areas for six months. The Skilled Regional Sponsored visa let them apply for permanent residency after

living in a specified regional area. Since the visa was closed to new applications in 2013, there is no substantive visa designed for progression from the Working Holiday visa. The only option is to extend the Working Holiday visa in exchange of mandatory farm work.

Case study 1 is one of many stories we heard from our interview participants who fell victim to the ever-changing migration policy. Fatima struggled to navigate the migration system for 13 years. Changes to visa programs make some migrant workers change jobs from one industry to a whole new one. Others make the tough decision to follow a visa option and move from one state to another. Some changes are introduced without enough prior notice or loud announcements, leaving little time for migrant workers to revise their future plans.

Case study 1.

Racing through ever-changing hurdles

Fatima (pseudonym) and her husband came to Australia in 2008. Their migration agent suggested that she get a diploma in hairdressing to apply for permanent residency. Three years later, Fatima became a qualified hairdresser.

It was not easy to find a job because competition in the job market was very high. She had to work without getting paid to gain local work experience and make connections. She extended her stay with two more student visas by taking courses she did not need. She finally found an employer who would sponsor her for a temporary skilled visa (subclass 457) in 2014. In two years, she became eligible to apply for an employer-sponsored permanent visa (subclass 186). She carefully prepared all the evidence and submitted her application.

Somehow the Government didn't open her application file for over 20 months. It was a difficult time to wait for the Government to review the application. Every night, Fatima and her husband would anxiously discuss what to do. In the meantime, the Government announced that they were abolishing Fatima's current visa

subclass because, according to the Immigration Minister, "it results, in many cases, in a migration outcome". (ABC News, 18 April 2017, "Government abolishing 457 visas, Malcolm Turnbull says".)

The Government eventually made a decision on Fatima's permanent residency application in 2018, rejecting her application. Fatima had to find another pathway because her employer didn't want her to appeal the decision and renewing her current visa became impossible.

With her migration agent's help, she prepared for a state-nominated permanent visa (subclass 190). Victoria, where Fatima and her husband had been living since their first entry to Australia, did not have hairdressing on the occupation list for state nomination. They had no alternative but to move to a new state.

She found a job in Tasmania and moved there. She would be eligible for the state sponsorship in three months. Just before she submitted her application, however, the Tasmanian state government changed the pre-application residency requirement from three months to six months

and increased the nomination threshold points from 60 to 65. Fatima's birthday was just around the corner, and she was going to lose five points by the time she met the updated residency requirement and fail to meet the new threshold points.

Fatima and her husband packed their bags again. This time they got nominated by the NSW state government for a provisional Skilled Regional visa (subclass 489). While Fatima got the nomination because she was a hairdresser, she couldn't find a hairdressing job in regional areas. She is currently working in the aged care industry.

Interviewee #1083102

Far too often, migrant workers fall victim to unexpected changes to visa regulations because visa processing takes too long. For example, it took almost two years before the Government processed Fatima's permanent residency application (Case study 1). Fatima and her husband had to stay on a bridging visa the whole time waiting for the visa processing. So many migrant workers must abide the unsettling time of bridging visas before they learn about their application results. In March 2021, the number of people staying on a bridging visa surpassed 350,000 and recorded a historical high. While staying on a bridging visa, some migrant workers lose their chance of permanent residency because the business employing them falls short of meeting all the requirements for sponsorship. Others become ineligible as their qualifications expire or their age surpasses the limit.

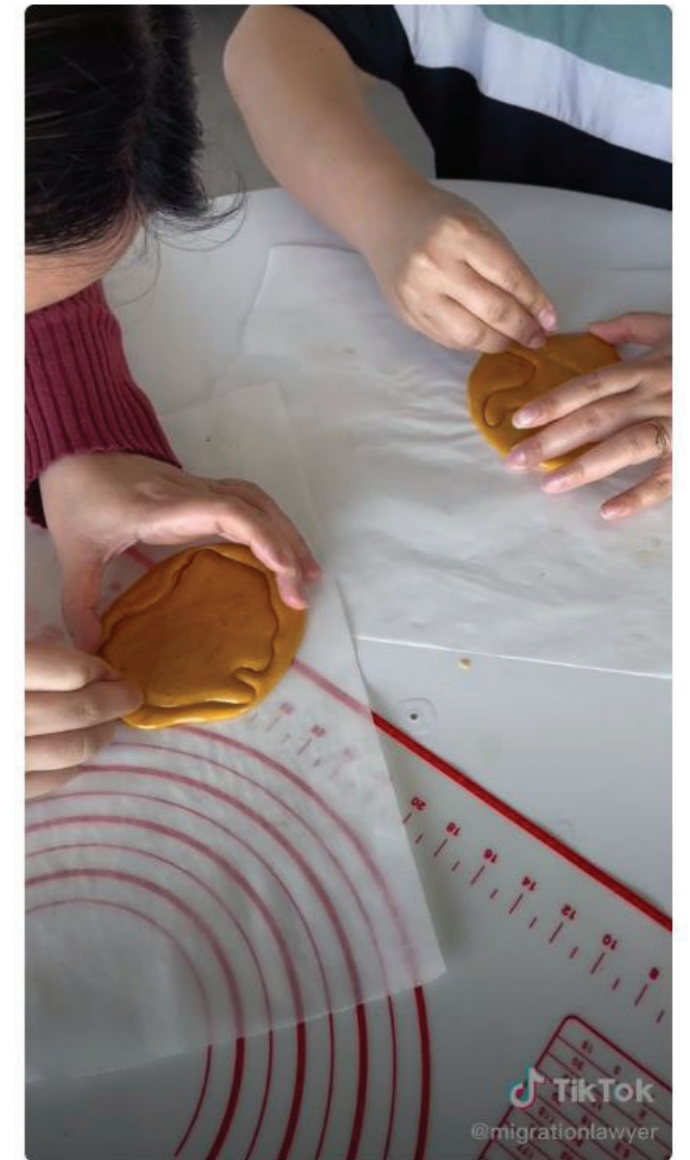
In-depth interviews also revealed that many migrant workers had no alternative but to stay in Australia. The migration system prefers people of young age who have Australian education and Australian work experience, making many migrant workers spend most of their young working years in Australia on temporary visas. After spending their 20s and 30s in Australia, most migrant workers no longer have social networks remaining active in their homeland nor do they have resources left to invest in taking a fresh start in a third country. Migrant workers find it extremely challenging to leave their job, house, and friends behind when their visa expires. Some eventually make the tough decision to stay without a valid visa.

Changing visa rules not only cause temporal delays to permanent residency but also increased expenses to keep relevant documents and credentials valid. 44.2% of our participants on temporary visas reported visa fees and associated costs as one of the challenges in pursuing permanent residency. The mental toll of insecurity and anxiety cannot be overlooked, either. Participants recorded a stress level of 8.83 out of 10 on average when they thought about their migration status. And yet, 42.9% of them had trouble accessing counselling services because they were not affordable without Medicare.

The Government has the authority to make changes to laws and policies necessary for the good of Australia, but it should not keep people living in limbo. Frequent changes to migration programs combined with extensive visa processing times mean that it is almost impossible to gauge one's chances of acquiring permanent residency. Some migrant workers have witnessed all their visa options being removed or changed while they work towards meeting the visa requirements; while others get surprised with an unexpected new pathway created for them. As a result, migrant workers encourage one another to not

lose hope for settlement and keep waiting for further changes. Whereas Australia's principle for migration was "populate or perish" in the old days, migrant workers' principle today is "persist or perish".

One migration lawyer likened Australia's permanent migration programs to the macabre game on Netflix's *Squid Game*. She said via TikTok: "Many students and skilled workers come to Australia every single year with the hope of being able to apply for permanent residency one day. [...] Here are two things I've learned as a migration lawyer. It's totally based on supply and demand. [...] And you need some luck".¹⁰ Many of our interview participants echoed her sentiment. On the surface, the migration programs seem to be objective, logical, and economically designed, but when seen from the inside, it is not so much different from a gamble.



Original source: https://www.tiktok.com/@migrationlawyer/video/701659567443114498?is_from_webapp=v1&is_copy_url=0&sender_device=pc&sender_web_id=7021381274170983938

Chapter 4. Migration as Hurdle Race



Earning Points

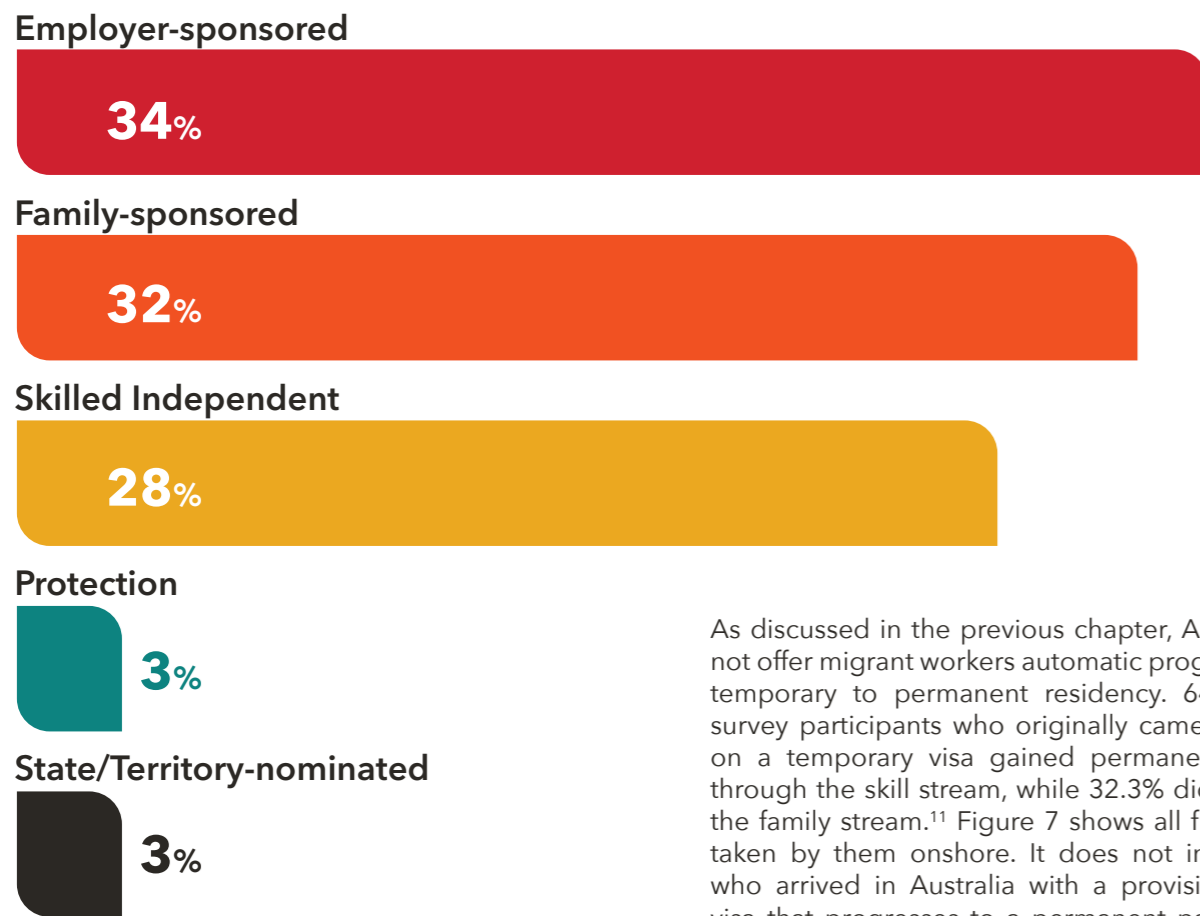
The Skilled Independent visa program uses a points-test system. The points test has been an iconic element of Australia's migration system ever since the country has refocused its migration programs on recruiting professionally skilled labour from overseas. The 1973 Structured Selection Assessment System and the 1979 Numerical Assessment Scheme paved the way towards today's points-test system that awards aspiring migrants 'points' for possessing employment-oriented qualities.¹² Politicians internationally refer to an 'Australian-style points-based system' in public debate about immigration policy.

Government. The Government then invites those who meet all the requirements to submit an application for a permanent visa. The system has undergone rounds of evolution in the following decades and become today's migration regime that ranks migrant workers by the points they are awarded according to various indicators of socioeconomic desirability and invites only the top-ranked ones by occupation for permanent settlement in Australia.

Currently as of 2021, the points-test system uses the following criteria: employment, education, language skills, age, and marital status (Figure 8). The more qualifications, experience, and skills one has, the more points they are awarded and the higher they are positioned vis-à-vis their competitors.

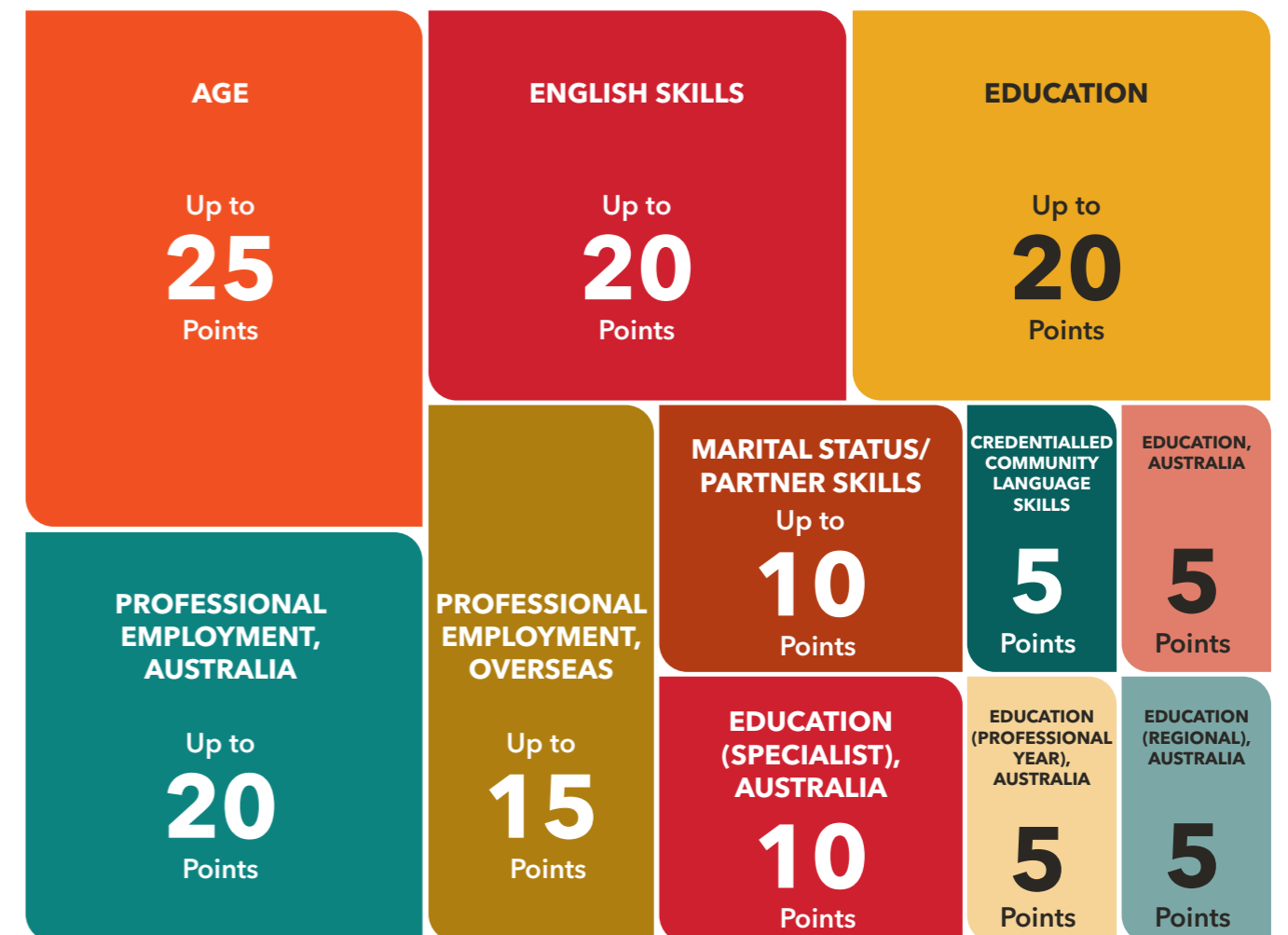
Migrant workers who have an occupation that is listed as one of the eligible skilled occupations can register their interest in permanent migration with the

Figure 7. Permanent residency pathways



As discussed in the previous chapter, Australia does not offer migrant workers automatic progression from temporary to permanent residency. 64.6% of our survey participants who originally came to Australia on a temporary visa gained permanent residency through the skill stream, while 32.3% did so through the family stream.¹¹ Figure 7 shows all five pathways taken by them onshore. It does not include those who arrived in Australia with a provisional partner visa that progresses to a permanent partner visa in time. This chapter focuses on the points-test system that is used for the Skilled Independent visa (27.7%) and State/Territory-nominated visa (3.1%). Employer sponsorship (33.8%) is discussed in Chapter 5.

Figure 8. Points for Skilled Independent visa as of 2021



“I have taken about 20 English tests, sometimes because my score expired and other times because some institutions would accept only certain types of tests. I also hired a private English tutor to help me prepare. In total, I’ve spent about \$10,000”.

(Interviewee #1090102)

“English tests in my mind are almost like computer games; they rarely represent the English I use in my day-to-day life as a registered nurse. I feel like English tests don’t serve much purpose other than getting a particular score required for whatever reason. It’s just a business”.

(Interviewee #1090102)

“I have a PhD degree from one of the top Australian universities. I have published my research and taught university classes in English. Still, I had to submit evidence that I could speak English good enough for permanent residency. I had to prove it only because I am from [an Asian country]”.

(Interviewee #1090104)

“How can one’s language skills expire? Do I stop being able to speak every three years?”

(Interviewee #1081002)

The seemingly objective criteria have numerous issues. Let’s take the example of English skills. Australia’s migration system recognises five internationally administered tests of English language ability and evaluates migrant workers’ English competency based on their score in one of the tests.¹³ A migrant worker interested in applying for permanent residency is required to include in their expression of interest a test score that corresponds to the ‘Competent English’ level. Migrant workers assert the test rarely reflects a speaker’s ability to communicate in English. The requirement does not vary by occupation nor can it be substituted with any other form of proof of one’s English language ability—including a university degree studied in English. Currently equivalent to an IELTS score of 6 for each component, Competent English is the same as what is required for entry into undergraduate university study in Australia.

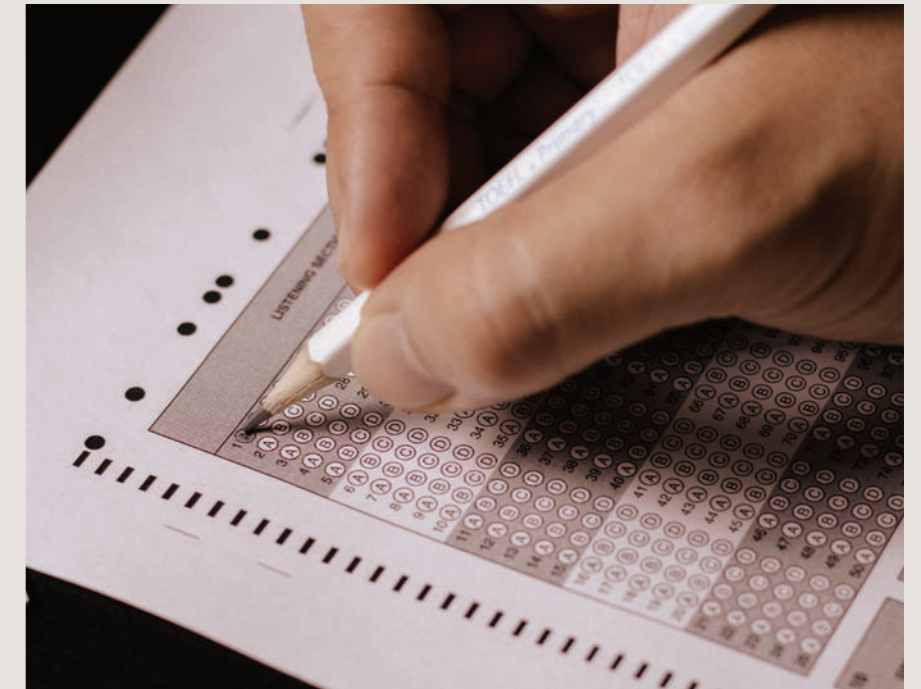
Migrant workers who have citizenship in one of the listed English-speaking countries—namely, the majority-white United Kingdom, Ireland, United States, Canada and New Zealand—are exempt from the requirement regardless of their length of residency in the country or educational attainment. Migrant workers from the listed English-speaking countries can choose to submit the test results if they want to earn extra points for having good English. Those with ‘Proficient English’ are awarded additional ten points towards their permanent residency application, and those with ‘Superior English’ 20 points.

Applicants can retake the test as many times as they wish, although this may come at a considerable cost. For example, one sitting of the IELTS costs approximately \$375, and any change to reservation or cancellation incurs further cost. As mentioned above, a migrant worker can earn up to 20 additional points for having Superior English. Considering that permanent residency is granted to the highest ranked candidates and that an old expression of interest can be bumped down by a new one with more points, migrant workers have no choice but to try their best to get the score for Superior English. Many of our interview participants (40.0%) confessed preparing for a permanent residency application was financially challenging.

English test scores are deemed valid only for three years from the test date. As a result, migrant workers need to take the test anew almost each time they apply for a new visa. As it takes increasingly more time for the Department of Home Affairs to process visa applications, some permanent residency applicants find their English test score expiring even during the visa processing period and have to retake the test to keep their application and evidence valid. This can be particularly frustrating for people who have a high level of English proficiency or who have completed significant tertiary studies in English, either in Australia or overseas.

Case study 2.

Test, test, and test ...



I had to take the English test in my homeland to apply for a Student visa, despite the fact that all my education had been in English. I remember taking the test being particularly hard for me because there was no testing centre around me. I had to travel interstate just to take the test, which is a lot of added cost on top of the actual test.

In Australia, I had to take the test again to apply for a Graduate visa. That really upset me. I did the test to come to Australia, and I graduated with a Distinction in my master’s. Seriously? It doesn’t make sense that a language expires in a couple of years. Maybe yes if you don’t use it, but come on! That’s when it became really apparent to me that the English test requirement was just a money-making scheme.

It’s so expensive when you’ve already done it and got a high score and still need to take it the second and third time around. When I took the IELTS this time, they gave me an 8.5 in every component except for writing, for which I got a 5.5. The disparity in the score was so wrong—it’s just impossible for someone to read, speak and listen at an 8.5 level and write at a 5.5. I had to redo it, which meant that I had to pay again, and they increased my writing score to 6.5 only. So I had to take the whole thing again, another \$400 down the drain.

Eventually it expired again, and I had to redo it for the Skilled visa. Same price, still annoying.

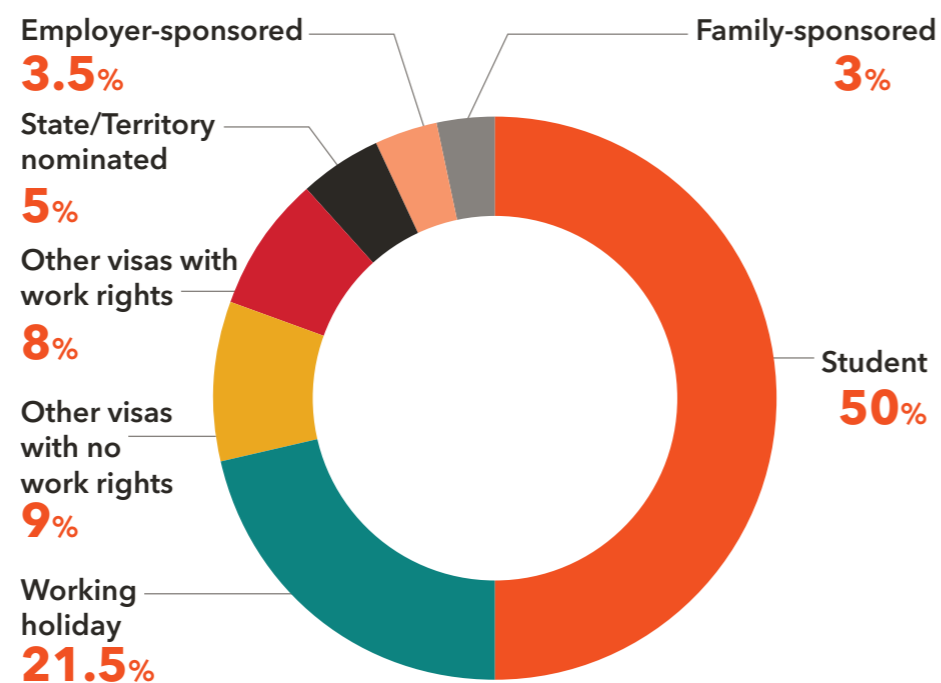
Interviewee #1072602

Some of the interviewees speculated that the English test score requirement was just another barrier the Government has established to delay or discourage migrant workers' permanent residency application. In addition to the test being expensive to take and difficult to pass, it is not possible to find a test centre away from metropolitan areas, even in Australia. In addition, migration requirements or test score ranges change time to time, forcing migrant workers to take the test again to meet the updated regulations.

The English language is rooted in Australia's history of exclusionary migration policies, which perceived migrant workers from English-speaking countries to be more aligned with 'Australian values' and favoured them over others. The requirement of high-level English ability regardless of the nature of migrant workers' occupation is underpinned by the public discourse that suggests English proficiency to be an indicator of the moral character of new Australians.¹⁴ A migrant worker fluent in English is believed to be more willing to assimilate into Australian society. Although 'good' English language skills may help promote social cohesion, research suggests that migrant workers' first language has no significant bearing on their degree of social connectedness.¹⁵ Given almost half the Australian population are born overseas or have one parent who was, the idea that there are uniquely Australian values is questionable. The rhetoric merely justifies imposing discriminatory barriers to effectively discourage the settlement of migrant workers who are deemed less 'desirable'.

Notably, English proficiency is one of many hurdles a migrant worker needs to pass under the points-test system. Our interview participants shared their experience with various challenges specific to their occupation that are beyond the scope of this report. What they tried to tell us was the same: the points-test system is far from fair and objective.

Figure 9. Temporary visas used for initial arrival



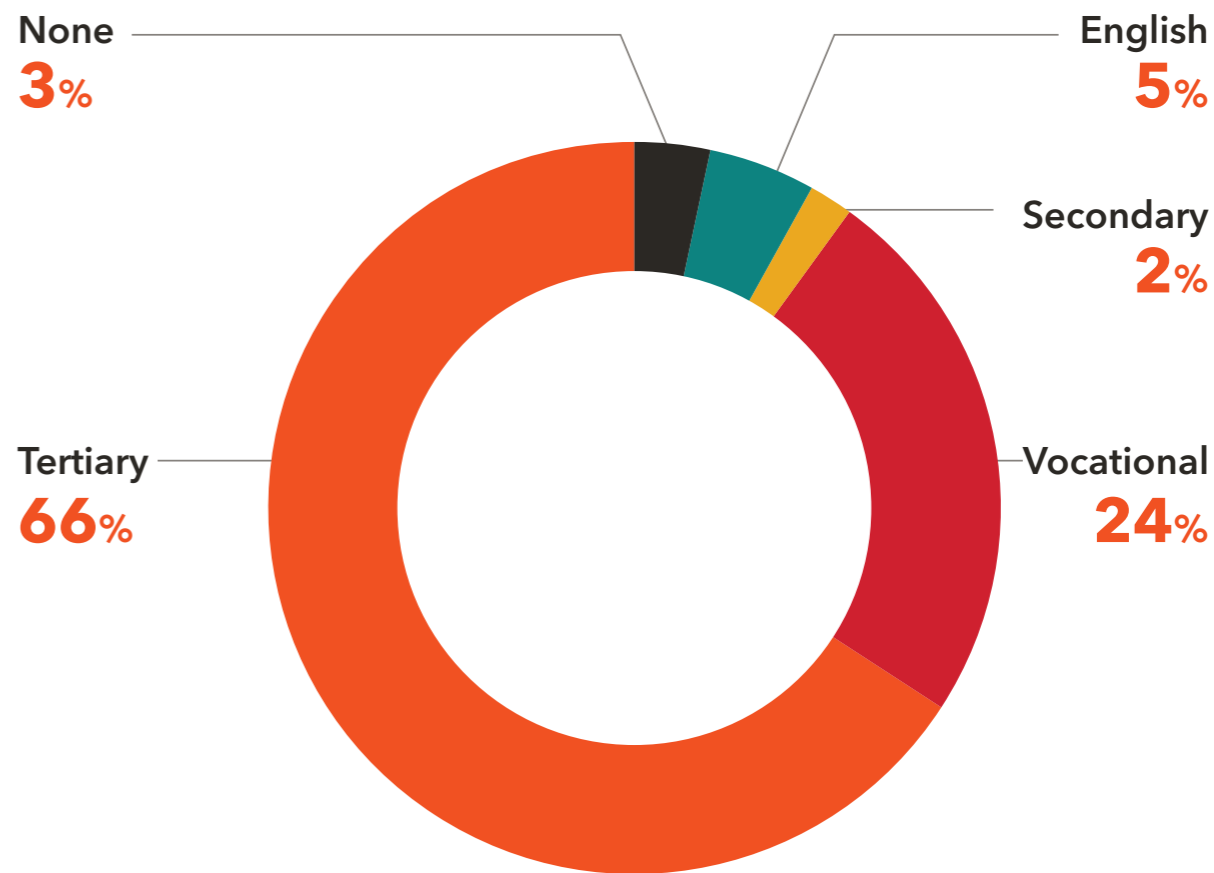
Besides, as long as the Government can make arbitrary changes to the minimum points required and the number of aspiring migrants to invite, it can be a never-ending race. Suppose you have 90 points, and there are 100 other migrant workers who score 91 points or higher. If the Government decides to invite more than 100 migrant workers, you will be invited along with all the others who are ranked higher than you. If the Government invites only 100, on the other hand, you will miss the invitation by a mere one-point difference. Indeed, when the COVID-19 pandemic broke out in 2020, the Government substantially reduced the number of migration places available, resulting in the rise of invitation cut offs for most occupations. To make matters worse, while you wait for the next invitation round, you could lose points as you get older or if your credentials expire. Your score might remain the same but you could be ranked lower in the next round if new migrant workers with higher points joined the queue.

Studying to Stay

The aforementioned points-test table (Figure 8) shows that the way of earning points that is relatively more within one's control is to get as much education as possible, preferably in regional Australia. As a matter of fact, the Government has invested a huge amount of money to promote Australian education programs in the international market, especially to young people in Asian countries, and revised the points-test system to encourage migrant workers to get as much education as possible in Australia.¹⁶

For example, a migrant worker who earned a Bachelor's degree from a university in regional Australia can be awarded 25 points in total: 15 points for the degree, 5 points for getting the education in Australia, and 5 more points for finishing the degree in regional Australia. If what the worker studied in

Figure 10. Australian education attainment after arrival on Student visa



Australia is either accounting, computer science, or engineering, they can try taking an additional course called Professional Year and raise their total education points to 30. On the other hand, a migrant worker who came to Australia after receiving a Doctoral degree from an internationally recognised university can be awarded 20 points for the degree and nothing more.

Consequently, many migrant workers pursue education in Australia. The Government accommodates the demand by issuing an unlimited number of Student visas each year. Universities and vocational schools welcome international students with open arms as they pay a higher tuition fee than domestic students. In the 2000s, the number of people on Student visas grew at the average annual rate of 13.9 per cent every year.¹⁷ Today,

Australia hosts the world's second largest number of international students after the United States, and the education industry was one of Australia's largest service exports, contributing over \$40 billion a year to the economy prior to the pandemic.¹⁸

Indeed, among our survey participants, taking out a Student visa was the most popular way (50.0%) to come to Australia (Figure 9). This group included both primary visa holders (who are required to stay enrolled in an education program) and secondary visa holders (who are the family members of the primary visa holders). Nonetheless, an absolute majority (96.6%) of the group received some type of education upon arriving in Australia (Figure 10). Those who received either vocational or tertiary education accounted for 89.9% of the Student visa arrivals.

It is important to note that most (84.6%) of the Student arrivals had already completed vocational or tertiary education before coming to Australia. Some could have pursued further education in Australia for their own professional development, but our in-depth interviews suggest that many took the trouble to increase their chances of permanent residency. It is not always easy to have their homeland education recognised in Australia. Other times, migrant workers choose to take out a Student visa, anticipating the local network building opportunities and the possibility to apply for a Graduate visa afterwards. Besides, the skills they bring to Australia sometimes lose their value as the Government introduces changes to the skilled migration program. As a result, migration/education agents often advise migrant workers to take a new career path different from their passion to improve their chances for permanent residency.

Case study 3.

Migrant worker, always a student?

I wanted to leave my homeland and consulted a migration agent. The agent suggested that I go to Australia as a student. He said that Australia offered a great quality of life, and it was easy to get settled there, and international students could support themselves with part-time work.

I decided to become a chef and acquired a Certificate IV in small business management. The Student visa was the only way to extend my stay. I got a Diploma of management, Advanced Diploma of management, Certificate IV in commercial cookery, Diploma of hospitality management, and Advanced Diploma of marketing. [...]

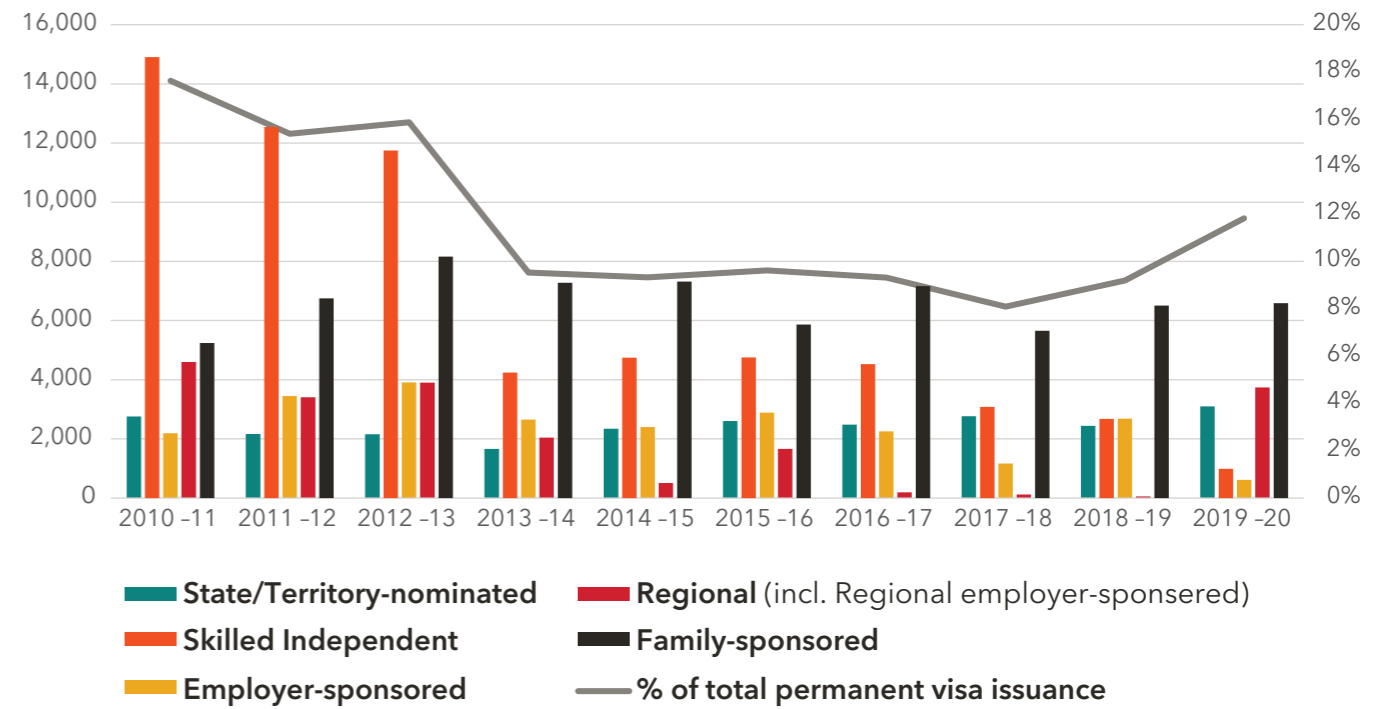
After eight years on a series of Student visas, I finally got an employer sponsorship visa. Things didn't work out, unfortunately. My migration agent suggested I apply for yet another Student visa. Since then, I got an Advanced Diploma of hospitality management and an Advanced Diploma of leadership and management.

Interviewee #1082301

Migration agents and the Government give migrant workers the impression that acquiring Australian education will give them a better chance to progress toward permanent residency. In reality, the so-called 'PR occupations' do not guarantee permanent residency. Australian education does help migrant workers win a few extra points in the points test. However, the 'skill point inflation' is so high that the cut-off has often gone up by the time international students graduate, leaving them still short of points to compete against people with more education and years of experience.

Other migrant workers resort to a Student visa when they have exhausted all other visa options to extend their stay. After all, the Student visa is the easiest visa to acquire because one only needs to pay for a course. Among the survey participants who had arrived in Australia on a temporary visa other than a Student visa, as much as 46.1% pursued vocational or tertiary education while in Australia. Extending stay with temporary visas is so challenging that they cannot help but resorting to the Student visa.

Figure 11. Permanent visas acquired by people on Student visas (DHA data)



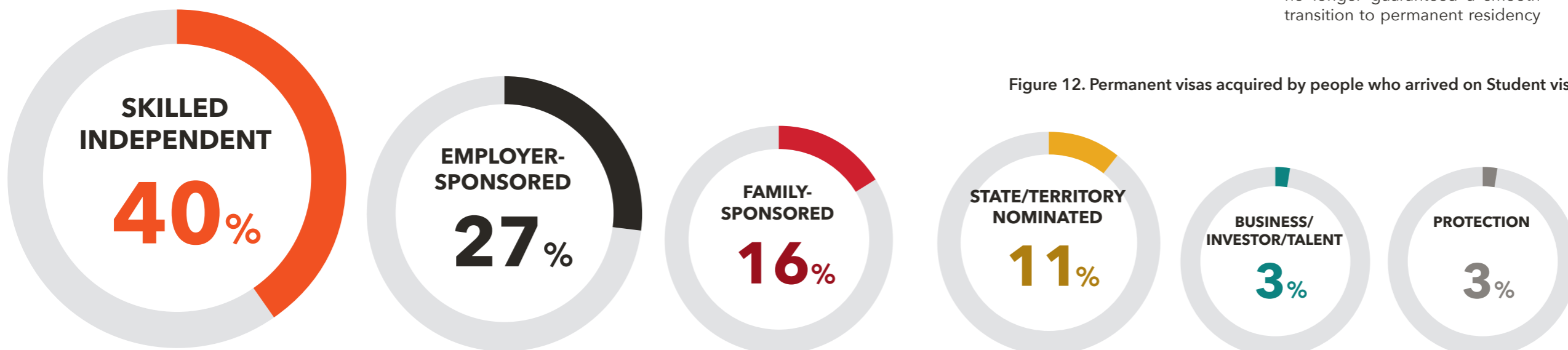
Source: DHA. 2020. Australian Migration Statistics.

Figure 11 shows that despite all the education being undertaken, it is becoming increasingly difficult to acquire permanent residency. In the past, the Skilled Independent visa was the most popular way for former international students to become permanent residents, and they were the largest source of permanent skilled migrant workers as well. Now, most people cannot move directly from a Student visa to a Skilled Independent visa. It can take up to 20 years, and even then, only 16 per cent can acquire permanent residency while the rest give up and leave the country.¹⁹

Permanent residency was relatively accessible for international students until 2013 through Training and Graduate visas or the Skilled Sponsored visa (subclass 886). The steep growth of the international student population in the 2000s, however, challenged their status of 'ideal migrant workers'.²⁰ It became evident that international students were overrepresented in the vocational education sector in the pursuit of permanent residency, with many of them failing to obtain intended skill levels or achieve employment outcomes.²¹ Australian degrees no longer guaranteed a smooth transition to permanent residency

as changes were made to the migration policy. Figure 12 shows that among our survey participants, the most secure pathway for Student visa arrivals was a Skilled Independent visa (40.5%), followed by employer sponsorship (27.0%) and family sponsorship (16.2%). It took on average 5 years on various temporary visas before they acquired permanent residency. Readers are advised to take caution when reviewing Figure 11 and Figure 12 together because the former illustrates a direct transition from a Student visa to a permanent visa, whereas the latter does not.

Figure 12. Permanent visas acquired by people who arrived on Student visas (MWC data)



Surviving Labour Exploitation

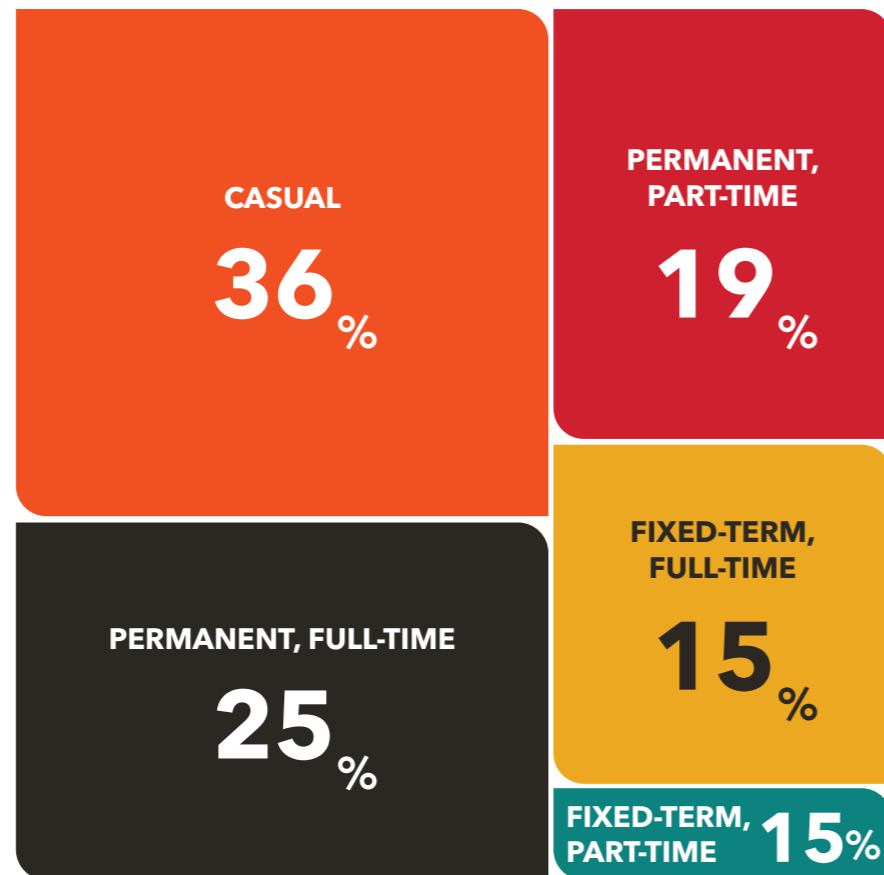
Migrant workers often experience downward mobility in their career upon arrival in Australia. Lacking local networks, not being a native speaker of English, and most importantly, holding a temporary visa are the three most frequently cited reasons according to our interview participants. Our interviewees all reported the experience of being unable to apply for certain job opportunities because the advertisements would read “citizens and permanent residents only”. Nonetheless, migrant workers are blamed for ‘stealing jobs’.

36.6% of the survey participants stated that they had been denied a job at least once because they held a temporary visa. Businesses are reluctant to offer migrant workers a professional job because the workers’ continued service is contingent on their visa extension. Employers perceive migrant workers on temporary visas as a risk factor that can potentially disrupt their businesses. As a result, many migrant workers become willing to take whatever job is available around them and often work in sectors that do not require the skills and qualifications they have. The skills-employment mismatch is particularly prevalent amongst migrant workers from non-English-speaking backgrounds.²²

“Most migrant workers do not come from a rich family. In many cases, the family back home took out a loan to send us to and support us in Australia, hoping we would get settled here someday. The reality is that we have little chance to acquire permanent residency and can merely survive here by enrolling in unnecessary courses available and picking up whatever jobs available. A friend of mine says, ‘we’ve been cheated by the Australian Government’. The Government is very much aware of this problem but does not do anything to fix it”.

(Interviewee #1080401)

Figure 13. Employment status of migrant workers on temporary visas



Our interview participants blamed the Government more than businesses for their job insecurity. They feel betrayed by the Government that seems to make permanent residency ever more unreachable however hard they try. Operating various uncapped temporary migration programs while imposing strict quotas for permanent migration, the Government is deliberately creating a large pool of migrant workers on temporary visas. Migrant workers’ job insecurity is a structural product of Australia’s gate-keeping migration policy.

Additionally, most temporary visas come with conditions that limit work rights, making it even more difficult for migrant workers to find work.

Figure 13 shows our survey participants who were employed while holding a temporary visa. Almost two thirds of them (68.8%) had stayed with a job for over a year, with 22.3% of all doing so for over three years. The largest number of them were employed in the job on a casual basis (35.7%), followed by permanent full-time employment (25.3%).

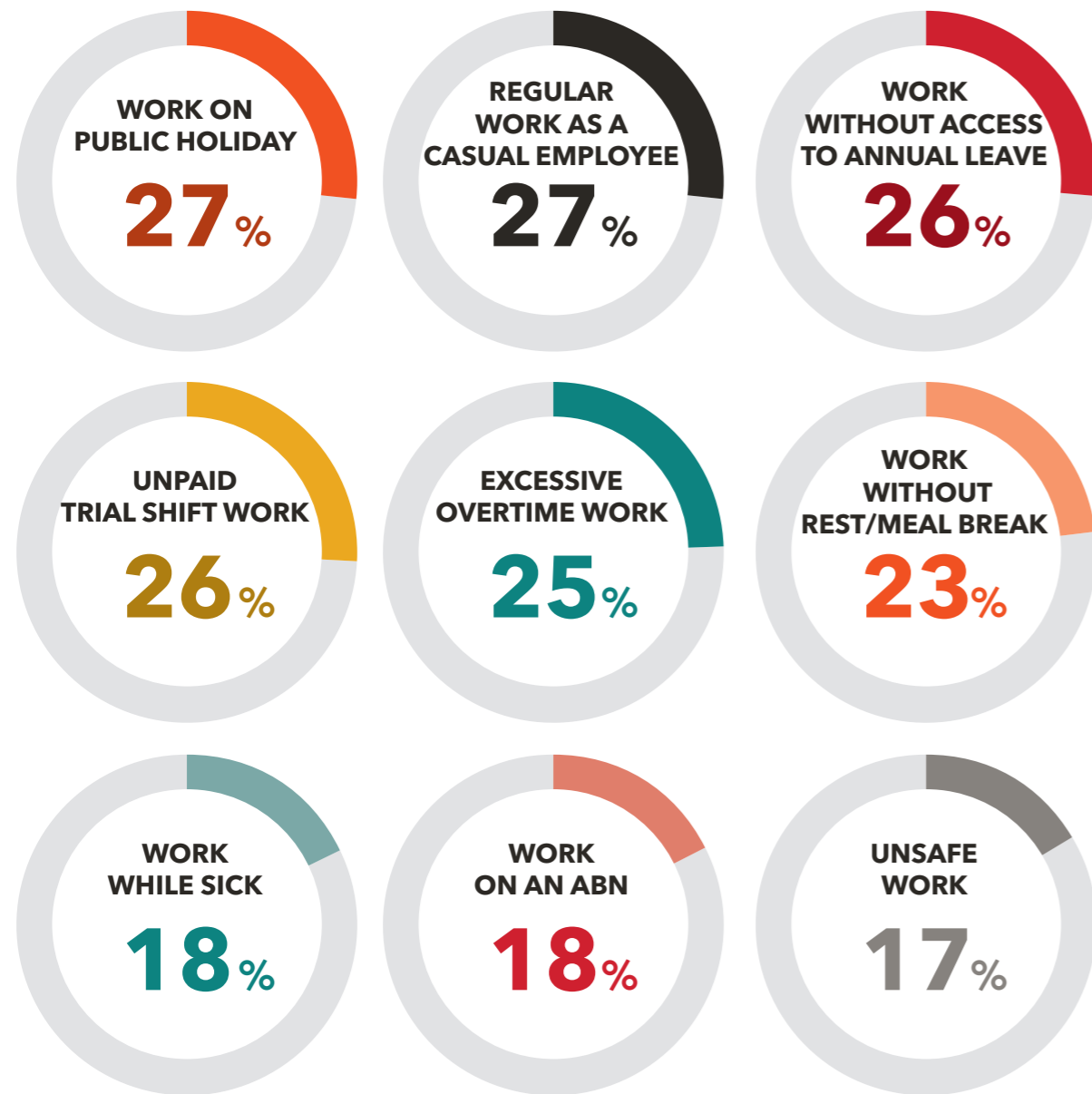
While permanent full-time and casual subgroups are at opposite ends in terms of job security, both confessed that they experience a high level of stress when thinking about their job security in Australia: 7.95/10 among casual employees and 6.01/10 among permanent full-time employees. Half of the casual employees (50.4%) were holding a Student visa. The earliest arrival among them was a Student visa arrival in 2008.

On the other hand, only 12.0% of the permanent full-time employees were holding a Student visa. They are likely to be spouses of post-graduate students. Post-graduate students and their spouses are not subject to Condition 8105 that prevents Student visa holders from working more than 40 hours per fortnight. Our interviews revealed that spouses of post-graduate students tend to be highly professional and have substantial overseas experience in their respective fields.

Regardless of their employment status, migrant workers on temporary visas invariably received a lot of pressure at work in violation of workplace rights. Among our survey participants, the most frequent complaints were about work hours (Figure 14). One in every four migrant workers were pressured to work without enough breaks, perform overtime work, and work on public holidays. Full-/part-time employees were denied access to annual leave, and casual employees were not given a chance to convert to permanent employment when they were engaged on a regular basis. Experience of unpaid trial shift work was equally abundant.



Figure 14. Pressure at work in violation of workplace rights (multiple responses)



A significant portion of migrant workers are exposed to labour exploitation and wage theft. Indeed, **64.8% of our survey participants on temporary visas experienced wage theft while working in Australia.** Wage theft may be motivated by many factors such as greed or market pressure, but only one factor enables employers to commit wage theft: the power imbalance between employers and workers. Wage theft disproportionately targets migrant workers on temporary visas because the power gap between them and their employers is even greater. This suggests that wage theft is likely to occur as long as there are migrant workers whose workplace rights are restricted by

visa conditions and who are left with limited recourse as well as employers who remain unafraid of the Australian justice system.

For example, temporary skilled visas are directly linked with employer sponsorship and can be cancelled after their holders lose jobs unless they find another sponsor in 60 days. This condition does not exempt circumstances where workers lose jobs due to employers' abuse, making it difficult for workers on these visas to fight against wage theft for fear of losing not only their jobs but also their livelihood and right to residency. On the other hand, Working Holiday visa holders must complete a prescribed minimum period of government-specified

work to be eligible to apply for extensions on their visas. Some employers take advantage of the condition and commit wage theft against Working Holiday Makers who have little alternative but to endure exploitation.

Reporting one's exploitative employer to the Government may have adverse effects on the migrant worker's visa status and potentially harm their settlement plan. They might lose a pathway to permanent residency because they no longer have a sponsoring employer. In addition, there is no practical mechanism for temporary visa holders to maintain their lawful status in Australia while they pursue employment-related proceedings which often

take longer than the validity of most temporary visas. Another barrier is the fear of harming their chances to continue living in Australia by reporting wage theft or other breaches of workplace rights. Migrant workers often do not have clear information about their entitlements or Australian migration schemes and worry that any records of legal procedures might ruin their prospects of acquiring permanent residency. Although the Fair Work Ombudsman assures that a breached temporary visa with work rights will not be cancelled where workers request the Fair Work Ombudsman's assistance, the assurance protocol is a

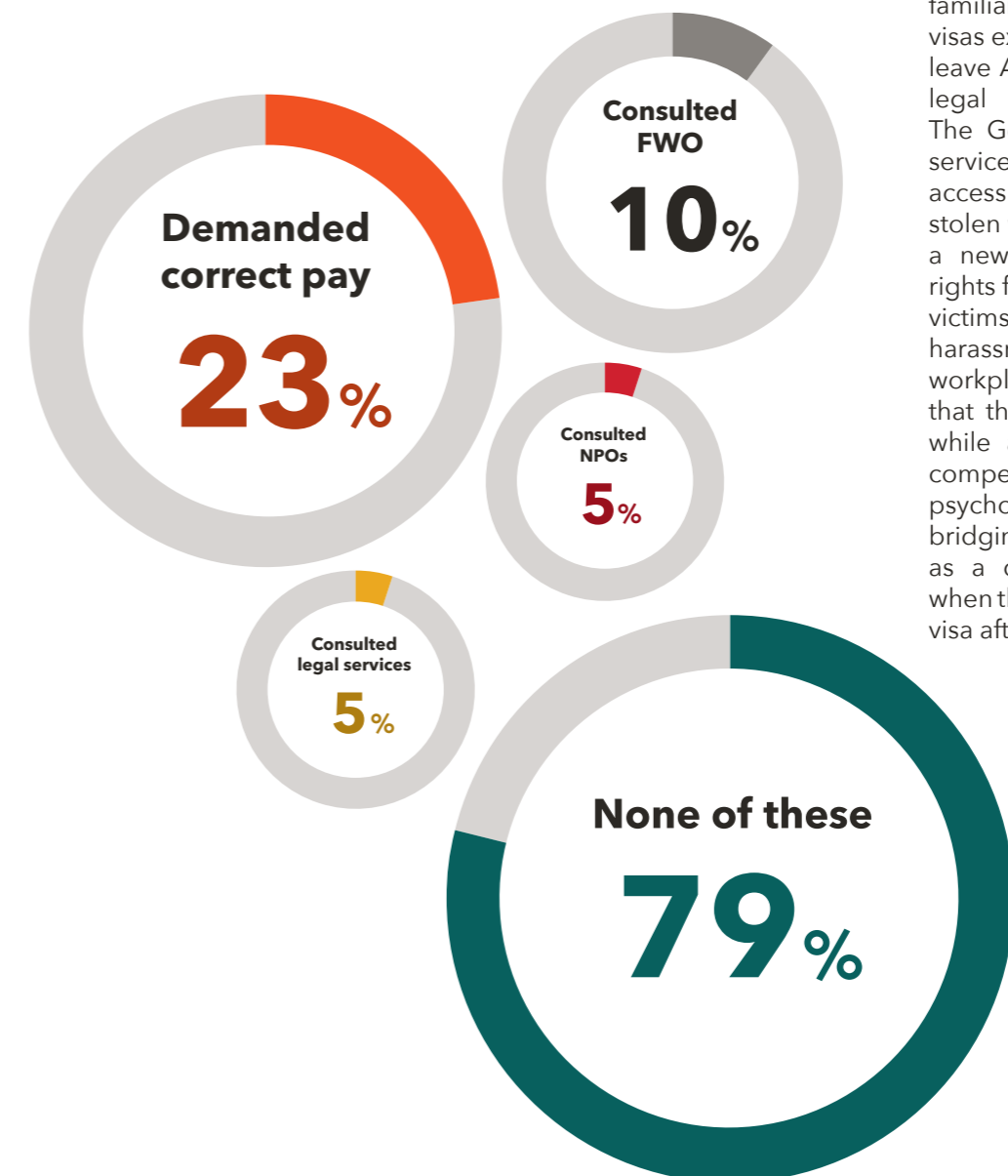
bureaucratic agreement between government agencies that most migrant workers are not aware of. Besides, it does not guarantee that there be no adverse action in assessing the workers' subsequent visa applications. The short expiry of many temporary visas or their dependence on employer sponsorship makes the protection not practical enough to encourage migrant workers to take the risk of contacting the Fair Work Ombudsman.

A clear and strong firewall between the Fair Work Ombudsman and the Department of Home Affairs should be created by making comprehensive improvements to

the existing Assurance Protocol to protect whistle-blowers. When a migrant worker reports labour exploitation, any breaches of visa-specific work conditions should not provide a ground for cancelling the worker's current visa. Also, they should not be made subject to the visa eligibility criterion "Have complied with previous visa conditions" in their lifetime in Australia.

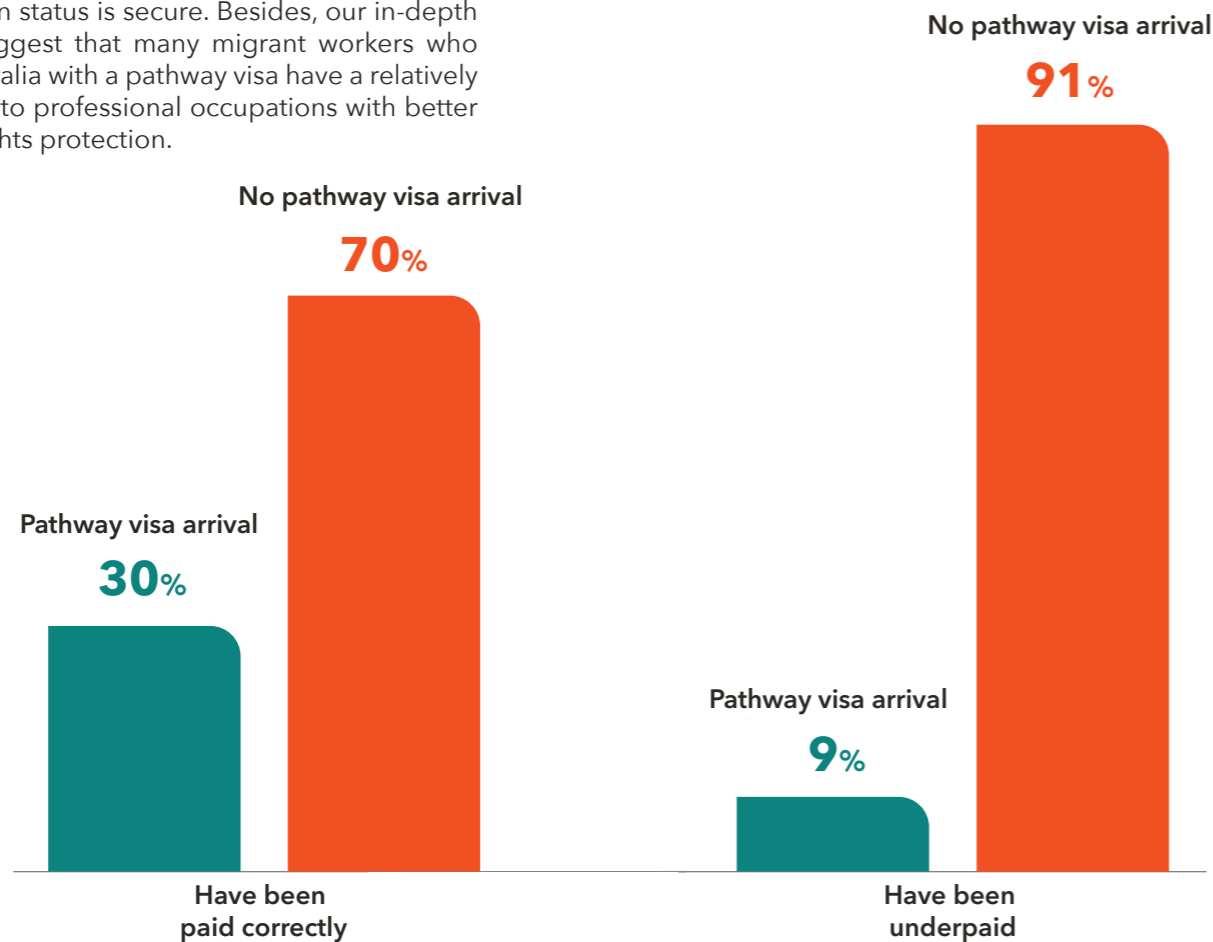
Fewer restrictions on work rights are guaranteed to help migrant workers feel more secure and confident to find work and will increase the chances of migrant workers' reporting employer contraventions. Additionally, migrant workers' access to courts and tribunals should be improved. The Australian justice system is not familiar to them, and temporary visas expire and force the victim to leave Australia before the lengthy legal processes are complete. The Government should expand services for migrant workers' access to court and recovery of stolen wages. It should also create a new bridging visa with work rights for migrant workers who are victims of workplace exploitation, harassment, or injury and have workplace claims pending so that they can stay in the country while accessing justice in court, compensation, or medical/psychological treatment. The bridging visa should be regarded as a qualifying substantive visa when the victim applies for another visa afterwards.

Figure 15. Reaction to wage theft (multiple selections allowed)



We have attempted various correlation analysis to better understand migrant workers' wage theft experience. Two variables did matter: gender ($p = 0.016$) and arrival visa type ($p < 0.001$). Women reported a higher rate of wage theft experience than men. Also, the survey results show a positive correlation between migrant workers' original entry visa types and their experience of exploitation. Figure 16 shows that 90.9% of migrant workers who experienced wage theft in Australia had originally arrived with a visa with no pathway to permanent residency such as Student or Working Holiday visa. This implies that employers find it more convenient to take advantage of people on no-pathway visas than those on pathway visas, probably because the former are less likely to stay in Australia forever to bear witness to their wrongdoings. Also, migrant workers feel more confident to stand up for their rights when their migration status is secure. Besides, our in-depth interviews suggest that many migrant workers who come to Australia with a pathway visa have a relatively better access to professional occupations with better workplace rights protection.

Figure 16. Experience of wage theft by arrival visa type



Interestingly, we found no statistically significant difference between migrant workers with high levels of education and those without it, irrespective of homeland or Australian education. This suggests that all the education migrant workers received in Australia did little to protect them from exploitation. Regardless of education level, migrant workers are not well informed about Australia's industrial system and their workplace rights. In-depth interviews with migrant workers who received education in Australia suggest that both tertiary and vocational education programs focus on improving employability but rarely pay attention to issues workers may face at work.

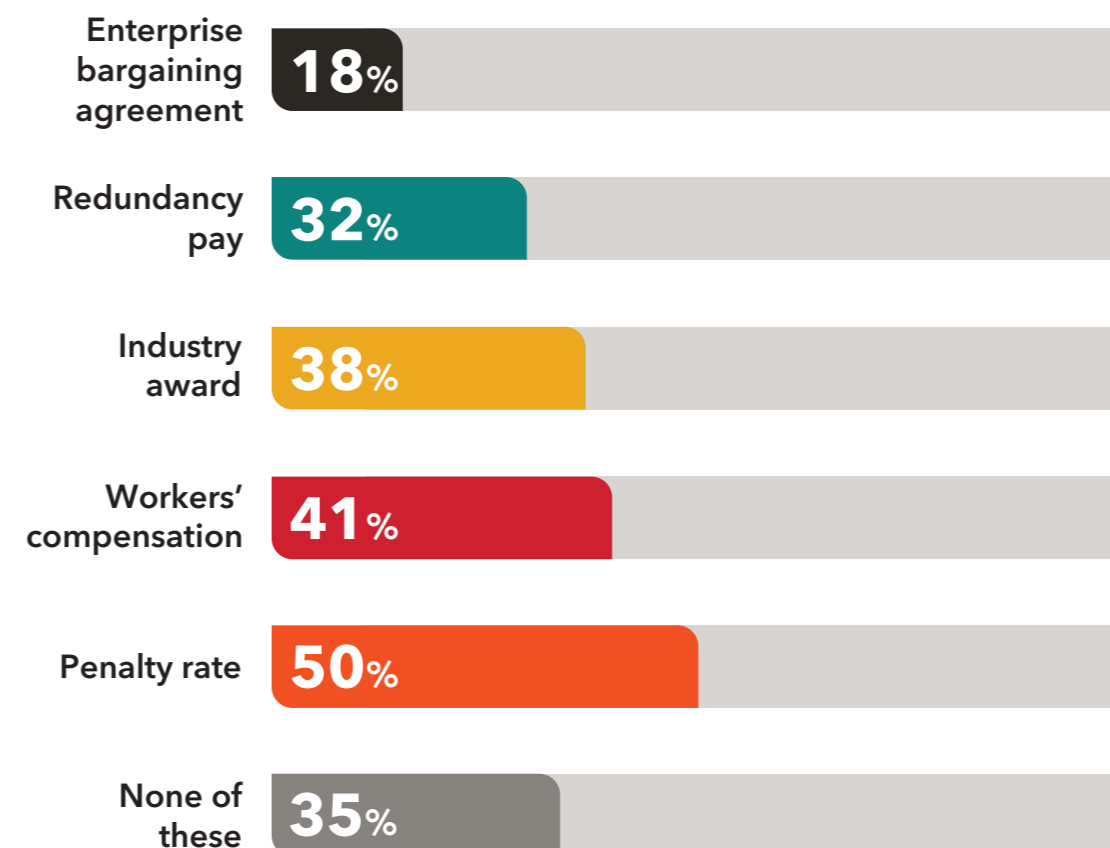
"The quality of education I received in Australia was very poor. I later learned that 35 per cent of the tuition I paid goes to my education agent. No wonder the education was poor quality. Australian universities are not interested in educating international students, either. They just want to take advantage of the Student visa program".

(Interviewee #1080401)



We asked our survey participants if they were familiar with some basic industrial relations terms: penalty rate, workers compensation, industry award, redundancy pay, and enterprise bargaining agreement. Figure 17 shows that none of the terms was known to a majority of survey participants. It is likely that these results overstate the knowledge of the wider migrant worker population, because many of the survey participants were followers of the Migrant Workers Centre on social media who were more exposed to topics about workplace rights than the wider migrant worker population.

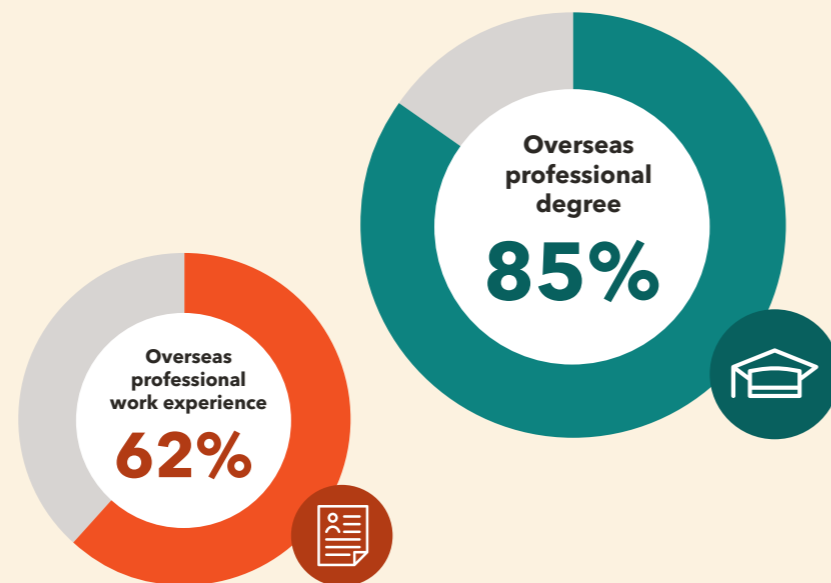
Figure 17. Familiarity with Australian industrial relations terms





In the previous chapter, we have shown that migrant workers who arrive with a no-pathway visa are more likely to be exploited in Australia than those with a pathway visa. This does not mean, however, that migrant workers arriving with pathways are immune to exploitation. This chapter shows that one of the main pathways to permanent residency—employer sponsorship—also directly creates the conditions for migrant workers to be exploited.

Profile of Migrant Workers on Temporary Employer-Sponsored Visas



Migrant workers who work in the country through the skilled migration program are highly skilled workers. Only a limited number of occupations of ANZSCO skill levels 1, 2 and 3 are eligible for an employer sponsorship.

All our survey participants on temporary employer-sponsored visas were aged between 25 and 44, likely owing to the age requirement of employer sponsorship. 81.8% were full-time workers because both primary and secondary visa holders participated in the survey. Half of the group (50.0%) were women.

84.8% of this group had finished either tertiary or vocational education before coming to Australia, and 61.8% came with years of overseas experience in their respective areas of work. Those with no overseas experience had come to Australia mostly on either a Working Holiday visa or a Student visa and pursued further education in the country.

Structural Dependency

Employer sponsorship has largely two sides to the application process. First, a business interested in employing a migrant worker must prove to the Government that it is in active and lawful operation, has a genuine need for a paid employee, and will pay the employee at the annual market salary rate or above. Next, the worker must demonstrate to the Government that they are healthy and law-abiding persons, speak English, and have the right skills and qualifications to do the job for which the business nominates them. When the Government approves both the business' and worker's applications, the worker is granted a visa.

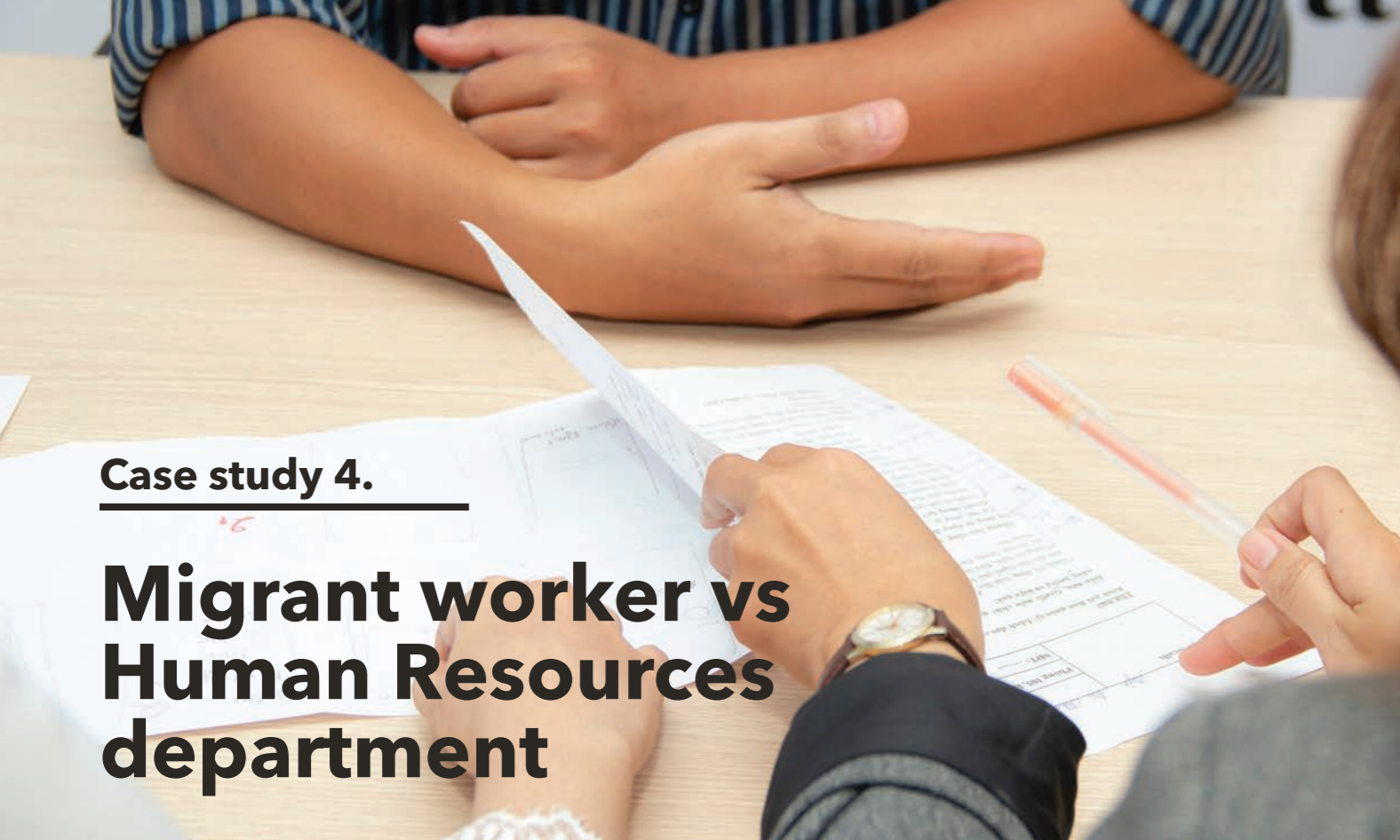
It is not easy to become a sponsoring employer. A business must show the Government its organisational structure, business activities, and financial statements, among others. Preparing the documents properly requires professional expertise and costs the business owner a lot of attention and money. Besides, the business must pay the sponsorship application fee and the Skilling Australians Fund levy. No business enjoys being audited by the Government and paying expenses. As a result, migrant workers find it more challenging to find a business that is eligible and willing to sponsor them than meeting all the eligibility requirements for themselves.

When nominating a migrant worker to a position of employment, the employer has two options, depending on the worker's qualifications and experience. The first option is to sponsor the worker for permanent residency straightforwardly (as known as the "Direct Entry" scheme).²⁵ The other takes a transitional approach and involves two different visas—a temporary sponsored visa for the first few years, followed by a permanent sponsored visa (as known as the "Transition" scheme).

The transitional approach costs more time and money for both the employer and the worker in the long run. Nonetheless, many migrant workers told the research team that businesses prefer the Transition scheme even when the worker meets all the qualifications and experience requirements of the Direct Entry scheme. This is because the transitional approach gives the business the power to decide whom to sponsor for the transition to permanent residency and when to do so under the Transition scheme. This power, subsequently, creates a fear in migrant workers that their livelihood in Australia is at the hands of the employer. What businesses do not realise is that they acquire the power under the Transition scheme in exchange for reduced productivity because migrant workers cannot fully concentrate on work while worrying about their migration status (Case study 4).

Ever since the Government adopted the concept of 'skilled' migration through the introduction of the Numerical Assessment Scheme in 1979, businesses sought greater access to flexible overseas labour through not only labour market deregulation but also variations to visa regulations.²³ In the early days, migrant workers with temporary employer sponsorship were mainly European males with managerial occupations. As the skilled migration program expanded, the demography of sponsored workers changed to include many semi-skilled occupations and both men and women from a wide range of countries of origin.²⁴

Employer sponsorship became a prominent temporary migration program when the Government created Australia's iconic temporary employer-sponsorship program in 1996. Originally titled Business (Long Stay) visa (subclass 457), this subclass facilitated the de-regularisation of the country's migration regime. It underwent numerous changes regarding eligibility, requirements, and conditions. It was rebranded as Temporary Work (Skilled) visa in 2012, only to be transformed again into Temporary Skill Shortage visa (subclass 482) several years later.



Case study 4.

Migrant worker vs Human Resources department

I came to Australia in 2016 with a degree and three years of work experience in computer engineering. I acquired another degree in Australia to increase my chances of employment and permanent residency. Luckily, I got a job while I was still in the degree program. I worked for my employer part-time during my Student visa years and full-time with a Graduate visa.

By the time my Graduate visa came to an end, I had met all the requirements and earned high enough points for any permanent visa. My migration agent advised me not to apply for a Skilled Independent visa but to ask my employer to sponsor me for permanent residency through the Direct Entry scheme because the Government prioritises employer-sponsored visa applications over any others. Indeed, according to the Department of Home Affairs' website, the processing time for employer-sponsored visas was only a couple of months while other visas could take years.

I showed my boss how much better work I could do for the company when I was not constantly worried about my migration status. I asked for sponsorship for a permanent visa, but the human resources manager suggested that the company first sponsor me for a temporary skilled visa. I had already worked for the company for three years on temporary visas and met all the requirements for sponsorship for a permanent visa. I couldn't bear any more insecurity with another temporary visa. I had hard time persuading my boss that I cannot perform my optimum if they get me a temporary visa because I would need to keep updating my credentials to prepare for the time the visa expires.

My permanent employer-sponsored visa was issued just before COVID-19 landed in Australia. The company dismissed all employees on temporary visas, and I understood why the human resources had proposed a temporary sponsorship for me. I was saved because my permanent visa was processed quickly as my migration agent predicted.

Interviewee #1082301

According to our survey, participants who held a temporary employer-sponsored visa recorded the highest stress level (9.66 out of 10) when they were asked about their migration status, compared to holders of any other temporary visa (Figure 18). This is because employer-sponsored visas are the only type of visa that ends upon dismissal or resignation

of employment. For example, people holding a Temporary Skill Shortage visa (subclass 482) might have their visa cancelled if they stop working. Condition 8607 of the Migration Regulations states: "You must not stop working for more than 60 consecutive days [for the business that nominated you]. ... If you want to change your employer, your new proposed

employer must get a nomination approved before you can start work for them".²⁶ This condition may ensure that the visa serves its intended purpose of meeting labour shortage but will do so at the expense of migrant workers' workplace rights and distorting labour market mobility.

Figure 18. Stress level when thinking about migration status by current temporary visa

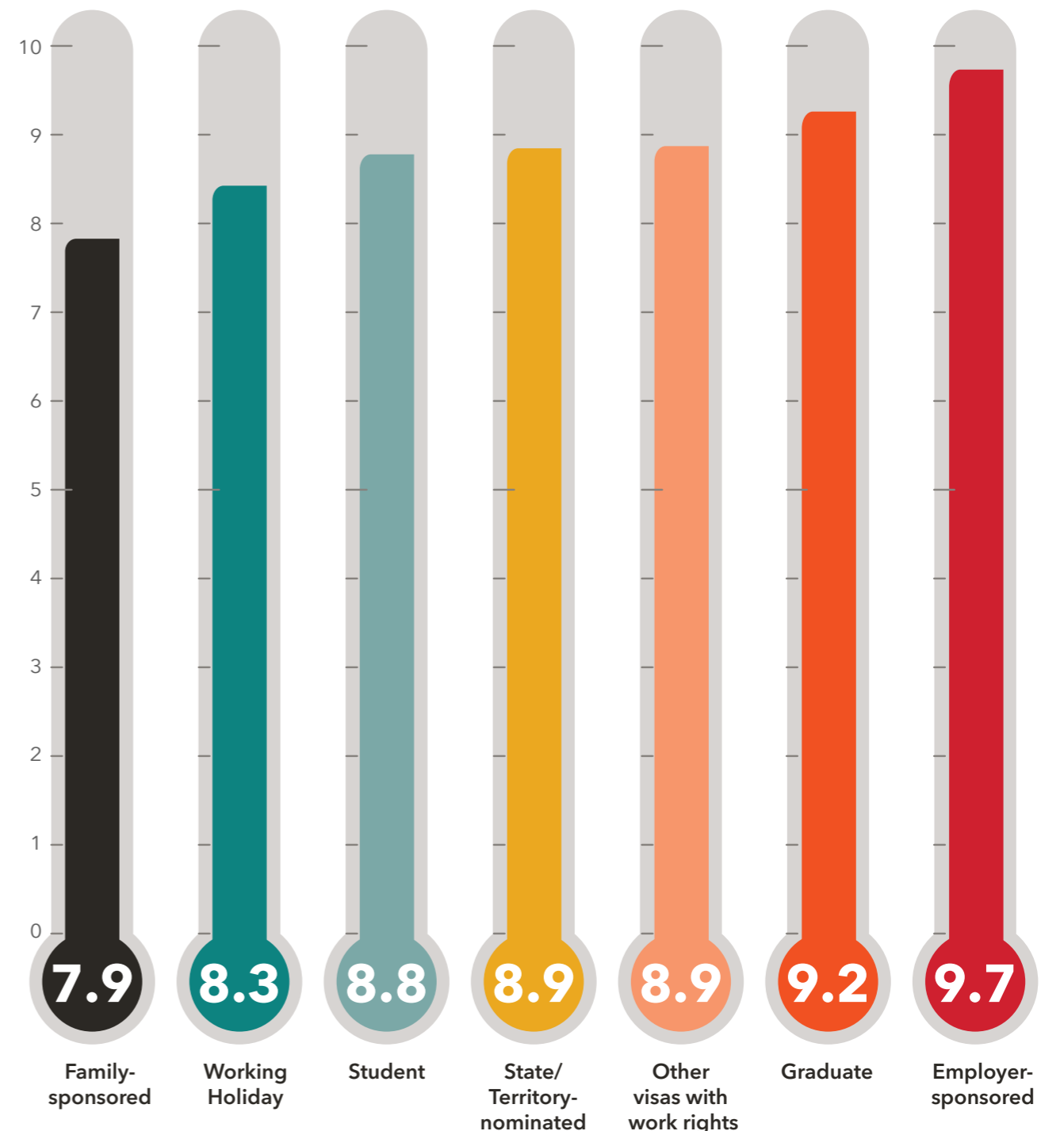
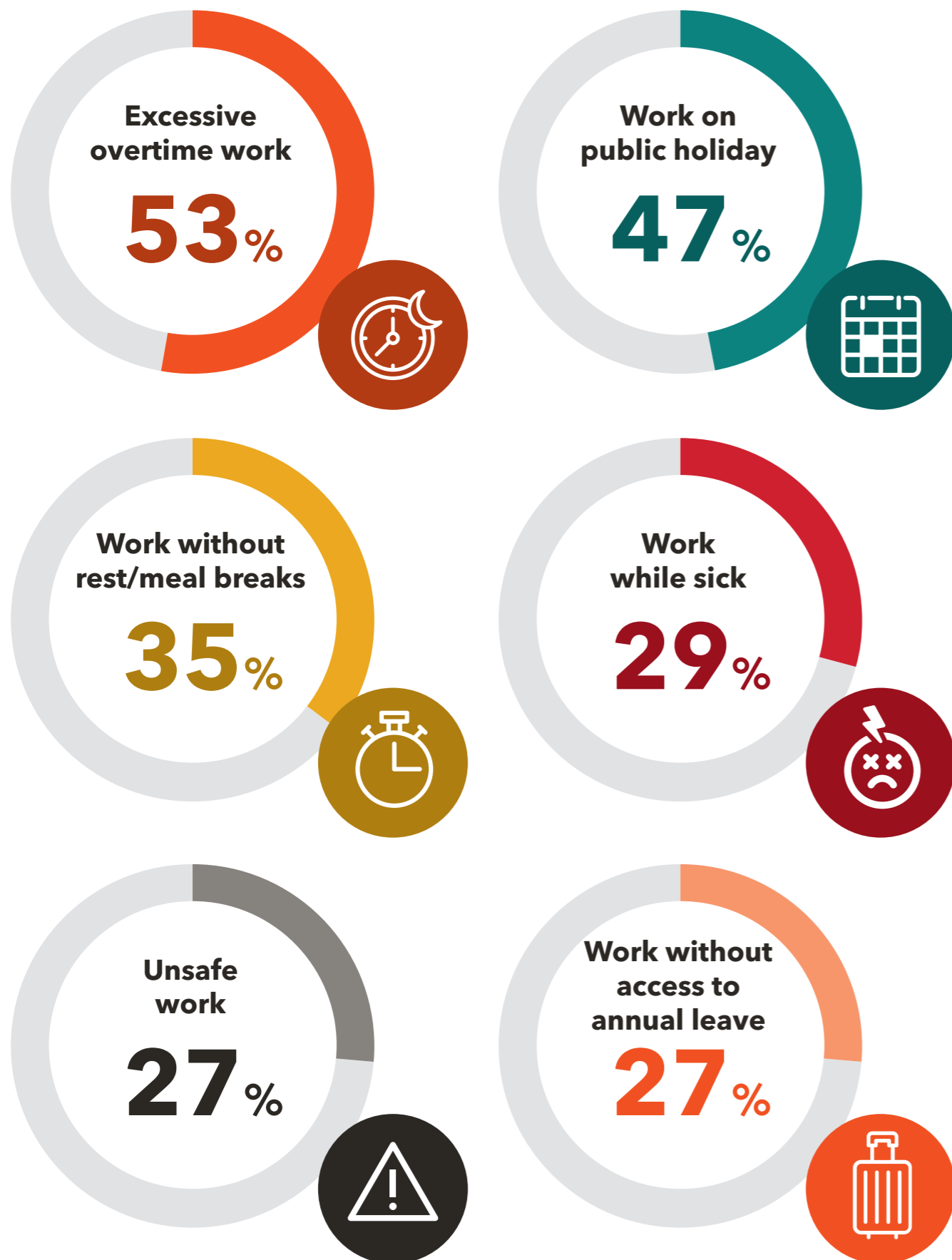


Figure 19. Pressure at work experienced by workers on employer sponsorship (multiple responses)



Labour Exploitation and Wage Theft

Migrant workers' lack of freedom to switch jobs and structural dependency on their continued employment with the sponsoring employer for their livelihood in Australia forces them to "say yes to everything" and discourages them from reporting workplace rights violation to the authorities. This problem has been continuously pointed out by the unions and the media and directly reported to the Government over a decade ago.²⁷ Even before the Government introduced temporary employer sponsorship, the 1995 Roach Report had warned it against using temporary migration as a strategy to channel migrant workers into low-paying exploitative work and advised using temporary visas to recruit only highly skilled workers who are less likely to become vulnerable to exploitation.²⁸

According to our interviewees, migrant workers on temporary sponsored visas are exposed to an increased risk of exploitation regardless of skill levels. Their life in Australia depends on the employer, and they don't enjoy the freedom to quit when the job does not work out for them. Technically speaking, migrant workers on temporary employer-sponsored visas can try to switch jobs. However, when we think about how challenging it is for anyone to find a job in 60 days, we can understand it is extremely difficult and sometimes almost

impossible for a migrant worker who is allowed to work in only one nominated occupation to do so.

Even when they are lucky enough to find a new sponsorship, migrant workers are reluctant to leave their original sponsoring employer because they need to complete three years of employment with one sponsor before they become eligible for transition to a permanent sponsored visa. Suppose there is a migrant worker whose employer stopped paying them at the end of the second year of employer sponsorship. If the worker moves to a new workplace, they must start from Day 1 again to fulfil the three-year work requirement. There is no guarantee that the new sponsor would not exploit them as did the original employer and no certainty that they would sponsor the worker for permanent residency in the end.

Consequently, half of our survey participants who were working with a temporary employer-sponsored visa (50.0%) complained that they "have to say yes to everything" the employer asks them to do in order to keep the employer sponsorship. They reported having been pressured to do excessive overtime work (53.0%), work on public holidays (47.1%), work without rest/meal breaks (35.3%), and perform unsafe work (26.5%). They also reported having been denied access to sick leave (29.4%) and annual leave (26.5%).

Although not all employers turn to temporary sponsorship with the intention of exploiting migrant workers, some are well aware of the insecurity of migrant workers and make the best use of it. Case study 5 illustrates a worker who works for an employer who has one pay rate for Australian-born workers and a lower one for migrant workers. When sponsoring a migrant worker, employers are required to show that they are providing equal pay and conditions of employment to the migrant worker and Australian-born workers performing equivalent work in the same location. This is called the market salary rate pay requirement. However, no one monitors workplaces to check if sponsored workers are paid according to the market salary rate once the visa is issued. The worker's employer in Case study 5 violated the requirement because there is no enforcement once the sponsorship is approved. The worker was reluctant to complain about the wage theft and discrimination even when he was deprived of basic rights such as toilet breaks. He was afraid that his employer might become ineligible to sponsor migrant workers if he had complained about the discriminatory underpayment, leading to his and his fellow migrant workers' visa cancellation.

The problem can be easily fixed by allowing migrant workers to combine work experience from multiple sponsors. This principle is already applied to the business visa, which grants permanent residency to migrant business owners when they demonstrate two years of combined business ownerships. To reduce the chances of migrant labour exploitation and facilitate skilled migrant workers' transition to permanent residency, the Government should enable migrant workers to combine local work experience from multiple employers as long as they maintain the same professional occupation.



Case study 5.

Australian wage only for Australian workers?

Tony (pseudonym) is a certified welder with years of experience. He and his spouse came to Australia in search for a better work-life balance. Tony's employer sponsored him for a four-year Temporary Skill Shortage visa (subclass 482) and promised to nominate him for a permanent Employer Nomination Scheme (subclass 186) visa if Tony showed him hard work.

There was a problem to Tony's Australian dream. However hard he worked, his employer was never satisfied and assigned him more work. Tony was often sent to various regional worksites on a tight schedule, which left him little time for lunch or toilet breaks. Tony often felt that he was doing the work of two employees.

He needed to be prepared with a test result of Competent English or higher for the day his employer would nominate him for a permanent visa, but he rarely had a chance to speak English at work and no time to study English after

work. He barely had time to take care of his new born baby because he worked over 60 hours per week on average and often had to go to work on weekends.

One day, Tony overheard his Australian co-workers talking about overtime and penalty rates. They were wondering how the employer could afford to pay Tony and other workers on temporary visas the penalty rates for all their

weekend and overtime work. It was only then that Tony realised that his employer had been discriminatorily underpaying him and his fellow migrant workers.

He was upset about the discrimination and called the Migrant Workers Centre for advice. The consultation was done over several short phone conversations because Tony had time to talk to the Centre only during his short toilet breaks in the absence of the employer around. The Centre provided him with

information about his workplace rights and offered help to resolve the discrimination and wage theft.

Reluctantly, Tony decided not to do anything about the exploitation and wage theft for fear his employer would not nominate him for a permanent visa. He was recently offered a higher paying job by a partner business but had to turn it down in order to complete the minimum three years' work with the current sponsoring employer required for transition to the permanent Employer Nomination Scheme (subclass 186) visa application.

Tony has brought skills to Australia that are high in demand and have the potentials of growing the economy. However, his skills were abused by his employer, who defeated competing businesses with non-compliance and distorted Australia's labour market with wage theft.

Despite all the reports of exploitation, the Government is reluctant to release migrant workers from the shackles of employer sponsorship. They are worried that no one would do the hard work if there were no migrant workers obliged to do the work. There should not be certain jobs or types of work that are filled only because workers fear losing their visa or residency status. Instead of relying on fear and punitive visa provisions to address labour supply issues, the Government should focus on ensuring working conditions are improved for all workers.

The Government believes that employer sponsorship is the best way to identify and address genuine skills shortages in the economy. The liberalist assumption that when businesses act in their own interest, it also serves the interest of Australia's national economy is far from the truth. Studies show more than ample evidence that businesses recruit and operate not to grow the national economy but to better position themselves against their local competitors and towards the global market.



Case study 6.

Culture of underpayment

I've been working in hospitality since arriving in Australia in 2014. I am lucky to have a full-time job that comes with an employer-sponsored visa, though temporary.

In hospitality, we work crazy hours in busy times. My contract says that I am expected to work for 38 hours per week and reasonable overtime. I usually work around 50 hours per week in winter and 60 hours per week in summer. I don't understand how they can call it "reasonable overtime".

I get paid a salary, not an hourly rate. So, there's no such thing like overtime payment however long hours I work. In hospitality, exploitation has become the norm, and even Aussie workers are

expected to work the same crazy hours as migrant workers. I once complained to my boss about the overtime work. He said, "Well, suck it up. Look around you! Everyone is working the same way. It's been like this forever".

I know my workplace rights, but I wouldn't dare to report my employer for underpayment. I know it will make no change because every hospitality business in Australia underpays workers. I am sure I will be known as someone who reported their boss to the authorities and get blacklisted. I cannot afford to never get another job in Australia.

Interviewee #1072704

Source: Migrant Workers Centre, 2021, Submission to the Joint Standing Committee on Migration on the Inquiry into Australia's Skilled Migration Program, p.8.

Visa Scams

Another aspect overlooked by the Government is the psychological effect associated with of the cost of employer sponsorship on the employer's attitude towards migrant workers. Once employers have outlaid various expenses to hire migrant workers, such as migration agent service fees and the Skilling Australians Fund levy, they often feel entitled to recover the expenses by exploiting the workers. Our interviewees shared many horror stories with us that featured some employers who paid no attention to workplace laws and the Migration Act.

As a result, migrant workers are vulnerable to visa scams and labour exploitation. Sometimes they are recruited from overseas by employers or mediators – migration agents, labour hire providers, or unauthorised individuals – who approach them with the intention of exploitation.²⁹

Other times, the employer bluntly demands the worker pay for their sponsorship. Below we recite two such examples. These stories clearly show that the current system gives too much power to employers over workers. Even when the employers are found guilty, workers have a hard time recovering underpayments. Our interview participants asked the Government to pay attention to the loopholes in employer sponsorship and fix the migration system to protect human rights. As long as the employer guards the door to permanent residency, the system can be misused for de facto slavery.

Case study 7.

Punished for following the rules

Peng (pseudonym) came in 2008 on a Working Holiday visa. She found a job at a remedial therapy service as an acupuncturist as she had studied alternative medicine. Her employer liked her skills and sponsored her for a temporary employer-sponsored visa (subclass 457).

When her 457 visa was about to expire, Peng asked her employer to sponsor her for a permanent visa (subclass 186). He demanded \$60,000 in return. Knowing it was unlawful to pay for visa sponsorship, Peng refused. The employer got her a second 457 visa instead of a permanent one.

In the following year, Peng became pregnant and desperately needed permanent residency to raise a family. She asked the employer again for a permanent visa. This time the employer demanded \$100,000 in return. Peng did not pay but managed to get the sponsorship by promising to work for the employer for four more years after acquiring permanent residency.

One thing Peng did not notice was that the employer had changed Peng's position title from acupuncturist to massage therapist on her second 457 visa. The DHA denied her permanent residency application because Peng had not worked for the sponsoring employer long enough in the current occupation.

A couple of years later, Peng attempted another permanent visa application. It took 2.5 years before the DHA responded to the application. By this time, Peng had been working in Australia for a decade and had a family of three. Eventually, the DHA denied her

application again on the ground that the employer did not meet the condition of actively and lawfully operating his franchise business. Peng and her family were ordered to leave Australia in 28 days.

Peng made an appeal to the Administrative Appeals Tribunal. She then emailed the DHA, saying that the employer demanded of her, along with her colleagues, money in exchange for visa sponsorship and that only those who had agreed to pay acquired permanent residency without issue and in no time. She received an automatic reply from the DHA that acknowledged the receipt of her email but heard nothing else back.

Peng later learned from her migration agent that the employer was no longer eligible to sponsor migrant workers and that she had no one to sponsor her for an employer sponsored visa even if her appeal was upheld by the Tribunal. She suspects the employer became ineligible for sponsorship because she reported his visa system manipulation to the DHA. Now Peng regrets ever having written to the DHA.

Peng's employer made more money from selling visa sponsorship to his employees than selling remedial therapy service to his customers. Peng resisted the employer's rules but followed those of the Government. And yet, it was Peng who got punished in the end. She tells her fellow migrant workers to never report their employers to the Government if they want to stay in Australia.

Interviewee #1081101

Case study 8.

Sponsoring boss stealing wages

Juan (pseudonym) and his wife came to Australia in 2008. Their families back home took out loans to support their travel to and study in Australia.

It was not easy to find a pathway to permanent residency, and Juan had no alternative but to extend his stay with a series of student visas. After acquiring two certificates, two diplomas, and two advanced diplomas in cooking and business management, he finally found a job opportunity with sponsorship for a temporary skilled visa (subclass 457). His migration agent held all the information about the job, and Juan had to pay him thousands of dollars to apply for the job in addition to all the costs associated with the visa application.

While Juan was waiting for his visa to be granted, his employer asked him to pay him \$35,000 in exchange for the visa sponsorship, otherwise, he would withdraw his sponsorship application. Juan did not comply with the sponsor's demand and found another sponsor.

Staying on a bridging visa, Juan started working for the new sponsor as a chef at a regional restaurant. His responsibilities included cooking orders, shopping for ingredients, and cleaning the venue. The employer wouldn't pay him. Each time Juan demanded his wage, the employer told him to wait till he got the visa approved. Juan waited patiently because he didn't want to lose the second sponsorship.

The visa was granted eventually in 2018. By now he and his wife had two kids. It was ten years since Juan came to Australia that he got a visa that would give him a chance to apply for permanent residency as long as his employer kept sponsoring him.

Juan asked for his delayed wages, but the employer kept ignoring his demand. Not knowing what to do, Juan didn't go to work one day. The employer became furious and threatened to ruin him and his family. The employer terminated his employment, consequently getting Juan's visa cancelled, and applied for an intervention order against his family.

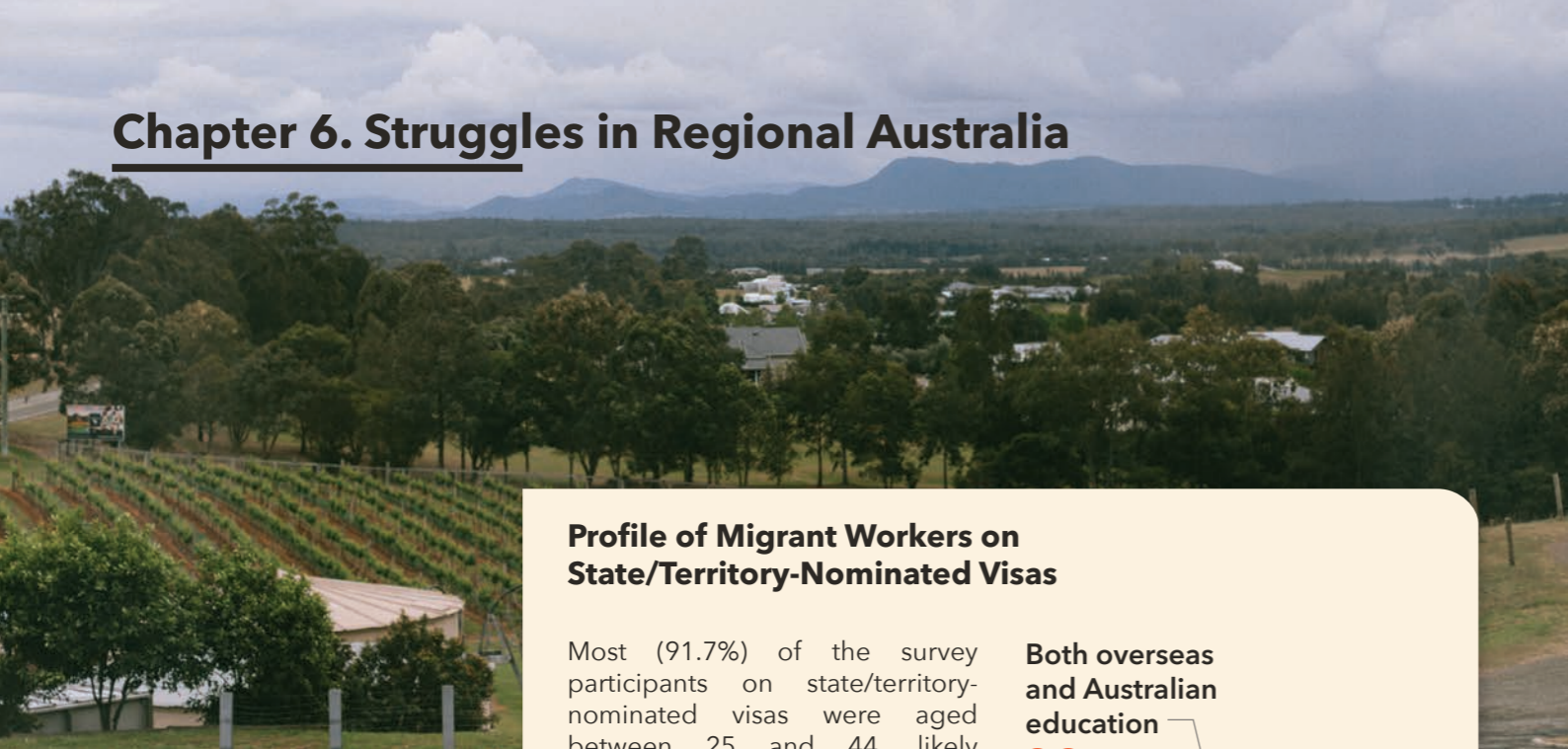
Juan consulted the Migrant Workers Centre and was introduced to a pro bono lawyer. The court finally ordered the employer to pay Juan all the outstanding payments. It cost a lot of time and effort to get the judgment, but the employer didn't budge. One full year has passed, and Juan is still waiting for the employer to follow the court order. He and his family cannot plan a day ahead while staying on bridging visas and waiting for the stolen wages to be paid. He cannot understand why the Government does not seize the employer's properties and help him get paid for his wages.

Interviewee #1081101

It is more than clear that employer sponsorship subordinates migrant workers to their sponsoring employers and breeds labour exploitation. The ultimate solution is to abolish the employer sponsorship system. Instead of having the employer sponsor the worker, the Government should advise the employer to register their skill needs and have the regional authority in the state/territory where the business operates sponsor the worker. This type of state/territory sponsorship is already in place for the State or Territory Sponsored Business Owner visa (subclass 892).

The Government considers employer sponsorship the most effective way to identify and meet local skills shortages. In reality, both businesses and migrant workers have difficulties locating each other and often rely on migration agents for brokerage. Migrant workers are often asked in the process to pay for the brokerage and sponsorship. Employer sponsorship can also be the most concealed means of labour exploitation because it gives businesses the power to decide whom to transition for permanent residency and when to do so. The Government should facilitate direct business-skill matches by introducing a skill search portal integrated in the Department of Home Affairs' ImmiAccount website. The portal data should be disclosed to the Fair Work Ombudsman and trade unions so that signs of labour exploitation can be detected early.

Chapter 6. Struggles in Regional Australia

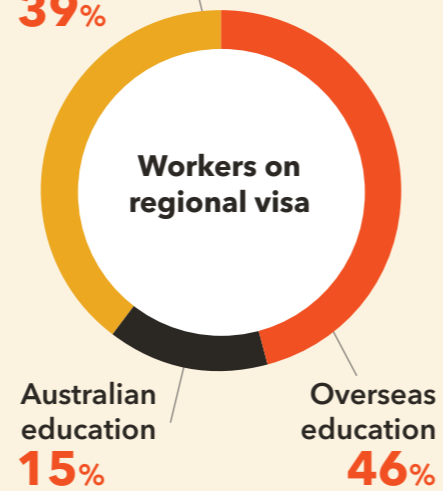


Profile of Migrant Workers on State/Territory-Nominated Visas

Most (91.7%) of the survey participants on state/territory-nominated visas were aged between 25 and 44, likely owing to the age requirement of nomination. 70.3% of those employed were full-time workers. 43.8% of the group were women.

85.4% of them had finished tertiary education before coming to Australia, almost half of whom pursued further tertiary or vocational education in Australia. Half of those with double degrees came to Australia on a Student visa and did not have overseas experience in their respective areas of work.

Both overseas and Australian education
39%



Australian education
15%

Overseas education
46%

For decades, the Government has sought to use migration to help populate rural and regional parts of Australia. State and territory governments operate both temporary and permanent migration programs for skilled migrant workers, which impose geographical boundaries on the workers' work for a limited time in the hope that during the mandated years they will develop attachment to regional Australia and build a livelihood there.

Many migrant workers on state-sponsored visas, however, do not have social networks in regional Australia and have trouble finding work and accommodations. The geographical restriction and regional Australia's smaller-scale, less diverse labour markets make it hard for migrant workers, once employed, to leave the employment however exploitative the work might be. In the absence of support services catering to the needs of migrant families and far away from the multicultural infrastructure that metropolitan cities offer, migrant workers in regional Australia are exposed to the risk of exploitation and mental health deterioration.

Throughout the post-war era and more intensively in recent years, the Government has sought to use migration policy to boost population and economic development in rural and regional parts of Australia. Policy settings and the design of assisted migration programmes have led to piecemeal rural settlement—sometimes at a large scale, as with the tens of thousands of migrant workers who spent their first years in Australia living in the Snowy Mountains during the constructions of its hydropower scheme.

In the 1990s, amid an increasing demand for labour and new recognition of the fact that a large share of newly arrived migrant workers were settling in the country's biggest and busiest cities, the Commonwealth and

state governments agreed for the first time to create specific visa categories for State-Specific and Regional Migration (SSRM) and Regional Sponsored Migration Scheme (RSMS).

Coming around the same time as the creation of the Temporary Work visa, these regional visas became a crucial part of Australia's shift towards temporary migration. The SSRM program was originally targeted at permanent migration, but migrant workers were given visas on the strict condition that they live and work for a specified period only in the state or territory that nominated their visa. In this manner, the visa "virtually created two classes of permanent settler immigrants to Australia" because they "restricted where the immigrants could settle in their first three years in the country".³⁰

The RSMS visa, on the other hand, came to support the growth in Temporary Work visas. The RSMS was originally an employer-sponsored permanent visa. As discussed in the previous chapter, businesses prefer to keep migrant workers on a temporary visa before sponsoring them for permanent residency. Many regional businesses chose to use the newly-expanded 457 visa to hire migrant workers and reserve the RSMS visa for eventually transitioning the workers to permanent visas.

Since the creation of the RSMS and SSRM visa categories, there have been frequent changes to the specific visa classes and the conditions they impose on new migrant workers. Throughout this time, the number of people using these visas to come to Australia and settle outside major cities has steadily increased. The Government has consistently aimed to grow the proportion of migrant workers using these schemes: before the COVID-19 pandemic, the Government's planned migration levels implied that 44 per cent of permanent visa grants would come under the SSRM and RSMS.³¹ Although the visas were nominally part of the permanent migration program, in reality, the Government was filling almost half of the permanent migration intake with provisional visas that restrict migrant workers' mobility and right to work.

Geographically-specific Visas

As of 2021, Australia's main geographically targeted visas are (a) Skilled Employer Sponsored Regional (subclass 494), a provisional visa which allows the migrant worker to work only for their sponsoring employer for five years and apply for permanent residence after three years, (b) Skilled Work Regional (subclass 491), another provisional visa sponsored by a state/territory government, which allows the migrant worker to live and work only in designated areas for five

years and apply for permanent residence after three years, and (c) Skilled Nominated (subclass 190), which is a permanent visa with a nomination from a state or territory government, which usually seeks a 'commitment' to live in the state or a specific part of it.

Other visas also have a substantial impact on regional settlement and labour markets. The 457/482 temporary work visas can be used by regional employers like any other. In practice, many regional businesses have preferred using these visas over the permanent regional visas, because employees with temporary status cannot leave their employer and the promise of later sponsorship provides a tool of control and motivation.³² The Government has also encouraged the use of these temporary work visas by creating special streams and conditions for regional businesses: Regional Certifying Bodies are able to approve sponsorship for positions that do not meet the ordinary wage and skill requirements, and there are more occupations eligible for temporary visas on the 'Regional Occupation List' than on the general shortage lists.

Perhaps most importantly, the Government uses labour agreements and Designated Area Migration Agreements to issue temporary visas with significant derogations from the ordinary criteria for temporary visas. Labour agreements and Designated Area Migration Agreements were implemented in part because of concerns that regional employers could not meet the required salary thresholds for visa sponsorship. They therefore play an important role in bringing migrant workers to regional parts of Australia. Labour agreements are made between the Department of Home Affairs and employers and allow visas to be issued for positions which would not qualify for ordinary visa pathways—either because the occupation is not on the eligible list, or to allow employment of people without the usual level of verified skills or experience, or because the employer wants

to pay below the ordinary salary thresholds. Employers can access migrant workers more easily without establishing their own labour agreement if they operate a business covered by an Industry Labour Agreement (for example, in the meat or dairy industries) in one of the selected regional areas through the Designated Area Migration Agreement (between the Commonwealth and a state or local government).

The Safe Haven Enterprise Visa (SHEV) is available to asylum seekers who apply for protection while in Australia. Part of Australia's harsh approach to refugee policy is that asylum seekers who apply onshore cannot be granted permanent residence. Their options are a Temporary Protection Visa—which lasts three years, and cannot be converted to permanent residence—or a SHEV, which lasts five years and can be converted to permanent residence under very limited circumstances, but requires the refugee to live in designated regional areas. The design of the protection visa system therefore encourages settlement in regional areas, though the uptake of SHEVs is low because the options for applying for permanent visas remain very limited.

People on other temporary visas in Australia are also encouraged to live in regional areas by several features of the application process for permanent visas. The points test for skilled visas gives points to applicants who have studied at a regional university or, for certain visas, for being sponsored by a regional employer. Although not part of the permanent migration program, Working Holiday visas are extensively used to maintain a steady flow of migrant workers into regional areas. The visas originally have a one-year expiry but can be extended up to a third year on the condition that the migrant worker works in designated industries in regional Australia.

Retention and Exploitation

The key concern of policymakers and employers throughout the history of the geographically-targeted migration scheme has been about the risk that migrant workers move away from the designated area once they have been granted a visa with no geographical restrictions, undermining the policy objectives of the program. Most research on these visa categories has been focused on this issue of retention, from the perspective of the Government, businesses, and regional communities.

Anecdotal reports of migrant workers leaving their regional area or employer as soon as the minimum time has passed have led to frequent calls for tighter conditions on regional settlement visas. A parliamentary report in 2001 called for the government to cancel RSMS visas if an employee left their regional employer in less than two years—even though the RSMS at the time granted permanent visas with no legal restrictions on the right to move or change jobs. These calls have been a regular feature of public discourse around migration policy in Australia, through to Immigration Minister's declaration in 2018 that he was seeking ways to 'bind' migrant workers to regional areas.³³

The latest iteration of the geographically-targeted visas impose strict visa conditions in an attempt to achieve this goal. Previously, migrant workers have been given provisional visas, which they can only convert to full permanent visas on showing that they have lived in regional areas for a minimum period, as intended by the policy. Under the new 491 and 494 visa rules, this condition does not apply only to converting to permanent residency: it is an ongoing condition which migrant workers must comply with throughout their time holding the provisional visa, or risk having their visa cancelled. This is bolstered by an expansion of the Department of Home Affairs' powers to investigate whether



people are living in regional areas - two new visa conditions require migrant workers to attend an interview with the Department and to provide written information about where they are living, working or studying, at any time the Department requests.

There is little information available about the effects of this kind of strict enforcement on migrant workers. The 491 and 494 visas were introduced in November 2019, meaning they were open for a limited time before the closure of Australia's borders. Most research on previous generations of regional visas is focused on statistical analysis of retention rates, not on the impacts on migrant workers themselves. However, there are a number of reasons to be concerned about the use of provisional visas to push migrant workers towards regional areas. These concerns are relevant both to the new, stricter approach and to previous visas where regional residence was mainly a condition of becoming a permanent resident, rather than being continuously monitored and enforced.

Visas issued under labour agreements and DAMAs (typically TSS/482 visas, under the 'labour agreement' stream) have all the same problems of employer

sponsorship discussed in the previous chapter. These problems are compounded because a migrant worker sponsored under a labour agreement is likely to find it even more difficult to change employers—since their work may not qualify for a visa unless they can find another employer with a labour agreement—and are less likely to have alternative pathways to permanent residence. This exacerbates the power that sponsoring employers have over migrant workers and can lead to workers being kept on temporary visas for as long as 11 years without being sponsored for permanent residence, or to the kinds of persistent abuses and poor working conditions such as those documented at Midfield Meat International in Warrnambool.³⁴

Regional visas also run the risk of pushing migrant workers into labour markets which do not match their skills and experience. While there are a large number of job vacancies overall in regional Australia, the temporary visa system is not well-aligned to these needs. Our survey participants in regional areas reported being "extremely overqualified" for the work they could find or struggling to develop their skills and advance their careers.

"It's not too bad, where I'm working, but I want better opportunities for career progression. It's hard, asking employers, 'what is your postcode?', because I can't work in certain areas".

(Interviewee #1081102)

Workers who find an employer that is a good fit to their skills and experience still have difficulties negotiating the visa systems.

"It's a catch-22 situation. It's hard to get qualified workers in the regional areas, because of how far away we are from bigger cities, but at the same time it's a lot to ask a small rural organisation to be a sponsor".

(Interviewee #1081301)

"We've had wonderful people that wanted to move here, with wonderful skills, but we just couldn't find employers or opportunities that match what their visa needed, with all the tightening of visa regulations and requirements".

(Settlement Advisor, Rupanyup Rural Migration Initiative)

Beyond employment, the coercive approach to regional visas isolates migrant workers from the support networks they rely on. In some instances, migrant workers told us about overt racism in regional Australia.

"I got a casual full-time job and worked for 6.5 years. I was exposed to racist comments every day. Customers and colleagues alike, they would say rude things about my Russian accent and tell me 'I hate foreigners'".

(Interviewee #1092701)

Even where there was no overt racism, the absence of established multicultural communities can contribute to migrant workers feeling isolated and finding it harder to settle in an area.

In other cases, regional areas simply could not support new migrant workers in the same way bigger cities could. Several interviewees highlighted the lack of hospitals and overstretched GP services in regional areas where they were living. Housing is also in extremely short supply.

"Regional Australia is good with many jobs and nice people. However, there is not enough housing. And Rupanyup does not have any hospital. The closest hospital is 45 minutes' drive away in Horsham. We tried 25 rental applications in Horsham and failed to get one, probably because we are temporary visa holders and have two kids."

(Interviewee #1072901)

The most recent iteration of the regionally-targeted temporary visas, the 489 visa, has had particularly devastating effects in isolating migrant workers from their families and communities. One worker who spoke to the research team provided a particularly clear example of the unfairness of these visa conditions.



Case study 9.

Couple cast away by visas

Mary (pseudonym) came to Australia in 2013 as a student in accounting. She later spent two years in the city of her first arrival in Australia and found work as an accountant on a Graduate visa. As she came towards the expiry of her Graduate visa, Mary applied for a 489 regional skilled visa. She had spoken to migration agents about this option, and several were sceptical because of the uncertain path towards permanent residence. However, other pathways for accountants were very difficult at that time, and Mary was seriously considering returning to her homeland. "I had bought a one-way ticket". Around three months before the end of her Graduate visa, she was granted the 489 visa.

As a condition of her new visa, Mary had to leave the city where she had spent her entire life in Australia and where her fiancé and all her friends were. She found life in regional Australia very hard. "Where I used to live, there are more Asian restaurants and food. It's very convenient. You still have a lot of shops open at 9pm. But when I first moved to regional Australia, everything shut at 5pm. It's pretty lonely." GPs and other essential services are much more overstretched, too.

Mary's move made continuing the relationship with her fiancé challenging because he worked in the city. Her fiancé said: "I would have to drive up to see her on the weekend, a 2 hour drive, and then 2 hours back." The regional residence condition disrupts their relationship. Mary is studying

for her Chartered Accountant certification alongside her work. "She doesn't have much time at all," the fiancé said. "It's sad that we can't live together, so that I can at least help her with some housework and cooking, since she's got no time." Instead, they are forced to live apart. "We've got to pay two different sets of rent. All those kinds of things are hard."

Mary applied for her Skilled Regional (subclass 887) visa, which would give her permanent residence and the freedom to live with her fiancé. To apply for the visa, she had to live in regional areas for two years, which she has now done. Still, she has to keep meeting this condition while the application is processed and wait times can currently be as long as three years.

Her experience has been so difficult that Mary would never advise anyone to go on a 489 visa, even if it was their only option. The effect on her relationship has been extreme. "Sometimes I feel bad, because if he had an Australian girlfriend, it'd be much easier for him."

Interviewee #1081102



Lack of public services, the absence of support networks and unsuitable labour markets all mean that even migrant workers who had every intention of settling in a regional area may find that they later need to move to a city. The current regional visa system forces people with clearly legitimate reasons for leaving—such as losing a job, developing complex health problems, or facing personal or family issues—to make a difficult choice between sacrificing their wellbeing or risking their visa status.

The core problem is that Australia's current approach to regional settlement is focused on pushing migrant workers to regional areas, not finding people who want to move. A study of the previous Skilled Independent Regional visa identified this issue clearly:

"When I asked Karthik if he could picture himself in regional Victoria he said that he did not really have a choice. He was seriously considering this option though was still hoping for another way. The most common worry about committing yourself to a life in the countryside is that, besides the fact that it might be hard to get a job there, it also means living an isolated life in a state of uncertainty about when one will be considered a real resident in Australia with full rights".³⁵

As a result, migrant workers are kept on temporary visas - at risk of exploitation by employers and landlords, and without access to most government support - in an attempt to force them to stay in regional Australia when they do not want to. This is a policy approach which makes migrant workers much more likely to leave the region as soon as they are permitted. It does not support sustainable settlement and only hurts migrant workers.

Settlement without Coercion

The risks of exploitation created by Australia's current approach to regional settlement are unacceptable. There is also no strong evidence that they do anything to help regional Australia. Supporting regional communities has to be done by attracting migrant workers who want to live and remain in those communities, not by trying to force them.

There are promising examples of alternative approaches, both in Australia and internationally. The successful settlement of Karen refugees in Nhill, which has been widely reported in the media, was not enabled by restrictive visa conditions—the migrant workers involved were resettled refugees on permanent visas—but by the hard work of community members in the town.³⁶ The research team heard similar stories while conducting the research project, like the one in the case study below. Notably, the current visa system was described as an obstacle to drawing migrant workers to regional communities, not a help.

Case study 10.

Community assisting settlement of migrant workers



Rupanyup is a small town three hours north-west of Melbourne, VIC with a population of just over 500 people. The Rupanyup Rural Migration Initiative is a community programme trying to attract migrant workers to the town and support them to settle in the area once they arrive.

The programme's roots are in a one-off decision by a farmer to sponsor a Colombian migrant worker and his family to come to the town. Other farmers were having trouble attracting workers to the area, and the district was facing continuing population decline as farms were consolidated and young people left the area. The Rupanyup community bank funded the publication of a 'prospectus', meant to promote the town to potential migrant workers and provide advice on how they could settle there.

That prospectus grew into the official initiative, launched in December 2018 in partnership with local community groups and businesses, and the Regional Australia Institute. It found immediate interest from other South American families with connections to the migrant family already in Rupanyup and from several nurses who were interested in work at the local nursing home. The initiative employs Sally Boyd, who talks to people interested in moving to the area and helps them find opportunities. Migration is an important part of keeping the town's population stable and making essential services viable.

"We need families. We need enrolments at the kinder and the school," Sally said about the impetus for the RRMI. "We can't rely on generational farmers to populate the town any more, there's just not enough of them. We need to be a place that people can move to." That means providing very hands-on support to migrant workers moving to the area. Job listings and rental availability are rarely published online, so having local support is essential.

Sally says about half of the migrant workers who have shown serious interest have ended up moving to Rupanyup. Not all are able to stay. One family eventually had to move to Bendigo after their child was born because of the lack of childcare services.

Some migrant workers who found work at the Rupanyup nursing home had to drive 45 minutes from a larger town because they couldn't find housing - and eventually found work there as well. "They wanted to live here," Sally said, "and we just had to work together to be able to provide that." As part of the initiative, locals have teamed up to buy and renovate homes in the area to make them suitable for migrant families, and tried to help with spare rooms or farm bungalows in the interim.

One of the obstacles to getting migrant workers settled in Rupanyup has been the visa system. "We've had wonderful people that wanted to move here, with wonderful skills," Sally said. "But we just couldn't find employers or opportunities that match what their visa needed, with all the tightening of visa regulations and requirements." Rising points requirements for sponsorship have made it very hard to get people settled, and regional visas are of limited help. "I'm not sure they provide that much extra benefit in practice, here," Sally said.

Overall, the Rupanyup Rural Migration Initiative is an example of the kind of hard work that is actually needed to attract and retain migrant workers in rural Australia. Regional visas do very little to help, and overall the restrictiveness of the visa system makes things harder for rural Australia, not easier. The key to drawing people to rural communities is not in a coercive visa policy. "I'm not much into that high level stuff," Sally said. "For us, we have a doctor in town three hours a fortnight. Once you lose one service, it's hard to attract professionals to the area, and then another business closes down." Improving housing, services and other infrastructure, and supporting community initiatives to welcome migrant workers like the one in Rupanyup, are much more effective and important.

The Canadian approach to encouraging migration to different parts of the country also provides an important point of contrast. Canada has a Provincial Nominee Program, comparable to state/territory-nominated visas in Australia, which aims to encourage immigration to parts of the country other than the traditional 'gateway cities' of Toronto, Montreal and Vancouver. The PNP grants a permanent visa immediately, and there are no conditions requiring new migrant workers to stay in the province which nominated them for a visa. Instead, provincial governments try to identify and nominate migrant workers who will choose to stay in the region. This means collaborating with local governments to identify people whose skills are likely to be valuable in the region, or who can be supported by existing multicultural communities in the area, and promoting migration opportunities to attract those people.³⁷

Retention rates for most provinces are around 80 per cent after five years.³⁸ This is a rate which compares favourably to Australia's 90 per cent after 18 months, without visa-based coercion. It is also significant to note that Canada has not responded to lower retention rates in some provinces with a coercive approach. The four provinces on Canada's east coast find it significantly harder to retain migrant workers who they nominate—the rate in Prince Edward Island is under 30 per cent. The government responded with an Atlantic Immigration Pilot, which continues to grant permanent visas but provides additional targeted settlement support. Early evidence suggests this approach has increased the number of migrant workers choosing to stay in the Atlantic provinces and the federal government has committed to making the programme permanent. The contrast to Australia's continuing, unsuccessful attempts to use visa conditions to force regional settlement is striking.

Regional communities in Australia would be best served by a migration policy centred on permanent migration, which creates the stability needed for local services, employers and community members to support new migrant workers. The current approach, relying on an ever-changing list of eligible occupations and an array of regional visas which are almost impossible to use without support from a migration agent, is a failure for regional Australia and creates shocking exploitation risks for migrant workers.

Chapter 7. Conclusion

The research shows, contrary to the widespread stereotype that migrant workers lack skills and increase burden to Australia's social security nets, most migrant workers on temporary visas are highly-skilled people who dedicate their prime working years to Australia. However, they are vulnerable to labour exploitation due to restrictive visa conditions and have a hard time progressing towards permanent residency. Frequent changes to the migration policy and the broken balance between permanent and temporary visa programs make it difficult for them to plan their future and create unnecessary stress to their working life in Australia.

Our interview participants shared with us not only their experience with Australia's migration system but also their ideas for migration reforms and better protection of migrant workers from labour exploitation. We conclude this report by presenting the most supported among them as below. Some ideas, for example, those primarily concerning asylum seekers or New Zealanders or their family members, are not included as they were beyond the scope of the report. We plan to discuss them in subsequent reports. We would like to thank all the migrant workers who participated in the project for their time and valuable contribution once again.

1. Increase the proportion of permanent visa issuance within the migration system

The Government has issued an unlimited number of temporary visas with work rights while maintaining a tight cap on permanent migration. The imbalance between permanent and temporary migration programs has created a large pool of migrant workers with long-term precarious status in Australia. Having little chance to acquire permanent residency, these workers have no social safety nets to fall back to and are exposed to a greater risk of labour exploitation. Australia cannot eradicate labour exploitation as long as migrant workers on temporary visas have no pathway to permanent residency. The Government should adjust the yearly issuance of permanent and temporary visas to an adequate ratio so that all migrant workers on temporary visas have a proper chance to progress towards permanent residency.

4. Adjust and monitor employer sponsorship programs to protect against labour exploitation and visa system manipulation

Employer sponsorship is considered the most effective way to identify and meet local skills shortages. In reality, both businesses and migrant workers have difficulties locating each other and often rely on migration agents for brokerage. Migrant workers are often asked in the process to pay for the brokerage and sponsorship. Employer sponsorship can also be the most concealed means of labour exploitation because it gives businesses the power to decide whom to transition for permanent residency and when to do so. The Government should facilitate direct business-skill matches by introducing a skill search portal integrated in the Department of Home Affairs' ImmiAccount website. The portal data should be disclosed to the Fair Work Ombudsman and trade unions so that signs of labour exploitation can be detected early.

2. Introduce a maximum waiting time to visa processing

The broken balance between permanent and temporary migration programs and the limited resources the Government allocates to visa processing have resulted in an unacceptable delay in the processing of certain visa subclasses. The delay is one of the biggest challenges that prevent migrant workers on temporary visas from planning their future. Coupled with frequent revisions to the migration policy and temporary variations to visa rules, a visa rejection at the end of an impeded process could crush people's dreams. The Government should not keep these young working people living in limbo. It should better fund the visa processing services and provide visa applicants with an option to get refunded of their application charge when their application remains unresolved for a year.

5. Enable onshore migrant workers to replace employer sponsorship with state/territory sponsorship for permanent residency

Many skilled migrant workers stay on temporary visas for an extended period of time because their employer refuses to sponsor them for permanent residency or because they have circumstances that make them unable to stay with one employer for three years and qualify for permanent employer sponsorship. To reduce the chances of migrant labour exploitation and facilitate skilled migrant workers' transition to permanent residency, the Government should enable migrant workers to combine local work experience from multiple employers as long as they maintain the same professional occupation. It should also allow them to be sponsored by the regional authority in the state/territory where they work in the same way as the State or Territory Sponsored Business Owner visa. When migrant workers on temporary employer-sponsorship move from one employer to another, either in the event of dismissal or resignation, they should be given 90 days instead of the current 60 days to arrange the sponsorship change.

3. Value migrant workers' contributions to Australian society

Australia's existing permanent visa schemes gauge applicants' potential contributions to the economy and do not consider what they have already contributed to the society. A desirable migration outcome for all is not simply that migrant workers earn the national average salary or above but that they promote diversity in harmony and help make Australia a freer and fairer place. To that effect, the points-test system should add a new criterion for recognisable social activities such as community service, innovation, and leadership. At the same time, visa applicants' English skills should be used only to check their eligibility and not to award additional points to higher-level English skills. The reconfiguration of points distribution would encourage migrant workers to participate more in community building instead of studying English for the sake of test scores. It is also expected to rescue some migrant workers with long-term precarious status who have made significant contributions to Australian society.

6. Provide settlement assistance in collaboration with local communities

Migrant workers face various challenges as they try settling in Australia including cultural difference, racism, and language barriers. For best migration outcomes, the Government should work with local councils and communities to overcome racial biases and provide settlement services and facilities. It is particularly important to provide assistance to migrant workers in regional Australia as the Government encourages migrant workers to move to regional Australia and makes permanent residency conditional to their length of stay there in the name of promoting regional development.

7. Give locally-educated migrant workers protection of workplace rights and a fair chance to permanent residency

International students are exposed to a greater risk of labour exploitation while being subject to Conditions 8105 that prohibits them from working more than 40 hours a fortnight. The Condition disadvantages them against other workers and can lead to acceptance of whatever terms of employment their employer lays out. The Government should abolish the Condition and collaborate with education institutions for the protection of international students. After graduation, locally-educated migrant workers don't get enough time to acquire local work experience and progress towards a skilled visa because many Graduate visas last for two years or less while most skilled visas require two years or more of full-time employment experience. The validity of Graduate visas and the work experience requirement of skilled visas should match so that locally-educated migrant workers get a fair chance to attempt permanent settlement in Australia.

9. Improve access to justice, compensation, and treatment

When employers violate workplace rights, migrant workers on temporary visas find it extremely challenging to access courts and tribunals. The Australian justice system is not familiar to them, and temporary visas expire and force the victim to leave Australia before the lengthy legal processes complete. The Government should expand services for migrant workers' access to court and recovery of stolen wages. It should also create a new bridging visa with work rights for migrant workers who are victims of workplace exploitation, harassment, or injury and have workplace claims pending so that they can stay in the country while accessing justice in court, compensation, or medical/psychological treatment. The bridging visa should be regarded as a qualifying substantive visa when the victim applies for another visa afterwards.

8. Provide information about workplace rights

Migrant workers, even locally-educated ones, are often not familiar with the basic conditions and protections of their workplace rights. The Government should proactively disseminate the message that the standards under the Fair Work Act 2009 apply to every worker equally, irrespective of their residency or visa status, upon issuing a visa with work rights. The message should be delivered in a language the workers understand the best. The Government should also facilitate follow-up education for migrant workers onshore by funding trade unions and community legal centres to offer workplace rights workshops in community languages.

10. Protect whistle-blowers

Migrant workers who have breached their visa conditions cannot report workplace issues for fear of losing their migration status. A clear and strong firewall between the Fair Work Ombudsman and the Department of Home Affairs should be created by making comprehensive improvements to the existing Assurance Protocol to protect whistle-blowers. When a migrant worker reports labour exploitation, any breaches of visa-specific work conditions should not provide a ground for cancelling the worker's current visa. Also, they should not be made subject to a visa eligibility criterion "Have complied with previous visa conditions" in their lifetime in Australia.

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