

ORIGINAL ARTICLE

Proposing mobility visas as an alternative to employer sponsorship: Addressing inequalities in the treatment of temporary migrant workers

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Abstract

Many countries use employer-sponsored visas to regulate migrant worker recruitment. By tying each sponsored migrant to a single employer, employer-sponsored visas have contributed to problems of workers being underpaid and mistreated. Through a critical assessment of temporary visas in Australia, particularly the Temporary Skill Shortage visa, and an analysis of relevant Australian and international literature, we argue that employer-sponsored visas are fundamentally flawed in their design and should be replaced. We consider various alternative options to employer sponsorship for regulating migrant worker recruitment before proposing the creation of a ‘mobility visa’, which would allow migrant workers to move freely between employers. We argue a mobility visa is a superior model for protecting worker equity and voice while also helping to address labour market needs.

Keywords: immigration policy; industrial relations; migrant workers; mobility

Introduction

Employer-sponsored visas are used in many countries to allow qualified migrant workers to gain residency if they receive a job offer from an employer sponsor and maintain employment with that sponsor. These schemes can benefit employers seeking to address job vacancies quickly or assert control over their workforce. Employer-sponsored visas are also attractive to governments wanting to maximise the economic returns of their migration policies (Papademetriou and Sumption 2011). This is because workers on employer-sponsored visas tend to have relatively high employment rates and can be enticed more easily to work in businesses, industries, and regions with pronounced workforce recruitment and retention challenges including those caused, at least in part, by low pay and insecure working arrangements (Wright et al 2017).

There are various problems with employer-sponsored visas that have been documented in international research. One problem relates to the impact of these schemes on migrant workers’ rights and bargaining power (Zou 2015). Migrant workers typically lose their residency rights if their employment with their employer sponsor is terminated, which discourages workers from speaking up if they are mistreated at work or prevented from

joining a trade union. Restrictions on seeking work with other employers also make it hard for employer-sponsored workers to negotiate better wages and conditions (Anderson 2010; Sumption 2019; Boucher 2023). Access to employer-sponsored visas can deter employers from investing in training or improving wages, working conditions, and other job quality measures to meet their workforce needs. This can erode security and sustainability of employment for other groups of workers (Ruhs and Anderson 2010; Wright and Constantin 2021).

Employer-sponsored visas have parallels with ‘guest worker’ schemes adopted in many Western European countries during the post-war decades. Like their modern employer-sponsorship equivalents, workers engaged via post-war guest worker schemes were ‘disenfranchised, incapable of organising effectively for self-defence’ and under ‘continuous practical threat’ of deportation (Walzer 1983, 59). The impacts of these arrangements led most Western European post-war guest worker schemes to be abandoned by the mid-1970s (Castles 1986).

Australia has relied heavily on employer-sponsored visas since a dedicated scheme was first introduced in 1996. Since then, employer-sponsored visas have been associated with problems of labour rights violations due to restrictions on sponsored employees’ rights and mobility, and visa rules that place considerable power in the hands of employers (Campbell and Tham 2013; Howe 2013; Boucher 2019). In the context of growing calls for alternatives to employer sponsorship, this article uses the operation of the Temporary Skill Shortage (TSS) visa in Australia as a focal point for examining various policy models that better protect temporary migrants.

This article builds on our invited submission (Wright and Clibborn 2022) to the Australian Government’s *Review of the Migration System* led by Martin Parkinson, Joanna Howe and John Azarias (Parkinson et al 2023). It draws upon research we have conducted previously from several individual and joint research projects, and an analysis of relevant Australian and international literature. The article addresses the following research question: what principles should inform the development of alternative models to employer-sponsorship? Using Befort and Budd’s (2009) ‘efficiency, equity and voice’ framework, we argue that four principles relating to permanency, mobility, skills, and institutional protection would reduce migrant workers’ vulnerability to mistreatment. First, we argue migrants should have guaranteed pathways to permanent residency and citizenship and be provided with adequate social and economic support. Second, migrants should have the ability to move freely between employers to minimise their dependence and related potential for employers mistreating them and to ensure the migration system contributes to a dynamic labour market. Third, the skills and workforce needs that the migration system is designed to address should be independently verified and coordinated with other labour market policies aimed at addressing skills needs, e.g., education and training and industrial relations. Fourth, institutional protection mechanisms should be sufficiently strong to ensure migrants’ rights and minimum employment standards are enforced.

Our arguments focus primarily on reform of the TSS visa as a key component of Australia’s migration system explicitly tasked with addressing skills needs. We examine the option of an industry sponsorship model, which has been suggested as a potential alternative to the current system of employer sponsorship (ACTU 2022), before recommending the creation of a ‘mobility visa’ as the most effective way to address skills and workforce needs while ensuring that migrants’ rights are protected.

Problems with employer-sponsored visas in Australia

Befort and Budd’s (2009) ‘efficiency, equity and voice’ framework suggests government labour market policy must support three goals: efficiency, defined as the effective

utilisation of labour; equity, defined as fair income distribution and protection from harm; and voice, defined as channels for workers and employers to have input in decision-making and representation (Befort and Budd 2009). This framework, which builds upon earlier pluralist industrial relations scholarship (e.g., Meltz 1989; Buchanan and Callus 1993), can allow for a critical assessment of whether government labour market policy is sustainable by appropriately balancing workers' and employers' needs and interests.

Previous research has identified problems with Australia's current migration system mainly due to the operation of temporary visas that have expanded since the mid-1990s. Migration policy has been used explicitly to address workforce needs since the end of the Second World War when previously tight immigration restrictions were loosened to aid the expansion of public infrastructure projects, manufacturing, and other parts of the industrial sector (Collins 1988; Jupp 2007; Quinlan and Lever-Tracy 1988). Migrant workers were granted permanent residency and received the same wages and conditions as Australian citizens under a system of labour market regulation that set and enforced decent standards. These arrangements 'restricted the capacity of employers to use immigrants as a "super exploitable" category of labour' (Quinlan and Lever-Tracy 1990, 161). The White Australia policy of racial exclusion, introduced soon after the establishment of the Commonwealth of Australia in 1901, continued to operate after 1945 before being formally abandoned in 1973 in favour of a 'points' system that gave greater priority to migrants' skills and other employment-related criteria (Tavan 2004). Studies have found that migrant workers arriving in Australia during the post-war decades had relatively higher agency and bargaining power compared to those arriving after 1996. This is because the latter group of workers had relatively restricted rights, more limited capacity to negotiate decent wages and working conditions, and diminished ability to pursue job and career opportunities available to citizens and permanent residents (Watson et al 2003; Markus et al 2009; Wright and Clibborn 2020).

A preoccupation with short-term economic efficiency objectives motivated policy changes that diminished the agency and bargaining power of migrant workers arriving after 1996. Policymakers sought to maximise the fiscal benefits of migration policy – for example, by reducing migrants' access to welfare and subsidised public services – and address individual employers' immediate workforce demands quickly to reduce the intensity of skill shortages (Wright and Clibborn 2020). These changes were also consistent with a wave of neoliberal reforms aimed at improving the 'efficiency' of Australia's labour market and economy (Quiggin 1999; Cooper and Ellem 2008; Spies-Butcher 2014). Neoliberal migration policy reforms occurred with the introduction of employer-sponsored visas (Campbell and Tham 2013; Howe 2013), changes to student and working holiday visas that gave incentives to migrants to work in industries defined by low wages and poor job quality (Reilly et al 2018; Clibborn 2021), and new investor visas that gave business owners a relatively easy route to residency but largely failed to fulfil their stated objective of promoting business innovation and entrepreneurship (Coates et al 2022).

Post-1996 migration policy reforms eroded 'equity' and 'voice' among migrant workers. Problems with the temporary skilled employer-sponsored visas illustrate these problems. In 1996, the Howard government established the 457 visa, which was a scheme that allowed employers to sponsor migrants to work in skilled occupations deemed to be in shortage (Campbell and Tham 2013; Howe 2013). In 2018, the 457 visa was replaced by the 482 visa, otherwise known as the TSS visa. There have been three main problems with temporary skilled employer-sponsored visas since their inception. First, workers on the TSS visa, and the 457 visa before it, are vulnerable to mistreatment and workplace health and safety violations. A key reason for this is that if a sponsored worker's employment relationship is terminated, they have a short time to find another employer sponsor, which can result in the worker not being able to exercise voice (Zou 2015; Boucher 2023). Second, workers on temporary skilled employer-sponsored visas have no access to social

security or unemployment protection (Boese and Macdonald 2017), which increases their financial dependence on their employer sponsor (Wright et al 2022). Third, the design of temporary skilled employer-sponsored visas does not reflect their objective to address skill shortages because shortages are not assessed independently from the sponsoring employer (Wright and Constantin 2021). The consequences of skilled workers on temporary sponsored visas being subordinated to employer control can potentially be serious, including for public safety, given visa conditions can make workers fearful of raising concerns regarding workplace health and safety (Toh and Quinlan 2009).

While these problems are evident across the labour market, the hospitality industry exemplifies them. Studies have found that many hospitality workers on TSS and other temporary visas are affected by employer non-compliance (Velayutham 2013). Cooks and chefs are among the most commonly sponsored occupations on TSS visas to file legal claims against their employer sponsors (Boucher 2019). Numerous surveys have found large proportions of temporary visa holders working in hospitality to be paid below, and often well below, the national minimum wage (Berg and Farbenblum 2017; Clibborn 2021). Access to a group of workers with restricted mobility and voice, owing to the tied nature of employer-sponsorship regulations, has been found to deter hospitality employers from using training to address their workforce needs (Wright and McLaughlin 2023). Similar outcomes have been identified in other occupations and industries (Howe et al 2019; Boucher 2023; Parkinson et al 2023), especially – but not exclusively (Boese et al 2013) – those with relatively low wages, widespread insecure work, weak unions, and business models based on labour cost reduction (Tham et al 2016).

Temporary schemes like the TSS visa that restrict temporary migrants' mobility, social rights, and access to representation and that empower employers in ways that heighten these workers' vulnerability to mistreatment epitomise the fundamental inequities between temporary visa holders and Australian permanent residents and citizens. The design of employer-sponsored visa migration policies has directly contributed to widespread underpayment of temporary migrant workers (Clibborn and Wright 2022). To ensure temporary skilled visas appropriately meet the three fundamental objectives of labour market policy – i.e., achieving efficiency, equity, and voice – they must be designed in a manner that complements domestic labour market policies, migrants must be protected, and employers must not gain an unfair advantage by employing them. This argument is further developed in the following section.

Ensuring temporary skilled visas complement labour market policies

Australia's migration system since 1996 has been disproportionately attuned to addressing employers' immediate workforce needs and insufficiently attentive to ensuring that employers do not gain an unfair advantage in utilising migrant labour. Barriers to temporary migrant workers' mobility, access to government support, collective representation, and permanent residency have made them vulnerable to unscrupulous employers (Clibborn and Wright 2022; Parkinson et al 2023).

Addressing Australia's skills and workforce needs is a key goal of the migration system. But migration is not the only policy area with this goal. Other policy areas also vital for addressing skills and workforce needs include industrial relations affecting job quality measures such as wages and working conditions that influence labour supply and demand; education and training providing the workforce with necessary skills; and social welfare encouraging inactive workers into the labour market (Oliver and Wright 2016). These different policy areas are weakly coordinated, that is, they do not work together effectively to address skills and workforce needs. For example, as discussed below, the TSS visa is designed to address individual employers' recruitment difficulties, which may be the result

of an employer offering uncompetitive wage rates and unattractive working conditions, rather than skill shortages that are experienced by all employers.

Australia's skills policies are designed to meet the short-term needs of individual employers. However, they are ill-equipped to address the labour market's longer-term needs. These policies are the consequence of the aforementioned neoliberal reforms implemented since the 1990s that have prioritised flexible skills supply through 'marketised' training policies over the development of transferable skills, a 'demand-driven' migration system, and industrial relations arrangements that have undermined workforce development and retention. While these changes have expanded employers' options for addressing their recruitment challenges, they have failed to prevent misuse and eroded the quality of skills development and the labour market's capacity to address workforce needs (Noonan and Pilcher 2017; Toner 2018; Joyce 2019). For example, studies have highlighted diminished vocational training quality, particularly among private providers subsidised by public funds to compete with government and community providers, and declining 'confidence among employers, unions and government in the capacity of the [vocational education and training system] system to deliver the necessary quantity and quality of skills' (Fortwengel et al 2021, 87). These outcomes made industries vulnerable to the disruptive effects of COVID and supply chain crises when certain avenues of skills supply, notably via the migration system, were less available (van Barneveld et al 2020).

Employer-sponsored temporary skill visas have remained popular due to perceptions they help meet employers' immediate demands and do not negatively impact citizen workers. For example, the Committee for Economic Development of Australia (CEDA) claimed that temporary skilled visa schemes – the TSS visa and the 457 visa that preceded it – have helped 'to fill important skills gaps, with safeguards to prevent the displacement of Australian workers and undermining of pay and conditions' (CEDA 2019, 12). A study by Breunig and colleagues found 'almost no evidence that outcomes for those born in Australia have been harmed by migration. If anything, there is some evidence that migration has a small positive association with outcomes for the Australian-born' (Breunig et al 2017, 256).

However, as the following discussion demonstrates, policies governing the TSS visa that restrict migrant workers' mobility and access to government support, collective representation, and permanent residency, which increase their reliance upon maintaining relationships with their sponsoring employers, have encouraged some employers to favour the migration system as the primary mechanism for addressing their workforce needs.

The operation of the employer-sponsored TSS visa is of particular concern as its design is underpinned by single-employer sponsorship. The scheme allows an employer to sponsor a migrant worker to work in a managerial, professional, or trades occupation, but only for that employer. If the employment relationship is terminated, the worker has 60 days to find another employer sponsor before losing their residency rights. This arrangement benefits employers who can use TSS visas with minimal risk that the sponsored worker will leave and gives employers a degree of control over temporary skilled migrants that they do not have over other workers (Howe 2013; Boese and Macdonald 2017; Wright et al 2017). By contrast, there are risks for an employer training non-sponsored workers if a worker leaves employment before the employer can recover the costs of its training investment. Visa sponsorship also involves costs for employers. Tying a sponsored worker to their employer to ensure the employer can recoup sponsorship costs has been cited to justify the single-employer-sponsorship model that limits the ability of workers to leave their employer (Ruhs 2013). However, this arrangement can make sponsored visa holders more vulnerable to underpayment and exploitation (Sumption 2019; Boucher 2023).

The single-employer-sponsorship model can also result in employers developing preferences for temporary skilled visa holders over other groups of workers. An analysis of

the reasons why employers sponsor workers under Australia's temporary skilled visa scheme found that while many did so to address shortfalls of suitably qualified workers, large proportions of employers in industries reliant on skilled trades workers used these visas to recruit workers perceived as having certain 'behavioural traits'. These 'behavioural traits' related to the perceptions of employer sponsors that temporary skilled visa holders had better attitudes, stronger work ethics, and were more loyal and harder working than other groups of workers. The tied nature of the visa scheme was identified as a reason for these perceptions (Wright and Constantin 2021).

Addressing skill shortages is the main objective of the TSS visa. However, there has been little scrutiny of employer claims of skill shortages even though, in some industries, 'much of the available evidence points in an opposite direction', according to Campbell (2019, 46). For instance, in the horticulture industry, which is a large employer of temporary migrant workers relative to its size, uncompetitive wage levels and exploitative labour practices are suggestive of 'a wasteful approach to labour that is more compatible with a situation of labour over-supply' (Campbell 2019, 47). These problems are evident in the design of the TSS visa. In allowing employers to sponsor temporary skilled migrants to address their recruitment difficulties, which may not necessarily be skill shortages, the TSS scheme provides limited scrutiny of employer claims. To satisfy eligibility requirements that a skill shortage exists, employers need only provide evidence of their individual difficulties in recruitment.

Some labour economists define skill shortages as market-wide shortages of workers at the prevailing wage rate that cannot be addressed by raising wages or improving job quality (Junankar 2009; Healy et al 2015). According to the Productivity Commission (2022, 14), 'skill shortages should be identified where employers have difficulties in hiring in the context of wage increases over time rather than "at current levels."' Skill shortages are also subject to employer preferences' (emphasis in original). By contrast, recruitment difficulties are when an individual employer struggles to attract workers because of circumstances within their control, for instance, by offering uncompetitive wages and conditions associated with poor job quality (Richardson 2009). Only 1% of surveyed employer sponsors of temporary skilled visa holders indicated they would increase wages to address their workforce needs, which suggests that they used the scheme to address recruitment difficulties rather than skill shortages. Even in situations where skill shortages did exist, employer disinclination to raise wages in response indicates these were unlikely to have been pronounced shortages (Wright and Constantin 2021).

The migration system can help to address short-term workforce needs, namely unanticipated shortages that cannot be addressed due to the inevitable lag in the training pipeline (Wright and McLaughlin 2023). However, Australian Governments have exceeded this legitimate role for the migration system by upholding regulations that have made temporary migrant workers vulnerable to mistreatment (Clibborn and Wright 2022; Coates et al 2022). This has led directly to some employers developing embedded preferences for using temporary visa schemes to address their workforce needs rather than through decent wages, training, and other measures to attract, retain, and develop workers (Wright 2022). These problems highlight the need to ensure the migration system complements industrial relations and training policies, rather than undermining them.

Recruiting workers perceived as having superior loyalty, work ethic, and attitudes compared to other workers may be legitimate for employers when making decisions regarding new personnel. However, these objectives are inconsistent with the explicit focus of TSS visa regulations on addressing shortages of suitably qualified workers and could lead other workers to be displaced. If temporary visa schemes are not regulated properly, they can have potentially adverse long-term implications for skills investment, career development, and employers seeking to transition to more productive business strategies (Wright et al 2021).

To summarise, the TSS visa is focused disproportionately on addressing individual employers' short-term workforce demands and reducing welfare expenditure. It is insufficiently focused on ensuring fairness and representation for migrant workers so that employers cannot gain a competitive advantage by employing them. It is essential that the migration system achieves a balance between labour market policy goals of 'efficiency', 'equity', and 'voice' since all three are equally important goals to guarantee sustainable outcomes in any policy area relating to the labour market (Befort and Budd 2009), including migration (Clibborn and Wright 2022).

Alternatives to employer-sponsored visas

Like employer-sponsored visas in other countries, Australia's TSS visa is designed to address skill shortages. However, the single-employer-sponsored nature of the scheme does not allow this goal to be fulfilled adequately. As noted above, the manner of the TSS visa's regulation is more attuned to addressing an individual employer's recruitment difficulties that may be caused by that employer offering uncompetitive wages and conditions, rather than skill shortages experienced by all employers within the same labour market. Furthermore, the restrictions on TSS visa holders' mobility between employers do not allow a sponsored worker to move easily to another employer to utilise their skills more productively. Given that citizens and permanent residents are not subject to these types of restrictions on their mobility within the labour market, this feature of the TSS visa also highlights a fundamental inequity in the design of single-employer-sponsorship models. This design feature can allow employers to recruit workers over whom they can exert more control compared to workers who are not subject to employer sponsorship. Single-employer sponsorship can thus create structural preferences for migrant labour that undermine other mechanisms of workforce development, which can distort the labour market.

In the following sections, we present two alternative models to single-employer sponsorship: industry sponsorship and mobility visas. While we present these as alternatives to the current design of the TSS, their features could also potentially be applied to other temporary visas with work rights.

Industry-sponsored visas

Several reports have proposed replacing the single-employer-sponsorship model that currently applies to the TSS and some other temporary visas with an industry sponsorship model (e.g., ACTU 2022; Wright 2022). The Australian Government's Jobs and Skills Summit Outcomes Document also flagged examining the potential for industry sponsorship of skilled migrants (Treasury 2022).

Australia has previously had two models that are potentially instructive for designing an industry sponsorship system. The first is Labour Agreements as they operated until the mid-1990s, which were signed jointly between the Department of Immigration and relevant employer associations and trade unions. While Labour Agreements still exist, unions are no longer formally party to them. The version of Labour Agreements that existed until the mid-1990s allowed employers, in agreement with unions, to address identified shortages via largescale sponsorship of skilled migrants (Brooks et al 1994).

The second is the Enterprise Migration Agreements (EMA) model developed by the Gillard government in 2012. The uptake of EMAs, when the system was in operation, was very limited. This was partly due to political factors and the sharp downturn in mining investment after 2012, which coincided with the launch of EMAs. It is likely that mining firms no longer needed EMAs because their demand for labour was declining, as reflected

in the diminishing rates of 457 sponsorship in the Western Australian mining and construction sectors after 2012. The design of the scheme was otherwise generally sound and analogous to successful industry-wide mechanisms for addressing skills needs in Denmark, Germany, and other European countries (Arnholtz and Wright 2023).

The EMA model was built around specific contours of mining construction. EMAs allowed subcontracting employers to engage migrant workers on temporary visas via the project owners or principal contractors, but only if they could demonstrate a shortage of resident skilled workers and only if attempts to recruit workers locally had proved unsuccessful. Project owners and subcontracting employers were required to make defined investments in training directed towards shortage occupations with the aim of reducing reliance on migrant workers (Wright 2012; Howe 2014).

While the features of mining construction are unique, the EMA's basic design of allowing sponsorship from a peak organisation, which retains ultimate responsibility for the worker, could be adapted for other industries. For example, in other industries, sponsorship could be done by an industry association, instead of a principal contractor, and individual employers, instead of subcontractors, could then engage workers with agreement from the association.

A design flaw of EMAs was that unions were not involved in the sponsorship process. While union membership in Australia has sharply declined in recent years, unions nevertheless remain by far the largest representative organisations of the workforce in every industry or occupation that they cover. They are therefore legitimate stakeholders in any area of labour market policy, especially ones directly related to the employment relationship (Cooper and Ellem 2008). Unions could be joint sponsors since they are better positioned and have arguably stronger interest than employer associations in ensuring individual employers comply with legal obligations to their workers.

The EMA model could thus be adapted to an industry sponsorship model under which the relevant employer associations and unions would be joint sponsors. Employer associations could have responsibility for allocating workers to individual employers to ensure the visa addresses skill shortages from the employer's perspective. Since workers are best positioned to know how their skills can be utilised most effectively, they should have freedom to move between employers so long as their work relates to their area of sponsorship. Unions and employer associations could have responsibility for ensuring that employers are compliant and that workers have representation to ensure the visa does not undermine employment and training standards.

Mobility visas

Mobility visas are a potential alternative to industry sponsorship, particularly for addressing problems of temporary migrant workers' restricted agency. While this would be an internationally unique policy approach for a temporary skilled visa, several schemes offer some insight into how it might function. Finland's residency permits, which enable workers to have mobility within their professional field, are one example of how such a system might operate. Under the Finnish system, if a worker is mistreated by their employer, they can leave the employment relationship and gain an 'extended permit or a certificate of expanded right to work due to exploitation by employer, [they] can work in any field of [their] choice. In other words, [they] will have an unrestricted right to work' (Finnish Immigration Service 2022). This arrangement effectively gives the worker mobility for 12 months before they need to find another sponsor. The scheme strikes a balance between meeting labour market needs while allowing visa holders the ability to obtain more competitive wages and working conditions with another employer in their professional field.

Another option – our primary recommendation – is to model mobility visas on Australia’s existing permanent skilled migration programme. Since the 1970s, visa schemes under the permanent migration programme have contributed to Australia’s skills base while delivering fair outcomes for visa holders. In stark contrast to the temporary visa schemes, there have been relatively few reported cases of mistreatment of permanent skilled migrants since their inception (Wright and Clibborn 2020). The main visas in the permanent skilled migration programme – the Employer Nomination Scheme (subclass 186) visa, the Skilled Independent (subclass 189) visa, and the Skilled Nominated (subclass 190) visa – or a scheme that combines elements of different permanent skilled visas, could form the basis of a design of a new temporary skilled visa.

For example, the entry criteria for a new ‘Temporary Skilled Employer Nomination Visa’ could be modelled on the Employer Nomination Scheme (subclass 186) visa. This would require applicants to meet existing criteria relating to possessing qualifications to work in an eligible skilled occupation; having relevant work experience; age; English language competency; and having nomination from an Australian employer but without obligation for the visa holder to maintain employment with that employer. Regarding the last of these criteria, nominating employers would have the first opportunity to employ a successful applicant, but the visa holder’s ability to seek employment elsewhere would give the employer an incentive to provide competitive wages and conditions and to treat the visa holder fairly.

Similarly, the entry criteria for a new ‘Temporary Skilled Independent visa’ could be modelled on the Skilled Independent (subclass 189) visa. This would be based on a points test, with the possibility of having a slightly lower points qualification threshold than the subclass 189 visa, to widen the number of eligible applicants if deemed necessary. As with the subclass 189 visa, points could be awarded for the existing criteria relating to: age; English language skills; employment experience in a skilled and/or in-demand occupation; local and/or regional employment experience; educational qualifications; and partner skills.

Finally, the entry criteria for a new ‘Temporary Skilled Nominated visa’ could be modelled on the Skilled Nominated (subclass 190) visa. This would be based on sponsorship from a state government and a points test, with the possibility of having a slightly lower points qualification threshold than the subclass 190 visa to widen the number of eligible applicants. As with the subclass 190 visa, applicants would have to meet several core requirements and satisfy a points test based on the existing criteria, which includes core requirements of being qualified to work in an eligible skilled occupation, committing to living in a nominating state for a minimum period, having an employment contract, and satisfying points test based on age; English language skills; employment experience in a skilled and/or in-demand occupation; local and/or regional employment experience; educational qualifications; and partner skills.

Another option is to create a new ‘Temporary Skilled Mobility visa’ using a points test that combines elements of these existing permanent schemes. For example, the Productivity Commission in 2016 recommended a job offer from an employer – or potentially nomination from a state government – in an area of identified shortage, qualifications, age, and English language ability as among several criteria be used to determine the points awarded to applicants under a single permanent skilled visa (Productivity Commission 2016). A single Temporary Skilled Mobility visa could be designed along similar lines.

It is important that problems with the current migration regime be addressed in the creation of any new visa scheme. Following the criteria outlined above, the proposed Temporary Skilled Mobility visa should meet preconditions relating to mobility, institutional protections, residency status, and skill thresholds, as argued in the next section.

Table 1. Designing a temporary skilled mobility visa to address the deficiencies of existing temporary visa schemes

	Current temporary skill shortage visa	Proposed temporary skilled mobility visa
Permanent residency	Partial – a pathway to permanency exists only for some visa holders.	Yes – if pathway to permanency is created and if restricted access to government economic support is eased.
Mobility	No – visa holders can work only for their employer sponsor.	Yes – if workers are allowed freedom to move between employers.
Skill thresholds/ labour market assessment	Partial – skill thresholds exist, but there is no effective labour market assessment.	Yes – if there is an independent assessment of labour market needs.
Institutional protections	Partial – however, the Fair Work Ombudsman is responsible for investigating both wage and migration law compliance for TSS visas.	Yes – if current problems with institutional protections are addressed and if union induction is introduced.

Discussion: Reforming migration policy

Given that temporary migrants in Australia are more likely than citizens and permanent residents to suffer underpayment of wages and other mistreatment by their employers (Clibborn and Wright 2018; Clibborn 2021), we propose several policy reforms to address this. These apply to employer-sponsored visas but would also benefit reforms to the wider temporary migration system. Australia's migration regime exposes temporary migrants to various forms of maltreatment at work due to current restrictions on residency status, mobility, skill thresholds and institutional protection. Therefore, we recommend that these four factors form the guiding principles of reforming all temporary visas. Table 1 outlines how incorporating these measures into a proposed Temporary Skilled Mobility visa could address the current deficiencies with the TSS visa.

First, in terms of *residency status*, reforms should recognise the benefits to social inclusion of permanent migration and the certainty created by a clear and defined pathway from temporary to permanent residency (e.g., after three years) for holders of the TSS visa and all temporary visa classes with work rights. Residency and citizenship are key determinants of whether migrant workers are likely to be treated fairly or unfairly by their employers. Temporary residency necessarily restricts the agency of migrant workers because it limits their capacity to find alternative employment and may entail limited access to public benefits that can increase their financial dependence on their employer. By contrast, permanent residency and citizenship greatly enhance migrants' ability to access their employment and social rights and to exit from exploitative employment relationships without fear that this could lead to deportation. Current restrictions on temporary migrants' access to social security, subsidised public services, and post-arrival support should be eased. These restrictions serve to socially marginalise many people who wish to contribute to and build a life in Australia and compound their potential vulnerability to mistreatment in the workplace (Boese and Macdonald 2017; Wright et al 2017).

Second, reforms should ensure that temporary migrant workers are granted and maintain *mobility* to move freely between employers. This would allow visa holders to exit from exploitative arrangements currently facilitated by their dependence upon employers created by visa regulations that produce a controlled and immobile migrant workforce. Even if nomination from an employer or a state government, or a job offer, is a precondition or a qualification criterion for a visa, there should be no obligation that the visa holder maintain employment with that employer. This would give the nominating employer the first opportunity to employ the visa holder but the visa holder's ability to

move to alternative employment would negate the problems identified of tying a visa holder to their employer. Regulations that limit mobility ignore ‘the profound inequality of non-citizen workers – who depend on employers in order to even enter or remain in the labour market’ (Dauvergne and Marsden 2014, 528).

Third, regarding *skill thresholds*, the labour market needs that the migration system is tasked with addressing should be independently verified by the Australian Government’s Jobs and Skills Australia with joint oversight from relevant employer associations and trade union representatives. This body is responsible for assessing existing supply and demand within the Australian labour market and regional labour markets and the appropriate roles for education and training and migration in addressing skills and workforce needs. The current model of using employer demand as a proxy for determining labour market needs in support of visa sponsorship applications has encouraged some employers to develop structural preferences for migrant labour in ways that have eroded opportunities for the local workforce. As Ruhs (2013) argues, skilled migration policies must be designed with reference to a broader range of policy principles other than simply ‘employer interests’. As well as independently verifying employer claims that migration is needed to fill skill shortages, Jobs and Skills Australia and other relevant government bodies must focus more attention on policy alternatives for utilising the existing and potential domestic supplies of skilled labour before allowing an occupation to be eligible for points attainment or employer or state government nomination. These alternatives include structured training programmes, active labour market programmes, and requiring employers in low-wage industries to raise wages and strengthen job security to improve the attractiveness of work in these industries (Ruhs and Anderson 2010).

Finally, institutional protections of employment rights must serve temporary migrant workers better. Weak institutional protections have contributed to problems of temporary visa holders being underpaid or otherwise harmed at work and must be addressed as a precondition for visa reform. This should be accompanied by an induction process administered by the Fair Work Ombudsman involving union participation to ensure that visa holders have awareness of their rights and means to enforce them. The Fair Work Ombudsman’s budget also needs to be significantly increased to ensure Australia’s labour enforcement function is adequately funded. A strong state labour enforcement agency is an important part of catching non-compliant employers, encouraging voluntary compliance by increasing employer expectation of being caught, and adequately protecting temporary migrant workers. Enforcement of employment laws for temporary migrant workers ideally involves more than just the state labour enforcement agency. While significantly increasing the Fair Work Ombudsman’s budget is important, there are numerous non-state actors whom the Australian Government could better support to be part of the enforcement solution. This involves both their funding and removal of barriers to their effective operation. Unions, community legal centres, other community-based migrant representative groups, and temporary migrant workers themselves should all be given a more prominent role in this regard (Clibborn 2019, 2023).

Conclusion

Migration policy has a vital role to play in addressing the challenges and opportunities that Australia and other nations face in the coming decades. However, there are two major problems with employer-sponsorship schemes that currently play a prominent role in Australia’s migration system. First, these schemes are not aligned with other labour market policies tasked with addressing skills and workforce needs. Second, the design of employer-sponsored visas fails to protect migrant workers from underpayment and other

mistreatment at work and fails to ensure employers do not gain an unfair advantage from employing them.

The migration system is preoccupied with short-term economic ‘efficiency’ objectives. Policymakers have sought to address individual employers’ immediate workforce demands and to maximise the fiscal benefits by reducing migrants’ access to the welfare and subsidised public services. Regulations giving effect to these objectives by restricting temporary migrants’ social rights and access to representation, and empowering employers in ways that heighten these workers’ vulnerability to mistreatment, have disregarded the vitally important labour market policy goals of ‘equity’ and ‘voice’.

We have proposed alternative models to employer-sponsorship visas to address these problems. Our arguments have been made primarily with reference to the TSS visa as a key component of Australia’s migration system explicitly tasked with addressing skills needs. Our primary recommendation is the creation of a Temporary Skilled Mobility visa scheme modelled on Australia’s existing permanent skilled migration programme. This would be the most effective way the migration programme can address Australia’s skills and workforce needs in a manner complementary to other labour market policies while ensuring that migrants’ rights are protected.

To return to the research question, the principles of providing support for temporary migrants and a guaranteed pathway to permanent residency, enabling worker mobility, independently verifying skills and workforce needs, and addressing deficiencies with institutional protection should guide reforms to the wider migration system. This includes reforms to any existing or new temporary visas such as the mobility visa model that we have proposed as a fairer and superior alternative to employer-sponsorship.

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