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Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

28 July 2024

Dear Ms Dunstone

Inquiry into the Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024 [Provisions]

Thank you for your email of 8 July inviting Mapien to make a submission in response to the current inquiry into the Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024 ("the Bill").

From review, the Bill intends to "*strengthen arrangements around skilled entry to Australia, by legislating income threshold requirements for skilled workers and amending the labour market testing provisions in the Migration Act. The amendments will promote transparency and worker mobility by introducing a public register of approved sponsors.*".

We have sought feedback from a selection of our clients in relation to the four key amendments proposed under the Bill, which has been incorporated below.

Legislation of income threshold requirements for skilled workers

In relation to income threshold requirements, the Bill seeks to allow for:

- Replacement of the current Temporary Skilled Migration Income Threshold (TSMIT) with a new Core Skills Income Threshold (CSIT), which will apply to the Core Skills Stream of the Skills in Demand visa. In the current financial year, this CSIT will remain at A$73,150 per annum, which is the minimum an individual must be paid, to be eligible for nomination under this stream.

- Introduction of a new, separate Specialist Skills Income Threshold (SSIT). This SSIT is proposed as A$135,000 per annum minimum, before a position can be nominated, and would reflect a higher amount being paid due the specialist skills associated with the position/occupation.
- Allowance for the Minister to determine an amount, under the Regulations, that should be paid to individuals sponsored under the Essential Skills Stream of the Skills in Demand visa. The Minister may also determine the way an amount paid to an Essential Skills Stream visa applicant may be worked out.

This proposed amendment is clear in its intention, and we have not received, nor do we have any specific feedback to provide in relation to the above except for the following two queries:

- What would be the basis for the Department to exclude skilled trades people earning more than A$135,000 per annum, from the Specialist Skills Stream of the Skills in Demand visa? We have many clients working in trade leadership roles, mostly in the mining and resources sectors, who are receiving guaranteed earnings above this level. These individuals are experts in their trade, who not only can perform all the technical requirements but also are engaged to provide training and leadership to their subordinate workers, and their salaries are determined to reflect this. It would be helpful if the Department could provide clarification around this reasoning.
- In the context of the Essential Skills stream, there has been limited information provided to date on this stream. In the context of determination of salary, will the Department allow that where an existing Enterprise Agreement (EA) is in place as approved by the Fair Work Ombudsman, the salary provided under that EA will be accepted without forcing these employers into a Labour Agreement, given some Labour Agreements take upwards of 12 months to be finalised?

Extension of validity period for Labour Market Testing

This is a welcome amendment which will help to avoid unnecessary duplication of advertising by sponsors, given it can take more than four months between the date a job advertisement opens to the date that a formal offer is made and accepted by a successful candidate.

We have seen many cases since this timeframe was reduced to the current four months, where employers have needed to recommence advertising due to this scenario. This not only places an administrative burden on employers who also must then issue a contract for a second time but also further delays the time within which a skilled candidate can commence employment. There have been no cases identified to us where this administrative need to readvertise has resulted in a sponsor subsequently identifying a more suitable candidate from the local market.

Further to this, employers on many occasions have indicated their frustrations in being forced to advertise a position which they are no longer actively seeking to fill, to satisfy what is sometimes seen as a 'box ticking' exercise.

We would like the Department to also consider some additional flexibility around the exemption to Labour Market Testing which is available in cases where an individual has been employed in their nominated position on a full-time basis for a period of at least two years.

For context, the Department has a policy-based concession in place which allows a Subclass 186 Temporary Residence Transition Stream visa application to be submitted one or two days *(the DHA indicated "up to 5 days")* ahead of a two-year sponsored employment anniversary, to avoid the need to renew a 482 application purely to gain one or two more days of eligible employment. This is helpful only in cases where a 482-visa holder was already working in the occupation/position with the nominating employer, when their 482 visa was initially granted.

We believe the Department should consider a similar concession under Labour Market Testing which would allow employers to not have to re-advertise where they already have a 482-visa holder working in the position, where that 482-visa holder has been working for a period of at least 12 to 18 months. This is more relevant to individuals nominated into occupations under the current Short Term Skilled Occupations List (STSOL), who may have been offshore at time of initial grant and who may have worked less than two years full time before again needing to renew their visas.

In these cases, these individuals have already been successfully tested in the workplace and demonstrated to the employer that they have the skills and experience required to continue in the role, and to positively contribute to the employer's business. This suggested concession could effectively be introduced as an additional alternate to formal Labour Market Testing, like the concession available to intra-company transfers. As the legislation allows employers to provide alternative evidence in lieu of formal Labour Market Testing for foreign employees being transferred to Australia from an associated entity of the business overseas, it would appear reasonable and consistent to allow alternate evidence to be provided for sponsored employees already in the role in Australia, who have proven their skills and experience in the local market and employed for a period of at least 12 to 18 months.

We have received consistent feedback from employers in relation to this requirement for this exact scenario, expressing a concern that they are effectively required to advertise positions that are not actually vacant. With Australia's unemployment rate having been consistently low for some time and most recently seasonally adjusted in June 2024 to 4.1%, it is reasonable to state that employers are continuing to have difficulty filling skilled roles locally. A concession of this nature would assist with

further streamlining the sponsored visa programs and allow Australian employers to focus on the core needs and continued operation and growth of their businesses.

Annual Indexation of income thresholds

While we and our clients support the annual indexation of income thresholds, there is concern about the intention to base these increases on the Average Weekly Ordinary Time Earnings figure published by the Australian Bureau of Statistics each year. For 2024, this figure was 4.5%[1], resulting in the current TSMIT increasing from $70,000 per annum to $73,150 per annum.

As the High-Income Threshold for age exemptions is linked to the definition of High Income provided by the Fair Work Commission, one valid question asked by several of our clients is why the Department would not link this indexation figure to the wage increase figures provided by the Fair Work Ombudsman. For the current financial year, the Fair Work Ombudsman has confirmed a 3.75% increase for award minimum wages. If this figure were applied, the current TSMIT would be $72,625 per annum.

Our clients have expressed concern that annual increases in line with the AWOTE, including the most recent increase of 4.5%, may result in the unintended consequence of benefiting temporary visa holders over Australian permanent residents and citizens, and that continued indexation connected to the Wage Price Index used for AWOTE will widen the gap between Fair Work Australia's minimums, and the Department of Immigration's expectations.

While real wages have been decreasing in Australia for several years, in its latest Employee earnings release in December 2023[2], the ABS noted that medium employee earnings were $1,300 per week in August 2023, representing a 4.2% increase since August 2022. This figure equated to a median annual salary of $67,600 per annum in Australia, in August 2023. If the AWOTE increase of 4.5% were added to that annual figure, the median annual salary in Australia currently would be $70,642.

This would indicate therefore that the minimum salary required to allow for sponsorship currently under the TSS visa program, is higher than Australia's actual median annual salary. While obviously the Australian Market Salary Rate for an occupation is the figure which also must be satisfied where this is higher, setting a minimum salary required which is higher than the actual median salary in Australia, would again create a system that is potentially skewed to favour temporary migrants.

[1] https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/average-weekly-earnings-australia/nov-2023
[2] https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings/aug-2023

The Department also needs to recognise that Australian employers use multiple data points when setting and reviewing the salary of employees, and the review process for some employers may also run in line with the calendar year as opposed to the financial year. Our clients have indicated the following as data sources used in support of salary reviews:

- Fair Work Australia's increase
- Wage Price Index and other reported inflation figures
- Relevant industrial awards
- Enterprise Agreements, where these apply
- Economic forecasts
- The organisation's performance and capability to afford salary increases
- Benchmarking to market rate data to ensure salary competitiveness in the market

For this amendment, we would recommend the Department reconsider which indexation factor should be used for future TSMIT/CSIT increases. We note again the genuine concerns which exist, that use of the AWOTE for this purpose will result in an inequitable increase in salaries paid to sponsored visa holders, when compared to the rest of the Australian labour market. Over time, indexation based on the AWOTE will restrict access to the sponsored programs for small to medium sized businesses, which may not be able to offer salaries that satisfy an immigration related threshold that outpaces the actual Australian median wage.

Public Register of Sponsors

We understand the final proposed amendment under this Bill is being introduced to 'encourage transparency, monitoring and oversight', while also helping 'temporary skilled migrant workers find a new sponsor and provide a resource to check that a sponsoring employer is legitimate.'.

The register will publish the following information: business name; ABN; postcode; number of individuals nominated and occupations of the nominated workers.

We have received feedback from several clients on this proposal, with a general recurring question being for what purpose does publication of the number of individuals nominated by a business and the occupations of these workers, serve the public? It is difficult to see how this register will help prevent abuses of the system, and these abuses would be best served by the Department making a considered and targeted further investment in compliance and direct sponsor monitoring activities. The register will not confirm the legitimacy of a sponsoring employer beyond confirming that the sponsor has been approved to nominate workers on previous occasions.

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We have received a further query around how frequently this information will be updated and who will be responsible for this, and how it will be reported in the context of complex business structures. It may be that this register will create an unnecessary administrative burden for the Department to keep updated, with minimal impact. This may create a circumstance also where the public register is exploited by non-citizens residing overseas to solicit sponsorship from employers, bypassing the proper process of applying for jobs when they are open to internationals. This is mentioned merely to highlight possible unintended consequences. For example, a UK national whose nationality provides an exemption to Labour Market Testing, may apply for a position where there is a vacancy which has not yet been advertised, preventing that job from being opened to the local labour market.

For complex business structures, the interaction of Section 50AAA of the Corporations Act allows for an individual to be sponsored by one company while they are employed by and working with an associated company in the same group. If the Department is simply to list for example that Company A Pty Ltd which holds the sponsorship agreement has nominated 100 individuals in two occupations, without recognising that 50 of those individuals were employed by Associated Company B and another 25 by Associated Company C, it will not be providing an accurate reflection of a business's actual use of the program.

In contrast to this is a genuine concern raised by a client whose business is small and highly specialised, who feels that publication of the number of occupations approved, and occupation itself, will make it easier for bad actors to identify its sponsored employees. This would result not only in a breach of the employees' (and our client's) privacy but may also make them subject to phishing and other scam attempts.

Businesses are concerned across various sectors that publication of their approved sponsorship status on a public register will also increase the number of unsolicited job requests/applications from individuals both in Australia and overseas, which will increase their workloads while also potentially impacting their retention, which can be costly.

A significant concern raised again is the general use of this information from bad actors, and there are doubts that the information will solely be used for the stated intent, opening the system for more targeted abuse. Compiling this information into one location makes it significantly easier for targeted scams (i.e. people pretending to be the Immigration department), which have been increasing in recent years.

It is suggested that if these multiple concerns are dismissed and a registry goes ahead, it should not include quantity and occupations of sponsored individuals or should have a required minimum

company size before these details are included, to help protect the privacy of sponsored individuals and organisations.

We thank you again for the opportunity to provide feedback on the draft Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024 and would welcome the opportunity to discuss these matters further with the Committee.

Yours sincerely

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