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Committee Secretary
Legal and Constitutional Affairs References Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

RE: Inquiry into the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages

Dear Committee Members,

Migration Council Australia is pleased to provide a submission for the inquiry into the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages being undertaken by the Legal and Constitutional Affairs References Committee.

Our submission reflects the ongoing commitment by Migration Council Australia to advocate for a strong skilled migration program that supports Australia's economic growth.

We appreciate your consideration of our enclosed submission in any findings in the inquiry and report on the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages.

Yours sincerely,

Carla Wilshire
CEO
Migration Council Australia



Recommendations

MCA recommends that you:

- **Consider** a national long-term economic strategy which details how the Temporary Skill Shortage visa is designed to complement other government programs, including the Skilling Australians Fund, to meet Australia's labour needs and build our economy
- **Consider** exemptions to the Skilling Australians Fund for service industries of benefit to the public
- **Consider** the Temporary Skill Shortage visa as one of the programs to address genuine skill shortages
- **Note** the economic impact for Australia and pressures on Australian businesses of hindering the flow of workers in areas of skills shortage and innovation
- **Consider** objective transparent analysis and projections of the labour market trends in key industries in Australia, while taking into account the experiences of Australian business and Australian workers
- **Consider** a fully transparent and accountable skills shortage assessment system
- **Consider** abolishing labour market testing
- **Consider** a further detailed proportional enforcement scheme to distinguish first time minor breaches of obligations from instances where an employer has benefited financially
- **Consider** including a pathway to permanent residency for all temporary work visas



Background

Migration Council Australia is pleased to provide this submission to the inquiry into the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages being conducted by the Senate Legal and Constitutional Affairs References Committee.

Migration Council Australia (MCA) is an independent not-for-profit organisation established to enhance the productive benefits of Australia's migration and humanitarian programs. MCA brings together corporate Australia and the community sector to provide a national voice to advocate for effective settlement and migration programs and to develop policy solutions to issues faced by migrants and refugees in Australia. MCA is a regular participant in public discourse relating to migration and settlement in Australia.

Introduction

As Australia is geographically isolated in an increasingly international market, the movement of skilled workers is key to our economic success. In MCA's view, a skilled temporary work visa scheme must ensure businesses are able to find the required workforce to prosper and keep Australia competitive and innovative. In other words, Australian businesses must be able to draw on international markets for skills and expertise they cannot find in Australia, and overseas businesses must be permitted to temporarily access the Australian market to fulfil contracts or provide services to an Australian business.

A skilled temporary work visa scheme should fit into the national economic strategic plan and be flexible to allow adapting to labour market variances while at the same time boosting knowledge transfer and innovation. The Temporary Skill Shortage (TSS) visa is one of many visas permitting migrants to work in Australia. It permits an employer to temporarily sponsor a suitably skilled worker to fill a position they can't find a suitably skilled Australian to fill.¹ It is one tool to address Australia's skill shortages.

Defining Skills Shortages

Identifying Australia's short-term and long-term labour market needs including skills shortages is a separate undertaking from establishing a list of eligible occupations for migration purposes. Identifying Australia's skill shortages is a task based on objective labour market analysis and projections as well as consultations with labour market stakeholders (industry, peak bodies and trade unions) and education stakeholders (education institutions and peak bodies). Skill shortages should be addressed through a

¹ Department of Home Affairs, Temporary Skill Shortage visa, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482>, accessed 5 December 2018



combination of national and international strategies. National strategies may include education schemes and financial incentives, and international strategies may include temporary migration programs (such as the Temporary Skills Shortage visa, Working Holiday visa; Temporary Work – Short Stay Specialist or International Relations – visa; Skilled Regional (Provisional) visa; etc.) and permanent migration programs (Skilled independent permanent visas; skilled nominated permanent visas, Employer Nomination Scheme visa; Regional Sponsored Migration Scheme visa; etc.).

Once skill shortages are defined, and strategies to address both short-term and long-term shortages are established, a list of eligible skill shortage occupations to be addressed through migration can be created based on labour market needs (including skills shortages, attracting talent and investment to develop innovation) and other migration integrity considerations.

Occupation lists responsive to Australia’s labour market needs

The Department of Jobs and Small Business provides recommendations to Government on the content of the Skilled Migration Occupation Lists (hereafter the Lists).² While the Department has made efforts to engage stakeholders by consulting on its draft methodology for providing advice on the composition of the Lists³ and has sought submissions regarding their review of the Lists⁴, the outcome of those consultations is not apparent.

While MCA acknowledges the Department “will continue to refine the methodology”⁵, it is unclear what information has informed the Skilled Migration Occupation Lists. To provide clarity and credibility to the process, at a minimum, the Department should publish a final detailed methodology report for assessing labour market needs including a list of objective criteria and thresholds considered, the modelling taken into account and the evidence studied, in addition to the proposed datasets.

MCA strongly encourages consultations regarding the Lists to conclude with a publicly available report of findings based on a variety of sources including the stated methodology, evidence-based labour market analysis and the submissions received. Publishing the report of findings would ensure accountability and help stakeholders (including businesses and prospective foreign applicants) as well as the public understand the basis of the Skilled Migration Occupation Lists and some of the changes

² Department of Jobs and Small Business, Skilled Migration Occupation Lists, Overview of the process for the Skilled Migration Occupation Lists review, <https://www.jobs.gov.au/SkilledMigrationList>, accessed November 23, 2018

³ Department of Jobs and Small Business, Consultation on Skilled Migration Occupation Lists, Previous consultation processes, <https://www.jobs.gov.au/consultation-skilled-migration-occupation-lists>, accessed 23 November 2018.

⁴ Department of Jobs and Small Business, Consultation on Skilled Migration Occupation Lists, Previous consultation processes, <https://www.jobs.gov.au/consultation-skilled-migration-occupation-lists>, accessed 23 November 2018.

⁵ Department of Jobs and Small Business, Consultation Paper – Methodology, https://docs.jobs.gov.au/system/files/doc/other/1710_methodology_approach_final.pdf, accessed 23 November 2018.



made to the lists of eligible occupations. It would also clarify the distinction between the list of short-term occupations and the list of medium-term occupations.

Skill shortage occupations eligible for migration

If the lists of skill shortage occupations eligible for migration differ from the findings of the Department of Jobs and Small Business, it would be appropriate for the Department of Home Affairs to consider publishing a report explaining how migration integrity issues, risk of fraud or other considerations were taken into account to establish the Skilled Migration Occupation Lists.

Understanding in practical terms how Skilled Migration Occupation Lists align with economic and labour market projections, and identifying connections between the occupations on the medium-term list, and to a certain extent on the short-term list, with the Skilling Australians Fund would help rationalise how the TSS is designed to meet Australia's labour needs and build our economy.

Providing clear, objective measures to assess true labour market needs (including indicators and thresholds), publishing the findings, and describing how the TSS fits within the broader forward economic plan would go far in establishing a successful program. For example, information on the following would provide transparency and contribute to strengthening the program:

- level of wages (what range) and other conditions necessary to create a shortage
- how restrictions/caveats are applied
- criteria are used to put an occupation on the short-term and medium-term streams
- justifications for the differences between the lists established by the Department of Jobs and Small Business and the lists of skill shortage occupations eligible for migration
- how the temporary migration fits within the national workforce development strategies and skills and training policies

Labour market testing

MCA recommends removing employer labour market testing for most occupations in favour of more robust, fully transparent independent industry assessment system. In MCA's view, once the lists of eligible occupations are established (including regional specifications) it is difficult to see the added value of an employer's own assessment of the labour market in regards to their own needs. This approach relies on subjective analysis from an interested party and does little to bar an unscrupulous employer from bypassing Australian workers in favour of a foreign worker. The 2014 Azarias review of the 457 Program argued that "the Organisation for Economic Co-operation and Development has pointed out, employer-conducted labour market testing is not "fully reliable", and in the Australian context has proven ineffective".⁶

⁶ Robust New Foundations; A streamlined, Transparent and Responsive System for the 457 Programme, Johan Azarias, Jenny Lambert, Prof Peter McDonald and Katie Malyon, published September 2014



A more effective measure would be to develop a tailored labour market assessment of industries, which would include tests for specific industry and regional practices as well as target businesses identified as having to justify an unusually high number of foreign workers. This mechanism ensures that testing outcomes are more reliable and would go further in protecting the domestic labour market.

Skilling Australians Fund

MCA has long advocated for a direct link between the temporary skilled migration program and a long-term plan to vocational education and training of Australian workers. The Skilling Australians Fund Levy allows for a more strategic approach to addressing training needs across industries and provides the ability to contribute to strategic national forward planning.

The contribution not only funds national training initiatives for Australians in areas of need, it also serves as an assurance that employers are willing to pay extra to hire a foreign worker. This is an important part of ensuring the programme achieves its objective of also protecting Australian job seekers.

At the same time, it is important to ensure public service industries are able to provide services to all Australians at an appropriate level. To facilitate filling shortages in public service areas, it would be appropriate to consider exempting industries providing essential services to the public, such as hospitals and education institutions, from the Skilling Australians Fund contributions.

Pathway to Permanent Residency

A pathway to permanent residence represents a huge incentive for workers to apply to work in Australia through a temporary work scheme. Approximately half of temporary work visa holders (457 visa holders) indicated the reason for applying for the visa was to live in Australia or become a permanent resident, and approximately 70 per cent of applicants intend to apply for permanent residence once their visa expires.⁷

Given the attraction for TSS visa applicants to have the option to apply for permanent residence, the absence of such a pathway risks creating difficulty for businesses seeking to attract talent in areas of skill shortages. The ability to acquire work experience in Australia for a limited amount of time may not be sufficient for applicants who would embark on a career-limited pathway.

Further, not enabling a pathway to permanent residence poses significant risks of producing a cohort of skilled workers living on the margins of Australian society who

⁷ Migration Council of Australia, More than Temporary: Australia's 457 Visa Program
Department of Immigration and Border Protection, Filling the Gaps: findings from the 2012 survey of subclass 457 employers and employees, p.3
<https://www.border.gov.au/ReportsandPublications/Documents/research/filling-gaps.pdf>, accessed 11 October, 2017



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

Visa enforcement arrangements

It appears the Department has focused its strategies to address compliance with employment obligations through a combination of awareness programs (such as the promotion of Visa Entitlement Verification Online checks⁸ and Illegal Worker Warning Notices⁹) and targeted risk-based monitoring that leads to migration related enforcement activities. For instance, in 2016-17, the Department reduced the number of sponsor site visits to monitor compliance (287 compared with 541 in 2015-16) however the number of business sponsors sanctioned increased (447 business sponsors had their sponsorships cancelled and/or barred, 158 were warned and 16 were issued with infringement notice).¹⁰

While MCA encourages raising awareness of employer obligations and issuing warnings for a first minor breach of obligations, MCA also recommends further detailing a comprehensive and proportional enforcement scheme to increase the integrity of the Program by ensuring unscrupulous employers are held accountable for their breach of obligations in a commensurate approach. Further developing a proportional scale of consequences for non-compliant employers should include consequences ranging from warning and remedies to encourage compliance to punitive consequences where an employer has benefitted financially. Current enforcement options include Administrative actions, enforceable undertaking and civil actions.¹¹ Clear guidelines on the types of sanctions applicable to each breach of obligation including warnings, setting a range of fixed cumulative pecuniary penalties and barring egregious employers from the Program for a number of years or indefinitely depending on the severity of the breach, would reinforce program integrity.

Subject to new legislation, the Department intends to publish information identifying sponsors who have not complied with their obligations and any action taken against.¹² This name and shame approach is both an incentive to ensure employers abide by their obligations and a warning to prospective workers who may consider working for a listed employer. Further details on the parameters of the naming policy (whether the breach and penalty will be publicised and the duration of the publication) and its effects remain

⁸ Department of Immigration and Border Protection, Annual Report 2016-17.
Department of Home Affairs, Annual Report 2017-18.

⁹ Department of Immigration and Border Protection, Annual Report 2016-17.

¹⁰ *Ibid.*

¹¹ Department of Home Affairs, Sponsorship obligations for Standard business, <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/existing-sponsors/standard-business-accredited-obligations>, accessed 10 December 2018

¹² *Ibid.*



to be seen. At the very least, this initiative increases transparency and accountability of the Program.

Conclusion

Many persons on temporary visas are permitted to work in Australia including students, working holiday makers and temporary workers. However, only the Temporary Skill Shortage visa is designed to meet Australia's labour market needs by focusing on skilled work in areas of shortage.

The most fundamental way to ensure the success of a temporary skill shortage migration program is to ensure all key players prosper and contribute to Australia's growth including Australian job seekers, Australian businesses and the Australian economy as a whole, as well as skilled migrants.

As such, it is essential to establish an overarching economic strategy that addresses labour market needs through complementary programs including the Temporary Skill Shortage visa. The economic strategy should draw links between the TSS visa and direct benefits to Australian job seekers, Australian businesses and the Australian economy as a whole. The program also needs to ensure migrants who have proven their ability to work in the Australian workforce are able to consider full and permanent settlement in Australia to continue to contribute to economic growth in the long term.