QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 21-22 MAY 2012

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(BE12/0187) Program 1.1: Visa and Migration

Senator Cash (L&CA 63-64) asked:

What was the policy intent when PAM 2.1 was amended? Why was the change made?

(The current version of the instruction reads: '2.1 Negotiated agreement: A labour agreement is a formal arrangement negotiated between an employer and the Commonwealth, represented by the department or the employment minister's department.' The previous version of the instruction read: 'A labour agreement is a formal arrangement negotiated between an employer or an industry association and the Commonwealth government, represented by this department or the employment minister's department.')

When was the change first contemplated and when was the decision made to update the procedures advice manual? When was the procedures advice manual actually updated? Does the update of the procedures advice manual mean that industry associations are now unable to enter into labour agreements?

Answer:

The PAM – the Procedures Advice Manual – is not in itself a piece of legislation but is a companion document to the Migration Act and Regulations which is intended to assist visa processing officers and is available to migration advice professionals by subscription.

During a routine review, it was noticed that parts of the PAM did not clearly reflect the legislative position in place since 14 September 2009. Since 14 September 2009 it has been the case that industry bodies cannot enter into “umbrella style” agreements on behalf of their members: they may only do it as direct employers. The direct employer relationship is the cornerstone of both the Subclass 457 and Labour Agreement Programs as it ensures that the employer is held legally accountable for how overseas workers are treated.

The text of the PAM was amended to more accurately reflect that a labour agreement is an arrangement between an employer *only* and the Commonwealth and by further clarifying that an industry body could only enter into a labour agreement if they were the direct employer of the workers.

If an industry body wishes to enter into a labour agreement as a direct employer and can meet all the requirements of the Labour Agreement Program, then they would be able to enter into a labour agreement.

The update to the PAM was included in the routine 24 March 2012 Legend system upload.

To date, the Department has received no formal requests to enter into a labour agreement from an industry body willing to be the direct employer of overseas workers and to bear the legal responsibility of the Sponsorship Obligations.