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Inquiry into the Impact of Temporary Migration

Thank you for the opportunity to provide submissions addressing the terms of reference for the *Inquiry into the Impact of Temporary Migration*.

These submissions have been largely prepared prior to the unprecedented global events of the last few days and weeks, as a result of the COVID-19 pandemic. While we have maintained the commentary on the 'business as usual' scenario in the large part, we would be keen to highlight that the impact of border closures and business downturn has disproportionately impacted on temporary visa holders to Australia, with a potential to increase their vulnerability.

We are pleased to provide these submissions to this inquiry. If we can assist with policy development in this area in any other way, please do not hesitate to contact Justin Gibbs, Director of Government Relations

Kind Regards,

Teresa Liu
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1. ABOUT FRAGOMEN

Fragomen is one of the world's leading global immigration law firms, providing comprehensive immigration solutions to our clients. Operating from over 50 offices in over 20 countries (with capabilities in more than 170 jurisdictions), Fragomen provides services in the preparation and processing of applications for visas, work and resident permits worldwide and delivers strategic advice to clients on immigration policy and compliance.

In Australia, Fragomen is the largest immigration law firm with over 140 professionals and support staff nationally, including Migration Agents, legal practitioners, Accredited Specialists in Immigration Law and other immigration professionals. With offices in Brisbane, Melbourne, Perth and Sydney, Fragomen assists clients with a broad range of Australian immigration services from corporate visa assistance, immigration legal advice, audit and compliance services, litigation and individual migration and citizenship applications.

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2. TERMS OF REFERENCE

We note the terms of reference are for the Select Committee to inquire into and report on the impact temporary migration has on the Australian economy, wages and jobs, social cohesion and workplace rights and conditions, with particular reference to:

- a. government policy settings, including their impact on the employment prospects and social cohesion of Australians;
- b. the impact of temporary skilled and unskilled migration on Australia's labour market;
- c. policy responses to challenges posed by temporary migration;
- d. whether permanent migration offers better long-term benefits for Australia's economy, Australian workers and social cohesion;
- e. the impact of wage theft, breaches of workplace rights and conditions, modern slavery and human trafficking on temporary migrants; and
- f. any related matters.

3. SUBMISSIONS ADDRESSING THE INQUIRY

As an introductory comment, the scope of this inquiry is potentially broad, and it may be useful to define what the concept of 'temporary migration' is intended to encompass.

Using the generally understood definition, 'temporary migration' means non Australians holding temporary visas, and this includes visitor visa holders, student visa holders, working holiday makers, skilled temporary residents as well as Special Category visa holders (i.e. New Zealand citizens).

As at December 2019, there were a total of 2,432,682 temporary visa holders in Australia, including 635,109 visitor visa holders (taking into account the seasonal tourism peak), 480,543 student visa holders, and 141,142 Working Holiday Makers, as well as 668,687 Special Category

visa holders. A further 216,141 persons were in Australia holding Bridging Visas. By contrast, at the same time, 119,160¹ people were holding temporary skilled visas – roughly 5 per cent of the temporary visa population and less than 1 per cent of the total Australian workforce².

Based on the terms of reference, we have limited our comments to key cohorts which hold work rights, including skilled temporary visa holders, student visa holders and Working Holiday Makers.

a. Government policy settings, including their impact on the employment prospects and social cohesion of Australians

In the global context of rising nationalism and protectionism in many countries, as well as the issues of wage stagnation, unaffordable housing and congestion in some of Australia's biggest cities, public debate has steered towards population growth – and migration – being responsible for these ills, with migration becoming an increasingly sensitive issue. In addition, with concerns about a slowing economy and wage growth, predicated most recently by the bushfire crisis and now the financial and health impact of COVID-19, thought and discussion inevitably turns to the perceived threat presented by migrants, and the role of government policy in addressing these threats.

We note that economic analysis³ indicates that there is no evidence that temporary skilled migration has a negative impact on the employment prospects of Australians. Indeed economic modelling shows that an increase in recent migrant share is associated with a positive effect on the labour force participation rate and annual wages of local workers. In the oil and gas industry, for example, it is estimated that every new position creates 10 more roles elsewhere in the economy⁴.

Looking next to the category of international students. Government data puts international education, including spending on tuition and living expenses, as Australia's third-largest export at more than \$32 billion annually⁵. In addition to the money spent by international students in Australia, it is also a job creator, with an estimated 240,000 jobs in Australia linked to the international education industry.

At the same time, recent government policy adjustments to encourage greater numbers of temporary workers and international students outside of the main cities of Sydney, Melbourne and Brisbane, has helped to increase the attractiveness of regional cities and other regional centres – including, for example, the introduction of regional visa options with migration pathways and giving graduates from regional institutions the opportunity to apply for further graduate visas. The introduction of further working holiday maker stay for visa holders who undertake specified work in regional areas (including in bush fire affected locations) will also assist to direct more visitors to the regions, and assist in economic growth. More, however, could be done by governments to assist social cohesion, including dispelling some of the myths related to the

¹ Statistics from: data.gov.au, BP0019 Temporary visa holders in Australia pivot table

² CEDA

³ CEDA – Effects of Temporary Migration

⁴ National Energy Resources Australia – Preparing Australia's Future Oil and Gas Workforce p

⁵ <https://internationaleducation.gov.au/research/Research-Snapshots/Documents/Export%20Income%20FY2016%E2%80%939317.pdf>

negative impact of migration; and responding to hard line policy proposals – such as that of One Nation, proposing that student visa holders should not have work rights.⁶

We have also previously made recommendations on further enhancements to the policy on enhancing the attractiveness of regional centres for visa sponsors and skilled visa applicants. For example, we submit that many – if not most – of the occupations on the STSOL would be recognised to be in longer term shortage in regional areas. We would submit there are two alternative options to better cater for skill shortages in regional areas:

- Remove the reliance on occupation lists entirely if the role is located in a postcode that is classified as 'regional' and the nominating employer can demonstrate they have completed Labour Market Testing in accordance with the requirements; or
- Where an occupation is on the STSOL but the nominee will work in a regional area, allow for the treatment of the application as though the occupation was on the MLTSSL (four year TSS with a transition to a PR pathway through the ENS). While we appreciate that the new regional visas offer a pathway to PR, given the upfront commitments and cost required by the Australian employer to gain the subclass 494 visa, this option may be more acceptable to the employer and the skilled worker.

b. The impact of temporary skilled and unskilled migration on Australia's labour market

As discussed above, we submit that the effect of temporary skilled migration on Australia's labour market is overwhelmingly positive, notwithstanding that temporary migrants form less than one per cent of the Australian labour market. Analysis shows that, as skilled temporary migrants (predominantly 457 visa holders and now Temporary Skill Shortage (TSS) visa holders) are on average younger, and better educated, and more productive than the average Australian worker, and their visa conditions mean that they are subject to less unemployment. In effect, if a skilled temporary migrant loses their job, they need to find another one within 60 days or depart Australia. There are numerous economic studies which point to skilled temporary migrants being job multipliers and growing the economy. By contrast, the inability to source appropriately skilled and experienced labour in Australia can have the effect of stifling and delaying projects and slowing down the economy.

Australia has few opportunities for temporary migration based on unskilled or semi-skilled occupations; noting that in some areas of the country youth unemployment is reported to be as high as 60%. However, many of the lower skilled labour shortages are filled by temporary visa programs, specifically international students, working holiday makers and seasonal workers under Pacific Island schemes, as well as – on occasion – graduate visa holders. Periodically, the issues of lower-skilled labour management come under scrutiny in terms of worker protection. Between 2013 – 2016, the Fair Work Ombudsman dealt with over 6000 requests for assistance from immigrant workers, and in 2014-15 these claims formed just under 11% of all requests.

Student visa holders have a right to work up to 40 hours per fortnight while their course is in session and have unlimited work rights during holiday periods. Their work patterns steer towards lower skilled jobs with flexible hours, and many will work in retail or hospitality in comparatively low paid roles with high turnover, arguably competing for these entry-level jobs against young and unskilled Australians seeking entry to the workforce. As noted above, in the current

⁶ <https://www.sbs.com.au/yourlanguage/punjabi/en/article/2018/04/09/international-students-should-have-no-work-rights-pauline-hanson>

unprecedented global environment and estimates of significant numbers of Australians out of work, undoubtedly these policy settings will again be highlighted for review.

Digital disruption is also relevant to any discussion of the position of lower-skilled employment in the temporary visa program. Many occupations are now under the threat of becoming redundant through digitisation or mechanisation. The occupations that will remain 'human' for the foreseeable future are those that have a uniquely human element to them that cannot be easily automated and require a degree of human 'craft' – such as cooks, cleaners, personal carers, hairdressers, gardeners, massage therapists – jobs that are difficult to teach a robot or computer program to do. These are all occupations which today are considered lower-skilled (and lower-paid) work. Demand for workers in these roles are likely to increase, with shortages exacerbated in regional areas and heightened vulnerability of temporary visa holders working in lower skilled roles away from major population centres. The fact that they are likely to survive in a post-digital world highlights the importance of getting the workplace and migration settings right. We would recommend that the visa program should include flexibility to sufficiently complement the available workforce arising from local training programs. As an example, the recent Aged Care Workforce Taskforce concluded that Australia needs to triple its aged care workforce over the next three decades to meet growing demand⁷. In addition, the need to provide culturally and linguistically diverse support in aged care has also been recognized as a specific need, including in the interim findings of the Royal Commission into Aged Care⁸, and one that may only be able to be filled through temporary migration.

c. Policy responses to challenges posed by temporary migration

Changes to the skilled migration program since 2009 have shifted the balance away from independent skilled migrants towards sponsored skilled migrants, who have an offer of employment. This reflects the move away from 'supply driven' independent skilled migration towards 'demand driven' outcomes, in the form of employer and government-sponsored skilled migration. The policy intention is to enable the program to better target the immediate skills needed in the economy and ensure that skilled migrants are employed in the industries that have the highest need, whilst also increasing the likelihood that new migrants will contribute to the economy and achieve economic independence.

We understand the key challenges to be the impact of temporary migration in the biggest cities, including congestion. We consider that the Government's policies to increase the attraction of regional centres are a good start to address this issue. To be truly effective, however, we would also argue that it is essential for regional centres to have the infrastructure and support that is needed for Australians and visa-holders to be able to live and work effectively, including medical care, schooling, availability of produce, cultural and language services, as well as accessible and affordable transport options to travel to big cities if required. In order to be effective in redirecting population from the major cities, the regional areas need to be attractive for both Australians and non-Australians.

⁷ <https://www.health.gov.au/sites/default/files/a-matter-of-care-australia-s-aged-care-workforce-strategy.pdf>

⁸ https://agedcare.royalcommission.gov.au/publications/Pages/interim-report.aspx?utm_source=National_Seniors_Australia&utm_medium=Email&utm_campaign=Royal%20Commission%20into%20Aged%20Care%20Quality%20and%20Safety&utm_content=Royal%20Commission%20into%20Aged%20Care%20Quality%20and%20Safety%3A%20191119

A further challenge arises out of the inability to convert to permanent residence in some circumstances, meaning there are visa holders who are not able to access the benefits such as social security and medicare. The introduction of the Short Term stream of the TSS visa, in particular, means that there are many skilled workers who are unable to transition to permanent residence. This is discussed further below.

d. Whether permanent migration offers better long-term benefits for Australia's economy, Australian workers and social cohesion

A number of studies have indicated that the likelihood of a migration outcome to be successful increases with a level of familiarity with the destination country. As such, encouraging the permanent settlement of temporary migrants (for example, holders of TSS visas or graduate visas) would arguably enable better outcomes, a greater degree of settlement and integration to Australia. It would also support the implementation of policies whereby temporary migrants are encouraged to settle in regional areas by supporting a transition to regional sponsored permanent migration programs in circumstances where the migrant has already had the opportunity to settle in the regional area.

Another important point is the ability of the temporary migration program to provide sufficient pathways and opportunities for graduates from Australian institutions. This would have the dual effect of enhancing the attractiveness of Australian international education as a product; as Australia's third largest export, and injecting the permanent visa programs with young, educated and talented workforce, who have adapted to life in Australia and who have the prospects of contributing to the economy for perhaps their entire working life.

We note the Department's intended policy response to decouple temporary visa programs from permanent residency and make a clear distinction between a temporary stay and a pathway to permanent residency, could be a barrier to successful migration outcomes. We would support a reconsideration of this position, and to appropriately link skilled temporary to permanent pathways.

In addition, it is arguable that a longer term ongoing reliance on a sponsor, where the temporary worker may feel less able to raise workplace concerns due to the necessary link of their employment with their visa status, has the potential to increase the need for costly workplace protections.

On the other hand, increasing numbers of people choose to be more mobile in terms of their employment, and move for opportunities, rather than choosing a job with the sole or even predominant purpose of permanent settlement. In other words, not everyone chooses to migrate permanently. This is also reflected in the growing trend of global nomads and the growth of the gig economy, where mobile, self-employed talent fluidly moves between projects. The traditional employer-employee relationship is therefore disrupted, and in the immigration context there are limited options that may cater in these circumstances (for example, General Skilled Migration).

e. the impact of wage theft, breaches of workplace rights and conditions, modern slavery and human trafficking on temporary migrants

In Fragomen's experience, such incidents tend to be isolated in lower skilled or unskilled occupations. For example, reports of student visa holders working in excess of their visa conditions

or being exploited occasionally surface in the media. In 2015-2016, in what was reported as 'probably Australia's greatest worker exploitation scandal', international students were reportedly paid as little as \$0.47 per hour by franchisees of 7Eleven and made to work well in excess of the permitted time, with reports suggesting anywhere from \$25 million to \$50 million was owed across at least 60% of franchises. Also in 2016, the Senate Standing Committee on Education and Employment released its final report following its inquiry into the impact of Australia's temporary work visa programs on Australian labour market and temporary visa holders, titled *A National Disgrace: The Exploitation of Temporary Work Visa Holders*.

At the same time, our view is that adjusting policy too broadly, has the potential of having adverse impact on highly skilled workers and ability for Australia to globally compete for talent. A fine balance therefore needs to occur in policy. In our view, there should be the ability to finetune policy settings while relying on existing safety nets for highly skilled migration – including accredited sponsors, sponsor monitoring, and data exchange with other organisations such as ATO and FWO. In the skilled temporary visa group – primarily now the Temporary Skill Shortage visa – the safeguards, including need for salaries to be set at least at TSMIT, and for an ongoing need for visa holders to be paid at or above market rates, together with penalties for employers/sponsors who do not comply with these requirements – are such that, in our experience, any non-compliance is rare and, more often than not, inadvertent.

We understand that with the increase of the number of accredited sponsors, and the correlated increase of nominations that are able to be auto-approved, the Department may be able to redirect resources to sponsor audits, monitoring and, we would recommend, education, to ensure that the safeguards continue to be complied with.

As a final note, we raise the current unprecedented environment affected by COVID-19, where even the best intentioned sponsors may struggle to maintain the employment and salaries of its staff. Outside redundancy considerations, we would argue there should be a mechanism in periods of a perceived temporary crisis, to enable employers to treat their temporary sponsored workers in the same way as they do their Australian staff in matters such as reduced hours or extended/unpaid leave, without adverse consequences to their sponsorship or to the visa holders' status.

f. any related matters.

Over the last 20 years, Australia's skilled migration programs have evolved from the recruitment of a broad spectrum of highly skilled workers with good prospects of successful settlement in Australia, to a system that seeks to directly match prospective clients to specific skills shortages in the labour market. This is often referred to as a shift from a 'supply-driven' to a 'demand-driven' migration program. In particular, changes to General Skilled Migration and the Employer Nomination Scheme since 2010 have refocused those programs on:

- recruitment of migrants who stand ready to make an immediate contribution to the workforce; and
- ensuring as best as possible that Australian business is not hampered in operating at maximum capacity due to an inability to source the workers it needs.

As a result, prospective skills-based migrants are extensively screened through a complex combination of metrics to ensure that they fit the profile of workers that are currently in demand in Australia. The criteria for skilled migration are based largely on:

- occupations in current shortage that require long and/or arduous training and which are not being delivered by the domestic education system (such as medical professionals); and
- areas of predicted or desired future growth (such as data analysts, and medical research and development).

Occupation lists and ANZSCO Codes – retrospective and out of date

The current occupation lists, updated on a six-monthly basis and overlaid by the labour market testing arrangements, are by their nature retrospective. The metrics used as screening criteria in skilled migration programs have historically been based on information garnered from studies and observations of migration outcomes and other factors such as labour market dynamics. They are unable to accurately predict the occupations where skills shortages will be in the future; and they also fail to take into account shortages in occupations which do not yet exist, or which are not adequately catered for by the outdated ANZSCO classification.

The need to fit an application to an ANZSCO classification is in itself often a difficult task. It is important that the categorisation of occupations is up to date with the changing nature of the Australian economy and emergence of new industries and skills. This is particularly the case given the transition of the economy to a largely service based economy; the evolution of the type of work in information and communication technology and other cutting edge sectors such as robotics; and the transition of work in service sectors to project-based roles. The last major review of the ANZSCO dictionary was conducted in 2006, and the rapid change in the types of occupations, particularly at the more highly skilled levels, since that time has made classification of more niche roles challenging.

Importantly, it is not just in the field of technology where the nature of business and work activity has changed. As digitisation disrupts each industry, the nature of the 'human element' involved in that activity has changed significantly. For example, the ANZSCO dictionary contains descriptions for more traditional corporate management roles such as General Corporate Manager and Sales & Marketing Manager; however, these do not always reflect the division of managerial responsibilities in specialised businesses. The advantage of a human component in a role is arguably flexibility, adaptability and ability to evolve, which necessarily extends roles across more traditional occupations.

Fragomen made these arguments in response to the 2018 ABS invitation to comment on the proposal to review the ANZSCO dictionary; however subsequently we were advised that the ABS had made a decision not to proceed with an ANZSCO review.

Given the decision not to review the ANZSCO classifications, we would argue that the temporary visa regime would benefit from additional flexibility in terms of access to new and evolving occupations. This would be consistent with the Government's innovation agenda and policies aimed at improving Australia's competitiveness for attracting global talent. While we acknowledge the efforts in this area, notably by way of the Global Talent Employer Sponsored (GTES) program, we are of the view that the potential effectiveness of that scheme may be undermined by the requirement that nominations for occupations are made within the constraints of the ANZSCO.