



Law Council
OF AUSTRALIA

*Federal Litigation and
Dispute Resolution Section*

6 January 2021

Committee Secretary
Department of the Senate
PO Box 6100
CANBERRA ACT 2600

By email: temporarymigration.sen@aph.gov.au

Dear Committee Secretary

Answer to question taken on notice – Temporary Visa Employer Register

The Migration Law Committee of the Law Council of Australia's Federal Litigation and Dispute Resolution Section (**the Committee**)¹ appreciates the opportunity to respond to a question taken on notice during its appearance before the Select Committee on Temporary Migration on 18 November 2020.

Question: Senator Walsh requested that the Law Council of Australia provide further details as to the suggested establishment of a Temporary Visa Employer Register.

Answer: The Temporary Visa Employer Register could utilise the existing Standard Business Sponsorship or Temporary Activity Sponsor processes in place for Temporary Skilled Work Visa holders whereby an Australian business is approved by the Department of Home Affairs under the *Migration Act 1958* (Cth) (**Migration Act**) and *Migration Regulations 1994* (Cth) (**Migration Regulations**) and thereby subjected to oversight of working arrangements and statutory compliance regimes.

A Temporary Visa Register of employers and employees would provide transparency and oversight as to the work being performed by temporary migrants in Australia and support efforts to reduce exploitation of temporary visa holders in Australia.

This could be achieved by establishing a two-stage registration process where Australian employers are required to register as a Temporary Visa Holder Employer and the Temporary Visa holder is required to register their employment with that business. Visa conditions could provide that work on temporary visas in Australia is only permitted with registered Temporary Visa Holder Employers and must be registered.

A similar arrangement currently exists with the Seasonal Worker Program. The recently renamed Commonwealth Department of Education, Skills and Employment requires employment entities to be approved before they can recruit seasonal workers through the program. The approved employers then enter into an agreement through the Department

¹ The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

and also into sponsorship arrangements with the Department of Home Affairs. In this situation the worker participants are all clearly identified because they apply for the Seasonal Worker visa.

According to the Department of Home Affairs statistics at 30 September 2020, there were 1,912,054 Temporary Visa holders in Australia of which less than 100,000 were visitors or airline crew. This leaves more than 1.8 million temporary visa holders in Australia who may have various work rights on their temporary visas (includes 657,186 New Zealand Citizens) with less than 10 percent subject to any oversight of work undertaken such as for Skilled Work and Seasonal Work categories, leaving the vast majority of temporary visa holders particularly subject to exploitation.

The Migration Act and Migration Regulations already provide for Australian businesses to be approved to employ some categories of temporary visa holders as outlined above. Existing programs allow for certain minimum standards to be met by an Australian business before they can engage temporary visa holders on relevant work visas and could be expanded to include a Temporary Visa holder Employer category. Existing compliance regimes could also be utilised to address exploitation by employers under the Migration Act and Migration Regulations rather than requiring Fair Work Australia to take on the regulatory role when matters involve a temporary visa holder in Australia.

The establishment of a Temporary Visa Employment Register would extend oversight and protections to all temporary visa holders in Australia as well as facilitate better management of the impact of temporary migration on the Australian labour market.

Should the Select Committee wish to discuss this correspondence, please contact the Migration Law Committee Deputy Chair, [REDACTED], on [REDACTED] or at [REDACTED] in the first instance.

Yours sincerely

Michael Tidball

Chief Executive Officer