

12 December 2022

Our ref: HS/MLCC

Dr James Popple  
Chief Executive Officer  
Law Council of Australia  
19 Torrens Street  
Braddon ACT 2612

By email: [REDACTED]

Dear Dr Popple

**Migration Review – ‘A migration system for Australia’s future’**

Thank you for your memorandum dated 22 November 2022 and the opportunity to provide feedback on the Migration Review. The Queensland Law Society (QLS) appreciates being consulted on this important matter.

This response has been compiled by the QLS Migration Law Consulting Committee, whose members have substantial expertise in this area. In light of the short time allowed for the review, QLS has focussed its attention on barriers and potential reforms in relation to Temporary Skill Shortage (TSS) (subclass 482) employer sponsored visas, given this is the primary program Australian employers use to sponsor overseas workers to address skill shortages in the Australian labour market, and given that there is a significant backlog in processing those visas.

**TSS visa program**

The present difficulties facing employers in relation to engaging appropriate staff are well known. Many employers are recruiting internationally in order to fill gaps and complement the domestic workforce.

Members of our committee act for a range of employer types, across most Australian industries within the public and private sectors.

QLS considers it worth exploring how the current ‘one size fits all’ approach to employer sponsored visas could be altered to improve efficiency for employers and visa holders/prospective visa holders while ensuring that workers in Australia on employer sponsored visas are protected from exploitation.

At present, application criteria and compliance requirements are essentially identical for all employers, regardless of size, location and the type of role being filled.

While QLS does not advocate for a system that would preference different categories of employer/roles in terms of processing priority, we consider that it may be possible to improve efficiency for all parties (including the Department of Home Affairs) by not applying unnecessary application criteria and compliance mechanisms to a subset of accredited employers sponsoring employees to fill certain types of roles. These would be ‘model employers’ with the demonstrated ability to comply with all sponsorship requirements, filling high salary roles where employees are not likely to be vulnerable to exploitation. QLS proposes the following streams.

### Accredited employer sponsored stream

To be eligible for this stream, one of the following must be met:

- a) The employer nominating the position must hold accredited sponsorship (as per the current accredited sponsor guidelines); or
- b) The position being nominated must have guaranteed annual earnings of at least \$100,000.

The nomination eligibility requirements should be amended to be more responsive to business need and streamline the nomination requirements for accredited sponsors. We recommend the following key changes to the current TSS nomination criteria:

- Nominated occupation – ability for employers to nominate individuals in positions without needing to align with specific ANZSCO Codes. This would enable accredited sponsors to be able to have more flexibility in nominating individuals for skilled positions that do not fit neatly within an existing code, and to reflect the constantly evolving nature of Australia's workforce. To ensure that positions nominated under this stream are skilled position, we propose either:
  - Positions must be within an ANZSCO occupation group at the major group levels 1, 2 or 3. The ANZSCO grouping is also correlated with a skill level which will determine skill and qualification requirements. For example, Managers for Major Group 1 are at skill level 1 (Bachelor degree or higher qualification, or 5 years of relevant experience to substitute for a formal degree) or skill level 2 (Associate degree, Advanced Diploma or Diploma or at least 3 years of relevant experience to substitute for formal qualification); or
  - If the migration program moves away from relying on the ANZSCO dictionary, requiring minimum qualification/experience levels.
- Labour market testing – no strict labour market testing. Instead, we propose that sponsors must make a declaration on the nomination form that they have made a genuine commitment to recruiting from the local labour market and are unable to find an Australian to fill the role. This declaration should be taken at face value, unless the case officer holds broader concerns about the genuine need for the position.

The current market salary and genuine need requirements under this new stream are proposed to remain unchanged.



### Standard employer sponsored stream

For those employers that do not meet the requirements of the accredited employer sponsored stream, it is proposed that standard TSS nomination requirements remain unchanged, with the exception of Labour Market Testing.

- The following changes are proposed with regards to Labour Market Testing:
  - Exemptions available where the occupation has been identified by the National Skills Commission as subject to skill shortages.
  - Greater flexibility to the modes of advertising required. Advertising to continue to be required to be completed on three platforms, however employers can advertise within their own local market or on their business website to achieve a more targeted approach.
  - Labour market testing to be a time of decision requirement. This would allow employers greater procedural fairness, and to be able to provide further documentation if needed to meet requirements.

### Labour agreement stream

Labour agreements provide flexibility for Australian employers where the standard visa programs are not appropriate. This stream allows input from industry and the creation of industry specific requirements and compliance frameworks.

QLS strongly supports the continuation of the labour agreement program.

### **Permanent residency pathways**

QLS is supportive of permanent residency pathways being available to all streams of the TSS visa.

Permanent residency pathways through the employer sponsored program are currently restricted to applicants under the age of 45, except in very limited circumstances. However, it is often visa holders over this age bracket that are filling crucial supervisory or managerial roles within Australian organisations, and are invaluable in the training and upskilling of junior Australian staff.


QLS is supportive of permanent residency pathways for applicants over 45, where employers can demonstrate that the applicant is contributing to the training and development of junior Australian workers.

### **Compliance**

In respect of the more vulnerable cohort of visa holders, QLS is of the view that the current compliance framework is appropriate but requires more robust enforcement, together with additional resources being allocated to:

- educating employers about their sponsorship obligations;
- assisting employers to navigate the compliance framework;
- educating employees about their rights if they are being exploited (for example, that their visa will not be cancelled if they are progressing a matter through Fair Work Australia).

## Migration Review – ‘A migration system for Australia’s future’

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via 

Yours faithfully



Kara Thomson  
**President**