

20 March 2020

The Hon. Dan Tehan MP
Minister for Education
dan.tehan.mp@aph.gov.au

By email

Dear Minister, Tudge,

Re: Direction not to cancel Temporary Skills Shortage visa due to breaches of visa conditions 8107 and 8607 in order for sponsored visa holders to access alternative employment without repercussion during COVID-19 pandemic

Community Legal Centres NSW is the peak for almost forty community legal centres across the state. Community legal centres are independent, community-based organisations that provide free legal advice and assistance to people and communities when they need it most. Our services are particularly targeted towards people experiencing disadvantage, especially financial disadvantage, and discrimination. Included in our membership are Redfern Legal Centre and Marrickville Legal Centre, centres that provide critical employment law services to members of the community experiencing disadvantage and discrimination in the workplace. These services are part of a consortium conducting a specialist employment service for migrant communities. Our correspondence has been informed by the expertise of these two centres, and contacts for both centres are included at the bottom of this letter.

The COVID-19 outbreak is having disastrous impacts for Australia's workforce and economy. While temporary stand downs, terminations and redundancies affect every employee in a negative way, for migrant workers in Australia, such actions could lead to visa cancellation, making their circumstances particularly precarious.

Subclass 457 and 482 visa holders (Temporary Skills Shortage) who are temporarily stood down are required to comply with visa conditions 8607 and are unable to access alternative employment for fear of breaking their visa conditions. The *Migration Regulations 1994* (Cth) – Schedule 8 state that condition 8607 requires a visa holder to only work in the occupation nominated on their granted visa. In plain terms, this means that a subclass 482 visa holder may only work in their nominated role for the nominated employer who sponsored them.

If these Temporary Skills Shortage visa holders are dismissed, in accordance with visa condition 8107, they have only 60 or 90 days to find alternate employment before their visas expire.

COVID-19 and the unintended impact of these visa conditions

8607

The enforcement of visa condition 8607 and the business response to the current pandemic means some subclass 457 and 482 visa holders will be unintentionally forced into poverty and destitution.

The Federal Government restrictions on crowds over 100 people and the call for Australian citizens to practice social distancing has had an immediate and drastic impact on some industries, particularly the hospitality industry. Australia's restaurants, cafés and bars rely significantly on migrant workers, including many subclass 457 and 482 visa holders.

Redfern Legal Centre has already provided advice to clients on subclass 457 and 482 sponsored visas in crisis due to COVID19. One client works as a chef for a catering company and was stood down without pay for one month due to a downturn in business. The company advised our client that it does not have enough funds to pay him annual leave at this time. Owing to condition 8607, the client cannot seek alternative employment for fear of jeopardising his Permanent Residency application. The client cannot return to his home country due to closed borders. He is destitute but willing to work in any role to survive, including as, for example, a supermarket casual, but cannot due to his visa conditions.

8107

Many businesses are terminating staff instead of standing them down. The Business Council of Australia has made public comment about businesses 're-hiring' workers after the COVID-19 crisis has passed. Once a Temporary Skills Shortage visa holder is terminated, they only have 60 or 90 days to obtain another sponsored role, a challenge in these uncertain times.

These visa holders are crucial to filling the gaps in the labour market. When social gathering sanctions are lifted after the COVID-19 pandemic has passed, the Australian economy will rely on these workers to rebuild the economy.

Flexibility to respond to COVID-19

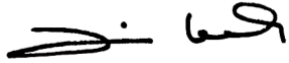
Recently the Australian Government announced international students are able to work beyond the 40 hours per fortnight cap (8105 visa condition) in response to the COVID-19 pandemic. At this time, the Hon. Alan Tudge MP [indicated](#) that the government would consider "providing flexibility with other temporary visas should the need arise."

We ask that the Australian Government take urgent action by providing direction to Department of Home Affairs decision-makers to consider not cancelling Temporary Skills Shortage visas for breaches of visa conditions 8107 and 8607. We urge the Australian Government to provide visa cancellation relief so these workers may have access to alternative employment if stood down, terminated or made redundant.

It is in the Australian Government's interest to support these experienced and highly skilled workers now so that they remain in Australia. The proposed visa cancellation relief will allow these visa holders to fill other gaps in the labour market, particularly in industries which will experience an increase in demand from a community in crisis, such as supermarkets and factories.

Thank you for taking the time to consider our position. If you would like to discuss this matter further, please contact Vasili Maroulis, Managing Principal Solicitor of Marrickville Legal Centre, on 0401 272434, or Redfern Legal Centre's Employment Law Practice Solicitor, Sharmilla Bargon, on 0424 397221.

Yours sincerely,



Tim Leach

**Executive Director
Community Legal Centres NSW**