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**RE: OHCHR Questionnaire – General Assembly Resolution A/RES/69/167 on the
Protection of Migrants – Australia’s response**

The Permanent Mission of Australia to the United Nations and other international organisations in Geneva hereby presents the Australian Government’s response to the Office of the High Commissioner for Human Rights’ request for information in relation to General Assembly Resolution A/RES/69/167 on the Protection of Migrants.

Compliance and Enforcement Framework

There is a comprehensive range of powers and sanctions under the *Migration Act 1958* (the Act) that enables the Department of Immigration and Border Protection (the Department) to respond to businesses and other persons who allow or refer persons to engage in illegal work. Under the Act, the Department has the ability to issue infringement notices, instigate civil penalty proceedings and criminal prosecutions. These powers and sanctions can be applied in situations where women migrant workers and migrant children are involved.

Promoting the human rights of migrant workers

- Australian workplace laws provide basic protection and entitlements for all workers in Australia, including workers from overseas. All workers are entitled to basic rights and protections in the workplace.
- All employees in Australia including overseas workers are covered by the *Fair Work Act 2009*.
- All workers in Australia including overseas workers have minimum conditions of employment. These standards cover things such as wages, working hours, payment for overtime, rest breaks, sick leave and holidays.
- All workers in Australia have the right not to be dismissed unfairly.
- All workers in Australia have the right not to be discriminated against for reasons of race, religion, sex, pregnancy, sexual orientation, disability or for being a member of a trade union.
- All workers in Australia have the right to work in a safe and healthy workplace.

Providing rights and obligations information to overseas workers

- The information booklet '*Your rights and obligations – immigration facts for workers*', has been produced to assist workers from overseas to know their rights and help reduce the incidence of exploitation.
- The information booklet, available in several languages, covers basic protections and entitlements, work rights, visa choices, employer obligations and using a migration agent for overseas workers.
- The booklet also includes contact details for the Department, Unions Australia, Fair Work Australia, the Office of the Migration Agents Registration Authority (Office of the MARA) and the Translating and Interpreting Service.
- The information booklet can be found on the Department's website (<http://www.border.gov.au/Trav/Work/Work/Your-rights-and-obligations-Immigration-facts-for-workers>).

Working in Australia

- To work in Australia, workers must have a valid Australian visa with work rights. A range of temporary and permanent skilled visas is available.
- Australian laws provide all employees with basic rights and protection in the workplace.
- Australia has a range of other sponsored temporary activity visas that may be granted to a range of persons undertaking specified temporary work or activities for which they may receive remuneration or may not.
- For a complete list of available visas with work rights, please visit www.border.gov.au.

Temporary work (Skilled)

- The Temporary Work (Skilled) visa (subclass 457) programme is used by employers in Australia (or those who are doing business in Australia) to address skilled labour shortages with genuinely skilled overseas workers on a temporary basis where they are unable to find an appropriately qualified Australian to fill the position.
- Before a subclass 457 visa is granted, a nominated worker must:
 - satisfy English language requirements (research has also shown that migrants with strong English language skills are less susceptible to exploitation and more able to raise workplace concerns with the appropriate authorities);
 - have a genuine intention to perform their nominated occupation;
 - possess the skills (qualifications and relevant work experience) necessary to perform the occupation, including undergoing a skills assessment if required;
 - maintain adequate health insurance arrangements while in Australia; and
 - satisfy health checks and public interest criteria, including in relation to character and national security.
- If the visa is granted, subclass 457 visa holders are limited to working in their nominated occupation and only for their direct (nominating) employer for up to four years. These conditions aim to prevent visa holders from being exploited by unscrupulous employers and also preventing the undercutting of jobs and salaries in the Australian labour market.
- Subclass 457 visa holders are only able to change sponsors if the new employer has become an approved sponsor and a nomination is lodged and approved. This facilitates mobility between sponsors for 457 visa holders to reduce the risk of them being 'bonded' to an employer.

- If a subclass 457 visa holder ceases working for their nominated employer, (for whatever reason) they have up to 90 days to find another employer who will sponsor them or to prepare for and leave Australia.

Permanent Employer Sponsored Visa Programme: Employer Nomination Scheme (subclass 186)

- The Employer Nomination Scheme (ENS) visa (subclass 186) is for skilled workers who want to work in Australia. This is a permanent residence visa.
- This visa involves a two-step process, firstly, nomination by an approved Australian employer and then an application under the nominated stream.
- Before a subclass 186 visa is granted, a nominated worker must:
 - have been nominated by an approved Australian employer
 - are younger than 50 years of age, unless you are exempt
 - meet the skills, qualifications and English language requirements, unless you are exempt
 - apply under the stream for which you were nominated
- Employers can nominate a skilled worker for this visa if they:
 - actively and lawfully operate a business in Australia
 - have a genuine need for a paid employee to fill a skilled position
 - offer a skilled position in the applicant's field that is full time and ongoing for at least two years
 - pay a market salary rate
 - comply with Australian immigration and workplace relations laws
 - there is no adverse information known about your business or any person associated with your business.
- The above conditions aim to prevent visa holders from being exploited by unscrupulous employers and also preventing the undercutting of jobs and salaries in the Australian labour market.

Permanent Employer Sponsored Visa Programme: Regional Sponsored Migration Scheme (subclass 187)

- The Regional Sponsored Migration Scheme (RSMS) visa (subclass 187) is for skilled workers who want to work in regional Australia. This is a permanent residence visa.
- This visa involves a two-step process, firstly, nomination by an approved Australian employer and then an application under the nominated stream.
- Before a subclass 187 visa is granted, a nominated worker must:
 - have been nominated by an approved Australian employer for a job in regional Australia (regional Australia does not include the Gold Coast, Brisbane, Newcastle, Sydney, Wollongong or Melbourne)
 - are younger than 50 years of age, unless you are exempt
 - meet the skills, qualifications and English language requirements, unless you are exempt
 - apply under the stream for which you were nominated
- Employers can nominate a skilled worker for this visa if they:

- actively and lawfully operate a business in regional Australia (regional Australia does not include the Gold Coast, Brisbane, Newcastle, Sydney, Wollongong or Melbourne)
- have a genuine need for a paid employee to fill a skilled position
- offer a skilled position in the applicant's field that is full time and ongoing for at least two years
- pay a market salary rate
- comply with Australian immigration and workplace relations laws
- there is no adverse information known about your business or any person associated with your business.
- The above conditions aim to prevent visa holders from being exploited by unscrupulous employers and also preventing the undercutting of jobs and salaries in the Australian labour market.

Labour Agreements

- The Temporary Work (Skilled) visa (subclass 457) programme is used by employers in Australia (or those who are doing business in Australia) to address skilled labour shortages with genuinely skilled overseas workers on a temporary basis where they are unable to find an appropriately qualified Australian to fill the position.
- Labour agreements are formal arrangements negotiated between an employer and the Australian Government that let an employer recruit an agreed number of skilled workers from outside Australia.
- Labour agreements are used where standard migration arrangements do not meet employer needs but a genuine labour market need can be proven.
- Labour agreements account for three per cent of primary visa grants under the subclass 457 visa and two per cent under the Permanent Employer Sponsor programme.
- Visas granted under the labour agreement will allow for temporary entry to Australia for periods of up to four years.
- Overseas workers must receive terms and conditions of employment no less favourable than an Australian worker. Terms and conditions of employment are expected to be consistent with local remuneration practices for that occupation and meet Australian workplace laws.

Consideration of the human rights of migrant children

Australia considers the best interests of migrant children, including those who are unaccompanied, as a primary consideration in any action taken concerning that child. Each child is considered in the context of their specific needs and circumstances and in conjunction with other primary considerations including Australia's migration legislation and policies.

Under the *Immigration (Guardianship of Children) Act* 1946, Australia's Minister for Immigration and Border Protection is the guardian of some children who arrive in Australia unaccompanied and with the intention of remaining permanently at the time of arrival. Many of these children arrive on a permanent visa granted as part of Australia's Humanitarian Programme or seeking Australia's protection after they arrive in Australia.

Australia's Unaccompanied Humanitarian Minors (UHM) Programme protects the human rights of such children by facilitating the provision of relevant care, supervision and settlement support services to them. Some of the support services include access to the following:

- Accommodation/out-of-home care services
- torture and trauma services
- medical services
- provision of English language classes
- mentoring services for the purposes of transitioning to adulthood
- community networks.

The UHM Programme is premised on the best interests of the child. This includes:

- protection from any form of abuse
- the respect, protection and general observation of the rights of children in accordance with the Convention on the Rights of the Child
- the taking into account of the age, gender, culture, safety, privacy, level of development and any specific needs of children in the provision of care and support
- the support of minors to reside in a safe and stable environment, including meeting their basic needs, such as the provision of food, shelter, education and access to health care
- the provision of service that builds on the strengths of children and promotes their independent living capabilities.

Further information about the UHM Programme is available on the Department's website at the link below:

<http://www.border.gov.au/about/corporate/information/fact-sheets/uhm-programme>