

COVID-19 Relief Measures

Australia's Indifference to Temporary Migrants

Kathryn Viegas and Gopika Aryad

Kathryn Viegas is a Director of Nomos Legal. She holds degrees in Psychology and Law from the University of New South Wales, a Graduate Diploma in Legal Practice from the Australian National University and a Master of Laws from the University of Sydney. Kathryn has practiced immigration law since 2003 and is an Accredited Specialist in Immigration Law. She has presented continuing education programmes through Nomos, the Law Society of NSW and other organisations. She currently teaches the Graduate Diploma in Migration Law at Victoria University. Kathryn is the current President of the Management Committee of the Immigration Advice and Rights Centre and the Secretary of Diverse Women in Law. She also sits on the Specialist Accreditation Immigration Law Advisory Committee in NSW.

Gopika Ayyappan Aryad is a second-year Juris Doctor student at UNSW. She has completed undergraduate studies in Law/Arts at the University of Kerala, India. She currently works as a Paralegal at Ivisapoint Migration Services. Gopika's legal studies have inculcated in her an interest in Migration Law, and through her work experience, she has gained an understanding of the practical issues involved in the Australian migration process. She is passionate about research and policy reform relating to refugee rights and hopes to develop her skills in that area of law.

Australia had its first taste of the impact of the COVID-19 pandemic in March 2020, when a range of laws and policies were introduced to protect the public health of those living in the country. As of 31 March 2020, this included 2.17 million temporary migrants.¹ Of these, 281,179 held a bridging visa, 567,924 held a student visa, 206,025 held a visitor visa, 17,223 held a temporary protection visa and the remainder held a temporary visa based on their employment or training.² Of these temporary visa holders, the majority would have had permission to work in Australia.

This article explores some of the issues faced by certain temporary visa holders in the wake of the COVID-19 pandemic. This article then considers the impact of governmental relief measures on employed temporary visa holders. This article finally considers whether this response was an appropriate one, taking into account the approaches adopted in other countries.

There is no universally accepted definition of the term 'migrant'. For the scope of this article, the definition by the United Nations Department of Economic and Social Affairs, that an international migrant is 'any person who changes his or her country of usual residence,' is adopted.³ Accordingly, international students and other temporary visa holders in Australia are within the scope of this definition.

I The Initial Impact of COVID-19 on Temporary Visa Holders

In March 2020, the Australian government introduced a range of urgent and necessary measures to protect the wider community from the rapidly spreading COVID-19 virus. These measures included border closures, lockdowns and the introduction of physical distancing requirements, amongst others, which had a serious impact on businesses across the country and their staff. The resultant impact on the tourism, retail and hospitality sectors, all of which employ a large number of temporary visa holders, was devastating.⁴

The JobKeeper and JobSeeker packages were the prime relief measures of the government during the COVID-19 pandemic. JobKeeper supported businesses significantly affected by COVID-19 by paying a subsidy to help them to continue paying employees.⁵ The aim was to help employers maintain their connection to their employees so that these businesses would be able to reactivate their operations quickly and without having to recruit staff after the pandemic. This payment was only available in relation to 'eligible employees', and an employee's visa status was relevant to whether or not they were considered to be an 'eligible employee'.⁶ Australian citizens, Australian permanent residents and certain New Zealand citizens qualified for the purposes of this test, whereas temporary visa holders, such as student visa holders, did not. It is worth noting that New Zealand citizens in Australia, as holders of subclass 444 Special Category visas, were considered to come within the definition



of an 'eligible employee', making this cohort of New Zealand citizens the only temporary visa holders who were eligible for JobKeeper payments.⁷

Similarly, the JobSeeker payment provided fortnightly payments to eligible Australian permanent residents and citizens of working age who were looking for work.⁸ New Zealand citizens were again treated differently to the majority of temporary visa holders, with certain Special Category visa holders eligible for payments.⁹ Apart from this, there was no government support for the majority of temporary visa holders who had lost their jobs and were looking for work.

In introducing the JobKeeper and JobSeeker packages, the government explained that their primary obligation was towards Australian citizens and permanent residents, and that a lack of financial resources prevented them from including temporary visa holders within these relief packages.¹⁰ Whilst it is true that a government has a duty of care primarily towards its citizens and permanent residents, the government's decision to intentionally overlook Australia's moral obligation towards the many temporary visa holders who live and work in Australia attracted criticism. Part of this criticism focused on the fact that temporary visa holders contribute substantially to the Australian economy and are taxed at the same rate as Australian citizens and permanent residents. The majority of the temporary visa holders who were excluded from government support packages had made a contribution to the Australian economy through their employment and education. Therefore, to treat them differently for the purposes of social support seemed harsh.¹¹ Further, Australia, being a party to seven core international human rights treaties, has binding legal obligations to respect, protect and fulfill a core set of basic human rights for individuals in Australia, including those who are not citizens or permanent residents.¹²

As the pandemic continued on through 2020, many temporary visa holders faced a loss of work and therefore income.¹³ The fact that JobKeeper did not extend to temporary visa holder employees undoubtedly played a part in this; with many businesses already feeling the economic impact of the pandemic, an employer's decision in respect of which employees were to be retained through the pandemic inevitably involved consideration of who would be eligible for JobKeeper and who would not be. The loss of employment had a particularly harsh consequence for Temporary Skill Shortage ('TSS') visa holders. TSS visa holders are subject to a condition on their visas that requires them to remain in employment.¹⁴ If they cease employment (for any reason) for a period of 60 consecutive days, this results in a breach of this condition and could result in visa cancellation.¹⁵ For many, this meant the additional pressure of finding another job or being forced to consider leaving Australia, neither of which were feasible options in the middle of a global pandemic.¹⁶

In addition to losing employment and income, many international students also faced a lack of family support because of the impact of the pandemic in their home countries, which in turn hindered their family's financial capacity.¹⁷ A lack of income affected the ability of international students to meet their basic living needs.¹⁸ In July 2020, 14% of international students faced homelessness, 28% were unable to pay for their meals, 18% were unable to pay for heating or electricity and 10% were unable to pay for essential medicine.¹⁹ Benevolent organisations and universities provided some financial support for international students, and emergency grants in the form of one-off payments of up to \$1,000 also provided some financial support.²⁰

Whilst there was some welcome support for international students, the majority of temporary workers did not have access to similar grants or financial support. As a result, some unscrupulous employers used these financial constraints as exploitative tools in the workplace.²¹ Many temporary workers reported working in return for food and housing rather than wages, receiving a reduced hourly wage, engaging in unpaid work, and were forced to do tasks that they did not want or were not comfortable with.²² Such exploitation was faced by 14% of students, 12% of Temporary Graduate visa holders and 10% of TSS or subclass 457 visa holders.²³

Temporary workers also reported suffering verbal abuse, harassment, physical violence and instances of racism during COVID-19.²⁴ The Prime Minister's position that temporary visa holders experiencing such hardship could simply return to their country of birth appeared overly harsh and arguably ignored the substantial contributions made by temporary visa holders to the Australian economy.²⁵ His comments also seemed to overlook the practical difficulties experienced by many temporary visa holders who were hampered by travel restrictions, difficulty finding affordable flights, and a worsening COVID-19 situation in their home countries.²⁶

This exclusion of temporary visa holders from social security policies also raised concerns in terms of a worsening public health crisis. The concern was that temporary visa holders would be forced to work in the informal labour market to ensure their financial stability and would be prevented from accessing medical attention due to their lack of financial resources.²⁷ Their financial position may also have pushed them to work even when they were sick, potentially worsening the impact of the pandemic and placing an already overburdened health system under additional pressure.²⁸ Shadow Minister for Home Affairs, Senator Kristina Keneally remarked, '[t]hey could be left with no choice but to unknowingly spread the virus as they are forced to keep working or keep seeking work'.²⁹

The decision to exclude certain temporary visa holders from government support packages therefore had adverse impacts across the economy, particularly in those sectors that are heavily reliant on temporary visa holders. Various government policies, including the closure of Australia's international borders to non-Australian citizens and permanent residents, have been predicted to reduce the migration rate, which will eventually create employment gaps in these sectors and hinder economic growth.³⁰

II Relief Packages to Meet the Needs of Temporary Visa Holders

As the pandemic continued through 2020 with no signs of easing, the government allocated \$22 million over a six-month period to the Australian Red Cross to deliver emergency relief and counselling support to the most vulnerable temporary migrants.³¹ This was a one-off emergency relief payment and the Australian Red Cross itself acknowledged that the payments would be insufficient to meet the needs of many temporary visa holders.³²

The government also relaxed the 40 hour per fortnight work limitation for international students, but this relaxation was limited to students working in certain 'critical' fields, including those working for aged care providers, disability support services and healthcare.³³

Temporary visa holders were also given permission to access their superannuation, if required. This was obviously only of benefit to those who were not working for cash and had a reasonable amount of superannuation to draw from.³⁴ Further, some temporary visa holders discovered that their employers had not made payments in line with their obligations or were unable to because of their own financial issues.³⁵ The COVID-19 early release of superannuation was only available between 19 April 2020 and 31 December 2020.³⁶ Whether this short duration was beneficial to temporary visa holders can only be answered with quantitative data from the Australian Taxation Office.

III Australian Policies Compared to Those In the UK and Canada

Australia was by no means the only country grappling with how to support temporary visa holders within its boundaries. For this article, we chose to compare Australia with the United Kingdom ('UK') and Canada, as these two countries were significantly more affected by the pandemic than Australia.³⁷ Both also have a considerable population of temporary visa holders.

In contrast to the Australian government, the Jobseeker Allowance in the UK provided unemployment payments to an employee who had the right to work in the country and was affected by the pandemic.³⁸ Similarly, the Canada Emergency Response Benefit also provided financial support to employed and self-employed residents who were affected by the pandemic.³⁹ The UK and Canadian Governments also allowed temporary migrants access to subsidy payments and initiated other support payments to ensure temporary visa holders were not unfairly disadvantaged.⁴⁰ As an example, the Canadian government provided funding to the provinces and states to increase the wages of low-income essential workers in nursing homes and the farming sector, which are roles that are typically filled by temporary migrants.⁴¹ The UK government also allowed temporary migrant workers to receive sick pay if they were required to self-isolate and could not work.⁴²

In contrast to both these countries, Australia's exclusion of temporary visa holders from COVID-19 relief schemes indicated a different attitude towards temporary visa holders. The Australian response appeared to focus on the fact that the majority of temporary visa holders could be — and indeed were — treated differently on the basis of their Australian visa status, whereas the UK and Canadian

examples both point to a more inclusive and compassionate approach in ensuring at least a basic level of support.

iv The Current Position in Australia

The exclusion of temporary visa holders from relief packages available to citizens and permanent residents was inconsistent with guidance from the United Nations⁴³ as well as several international conventions that Australia is a signatory to.⁴⁴ Many of these principles underpin the *Fair Work Act 2009* (Cth), which treats migrant workers as within its scope.⁴⁵ The exclusion also contradicts the legislative intention behind some of the visas accessed by temporary workers. For example, the TSS visa was created to enable Australian employers to fill suitably skilled positions within a business that could not be filled via the Australian labour market.⁴⁶ These members of staff may have brought new skills to the employer or perhaps were willing to work in a part of the country where it is typically challenging to find staff. In addition, most employers who nominate candidates for a TSS visa go through a formal process of testing the Australian labour market before being able to nominate a candidate for a TSS visa, meaning that they have already established a genuine need for the visa-holding staff member. To then deny these employers JobKeeper on the basis of having hired non-Australian staff seems inconsistent with the intention and purpose of the visa in the first place. The impact of this will be most keenly felt in sectors of the economy that rely heavily on TSS visa holders. Considering that the top four sectors that accessed the TSS visa to 31 December 2020 were Information Media and Telecommunications, Health Care and Social Assistance, Professional, Scientific and Technical and Accommodation and Food Services, the long-term impact on the correlating sectors of the economy will be significant both in terms of lost revenue as well as a loss of knowledge and skill.⁴⁷

In a similar vein, student visas are granted with permission to work up to 40 hours per fortnight, acknowledging the need for many student visa holders to work part-time to support themselves whilst in Australia. Whilst this limitation has been removed for a small cohort of student visa holders in limited industries, given that the employers of student visa holders were not eligible for JobKeeper, it may have made sense to allow student visa holders to, for example, apply for a temporary waiver of this work limitation on the basis of financial hardship.⁴⁸

It is interesting to see that the government has changed its position as Australia comes to terms with the July 2021 COVID-19 outbreak. Currently, temporary visa holders can access COVID-19 disaster payments if they have lost at least 8 hours of work due to the restricted movement order. The payment ranges from \$450 to \$750 depending on the hours of work lost.⁴⁹ The initiative does cater to the financial needs of some temporary residents and to some extent makes up for the lack of governmental support during the first phase of COVID-19. It is too early to determine whether this payment serves its intended purpose, particularly in light of some of the issues that emerged in 2020, such as the fact that many temporary visa holders engage in cash in hand jobs.

v Conclusion

Extended periods of residence provide a basis for community membership, regardless of migration status.⁵⁰ Asking temporary visa holders to return home or purposefully excluding them from relief packages fails to recognise their contributions to the Australian community and assesses a person's value based on their visa status. For many temporary visa holders, Australia is the country in which they live, work and study — it is their home, regardless of the fact that they are not Australian permanent residents or citizens. To have abandoned them at a time when they needed support neglects our moral obligation as a nation and may well have a long-lasting impact on our international reputation, as well as our ability to attract skilled migrants to Australia as we tackle the post-COVID-19 rebuilding of our economy.

According to figures presented to the Inquiry into Australia's Skilled Migration Program, Australia has already lost over 500,000 temporary visa holders over the course of the pandemic and our net overseas migration has dropped to the lowest figure in the last five years.⁵¹ The impact of this will be particularly evident in areas of our economy that are traditionally reliant on temporary visa holders, such as hospitality, the information technology sector, the aged care sector and agriculture. Peak bodies representing a range of industries spoke to this in the above-mentioned Inquiry, noting

that temporary skilled migration plays a vital role in workforce planning, particularly in regional Australia. The practical effect of these departures is that economic recovery is going to take time. Australia is going to have to work hard to reach our pre-COVID-19 economic position, and temporary visa holders will play a critical role in filling skills shortages once our borders reopen. It is reasonable to assume that there will be significant global competition for talent as the pandemic eases, and how a country treats their temporary residents may well become a deciding factor for many prospective migrants. It is too soon to quantify the impact of our COVID-19 support policies on temporary migrants and whether they will continue to find Australia a migration destination of choice. We can only hope that the shift in government policy between March 2020 and July 2021 has had something to do with the government's recognition of the vital role that temporary visa holders play in Australia and goes some way to appeasing these vital members of Australia's community.

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