



Submission on General Skilled Migration (GSM) Program

Background

As the peak professional organisation representing Registered Migration Agents in Australia, the Migration Institute of Australia (MIA) is in a unique position to see the ramifications of these General Skilled Migration (GSM) processing procedures for:

- applicants and registered migration agents;
- for perceptions of Australia and the Australian Government; and
- Australian society.

The GSM program is the largest single Australian migration program but it is no longer meeting skilled labour demands efficiently. Approximately half of all primary applicants are international students with little or no skilled work experience. Some 80% of applications specify Migration Occupations in Demand List (MODL) occupations but tend to be mainly accountants, cooks and hairdressers ignoring the full spectrum of more than 100 MODL professions.

The ineffectiveness of the GSM program to meet Australia's skills shortages has resulted in the introduction of a priority processing regime. Initially, priority was given to applications with State/Territory government sponsorship and then to applications with nominations on a new Critical Skills List (CSL).

There are far more applications for General Skilled Migration already in the pipeline than can be granted each year. As of October 2009 there were over 130,000 applicants in the system but a total annual program size of 65,000 places.

The GSM processing backlog will continue to grow if no action is taken. In 2008-09, more than 320,000 student visas were granted¹ representing a 15% increase on the previous year's intake. International students can usually apply for GSM on completion of two years study in Australia. This legitimate pathway, combined with the relative ease of onshore applications and permission to stay in Australia on bridging visas during processing, has been used to induce international students to study in Australia. Education is now Australia's third largest export earner.

The lack of acknowledgement of the link between education and migration has been of concern to the MIA for some time. We raised this issue in our submission to the 2006 Birrell Report on Skilled Migration. Three years later, the Department of Immigration is facing public criticism as a result of inaction despite the warnings.

¹"Offshore and Onshore Grants for 2008-09 (PY) including eVisa grants, excluding permission to Work (PTW) and Change of Provider (COP) Grants", Department of Immigration and Citizenship, http://www.immi.gov.au/media/statistics/study/_pdf/2008-09-offshore-onshore-combined-grants.pdf (accessed 13 November 2009)

The Problem

Processing priority for General Skilled Migration applications is in danger of being a bandaid solution to systemic problems in the program. When the Minister announced changes to processing priorities in September 2009, there was a warning that non-CSL applications would not be processed before 2011². This ignores the impact on many non-CSL applicants who have been in the system for 18 months or more when the announcement was made.

Such bandaid solutions have unintended consequences. The MIA has grave concerns about the consequences of the processing priorities as they have been implemented. A vast number of applicants will be waiting for perhaps several years in a state of uncertainty about their future. It appears GSM program settings have been changed to one of administrative delay in the hope that the problem (too many applicants for too few places) will give up and disappear.

It is reasonable for potential applicants to have taken the Department's published service standards for processing times into consideration when deciding whether to apply. These applicants have paid the visa application charge (VAC) and associated costs of up to \$1100 on skills assessments, language testing, police and health checks. Until the priority processing regime came into force, these people had a reasonably clear indication of the time it might take to have their applications processed and of prospects of their success.

Many GSM applicants, whose applications were about to be processed after already being in the pipeline for a considerable amount of time, have been requested by case officers to undergo further police and health checks, as previous ones had expired. Even as these further checks were being conducted, the processing of many of these applications was suddenly stopped following the Ministerial direction. [See *Attachment 1* for examples.]

This has caused many GSM applicants further expense and great uncertainty. Those not on the new priority processing lists will have the expense of further health and police checks, English language tests, or renewal of skills assessments when their applications are eventually finalised. These additional expenses are an unfair burden on applicants when it is not the applicant's fault for extreme delays in the processing system which has led to their initial checks expiring.

Of particular concern are onshore applicants who are recent graduates of Australian educational institutions. These individuals have taken the opportunity provided by the Australian Government to avail themselves of the GSM pathway to permanent residence in Australia. While that particular pathway does not guarantee permanent residence, it does, nevertheless, present a valid opportunity to seek permanent residence. While technically the Student Visa Program and the GSM Program are separate programs, to claim that they are distinct is spurious and disingenuous. It is well established that the study pathway to GSM is specifically designed for overseas students in Australia.

² "Updated Priority Processing Effective from 23 September 2009" Department of Immigration and Citizenship <http://www.immi.gov.au/skilled/general-skilled-migration/pdf/faq-priority-processing.pdf> (accessed 13 November 2009).

Government policy about that pathway was quite clear:

*"From 1 July 2001, successful Australian-educated overseas students with ICT and other qualifications in high demand will be allowed to apply for, and be granted, permanent residence under the Skilled-Independent and Skilled-Australian Sponsored categories without leaving Australia. This initiative **builds upon previous measures designed to retain successful overseas students** with qualifications that are in shortage in Australia and who are sponsored by Australian employers, including waiving work experience requirements for those who have obtained Australian qualifications in the six months prior to lodging their visa applications and giving bonus points to applicants with Australian qualifications."* [Announcement of policy, Ministerial media release, 29 January 2001]

If that pathway inadvertently encouraged a huge number of GSM applications (not to mention a growth industry in poor or misleading migration advice and scandalously inadequate "education" institutions), that is not the fault of GSM applicants. The fault lies with those who had the power to monitor and correct the situation and failed to do so.

Australian governments have allowed a situation to arise where there are more applications than can be accommodated or processed. As a result it has implemented a priority processing regime that is particularly unfair in dealing with a problem that is not the fault of current applicants. It is also a most inefficient method of dealing with Australia's skills shortage.

The current priority processing regime creates numerous serious problems:

1. Employability on Bridging Visas

Although onshore applicants are generally on Bridging Visas with permission to work, they often have great difficulty in obtaining work as many Australian employers prefer their employees to hold, or to be certain of gaining, permanent residence. If a GSM application were to be refused, the applicant would need to leave Australia within 28 days, and an employer would lose an employee. Consequently, international students are in a very vulnerable position, and may be tempted to take any employment available, even if the conditions are not favourable.

2. Interruption and damage to careers.

If GSM applicants are in Australia and unable to obtain work in their nominated occupation, they are likely to find employment difficult when they are eventually granted permanent residence, as they may not have been able to maintain their expertise or keep abreast of new developments in their chosen occupation. A substantial gap between graduation and the start of a career, as many GSM applicants will experience, could complicate or destroy a potential career, and makes a mockery of the GSM program.

3. Damage to Australia's social fabric

Having a very large number of people on Bridging visas for several years, unable to obtain satisfying work or advance their careers, is a recipe for frustration and resentment at best, and social unrest at worst. This is a disgraceful initiation into Australian life for potential Australian permanent residents or citizens. It also flies in the face of ideals and values that are espoused by the Australian government, and which once made Australia an attractive choice for potential migrants.

4. Damage to Australia's reputation

Thousands of people, who in good faith paid visa application charges with the quite reasonable expectation that the applications would be finalised within published service standard times, will be waiting indefinite lengths of time for a decision to be made about their GSM visa applications. These people are not being treated with dignity, compassion, and fairness. .Australia's reputation as the country of opportunity, where governments act reasonably and fairly, has been considerably tarnished.

To draw an analogy, if Registered Migration Agents accepted fees from clients and then made unilateral decisions to not provide the services until some unspecified time in the future there would be a public outcry led by an outraged DIAC and the Office of the MARA.

5. Australia's skills shortages not being met - loss of quality applicants

(a) Australia is being denied the immediate benefit of young people with excellent skills which Australia needs. Many current and potential highly skilled and genuine applicants will justifiably see the current priority processing regime as grossly unfair and forego the opportunity to become permanent residents.

When faced with a delay of two to three years in the processing of their application, why would quality applicants persist with their applications for migration to Australia when they have other migration options or good employment prospects in their home country?

(b) Currently, of the occupations on the CSL that require a bachelor degree, only accountants, teachers, nurses and engineers are realistic options for international students. Are these the only skills Australia now requires?

6. Lives and plans damaged

Thousands of currently enrolled overseas students who are paying large fees to Australian education providers and who intend to use the perfectly legitimate and government designed pathway to permanent residence have had their plans derailed.

7. Splitting Families

(a) It is common for students to get married after completion of their qualifications in Australia. In this case, it is generally not possible to include the new spouse in a GSM application after lodgement. As the wait for permanent residence can be two years or more, GSM applicants may be unable to sponsor their spouse to join them in Australia for a significant period of time.

(b) In some cases the extremely long delays in processing times will mean that an applicant's child, who was a dependent child when the application was lodged, will no longer be dependent when the application is finally processed and will therefore not be able to migrate with the parents. This is a shameful result of the priority processing regime.

8. Clear advice about Australia's GSM program is impossible

Registered Migration Agents are unable to provide any certain advice to clients who are current or prospective GSM applicants. While the Australian Government has the right to make changes at any time, and responsible migration agents have always informed clients of this, the current radical and retrospective changes are beyond what is reasonable and make sensible advice impossible.

9. Distortion of Education and Migration Program

Attempting to "cherry pick" GSM applicants seems to have unintended consequences. This occurred a few years ago when Information and Communications Technology (ICT) occupations were removed from the MODL and Accountants were retained. The ICT students who stuck their ground came out with 115 points and walked the path of capital investment - only to be thwarted there. Their colleagues who abandoned ICT for accounting now have Australian citizenship whether they chose to work as an accountant or not.

The priority processing regime will also encourage international students into an even narrower band of occupations than the MODL did. The only occupation on the CSL that can be done in two years via a conversion course based on an unrelated undergraduate degree is Accounting.

Under the current priority processing regime ICT students know they will be waiting for at least two years if they apply for GSM. ICT professionals currently studying in Australia will look at the CSL and hear success stories of prioritised Accountants with IELTS 7 who get PR in two weeks. They will in all likelihood transfer to accounting courses.

Should students choose to take these options, which are not necessarily in their or Australia's best interest, it is not necessarily because they are being advised to do so. Most of these students are knowledgeable enough to work things out for themselves, and to take whatever legitimate pathways they can find to a permanent life in Australia – as many of us, or some of our forebears, did.

10. Unacceptable and unfair additional costs

Most GSM applicants, whether CSL or not, must complete health and police checks and English language tests prior to the lodgement of their application. Many of these checks and test results will certainly expire well before processing of the applications has even commenced.

Many applicants who have been requested to complete medicals by the Department of Immigration have now been informed that their applications have been put on hold. This is because their applications were state nominated (previously the highest level of priority) and are now lower down in the new priority list. These applicants, whose applications have been 99% finalised, will now most likely need to do their medicals all over again.

Medicals are not cheap – the cost is generally about \$300 per family member. English language tests are similarly priced.

Many applicants may have skills assessments or State or Territory sponsorships repeated or renewed at significant extra expense – if they are still eligible.

11. Overseas Travel problems

The bridging visa issued to students does not have travel rights – if the students with GSM applications lodged depart Australia, they risk refusal of their application. It is possible to apply for a Bridging visa allowing travel, but this involves extra cost and evidence of the reason for travel. The maximum period of travel is in general three months. Even though the Department is not actively processing their applications, and employment prospects in Australia can be bleak, students are effectively forced to stay in Australia to await grant of their visas.

12. Lodgement of Frivolous Applications

The long processing times may result in lodgement of more frivolous applications which have no chance of success. This is because onshore applicants can remain in Australia on bridging visas with full work rights during processing of their applications – no matter how long this takes. If their application is refused, they may then appeal to the Migration Review Tribunal (now taking 12 months or more), the Federal Court or the Minister. By the time the appeal process is complete, the applicant may have been in Australia for 5 years or more with work rights.

We are already seeing increased numbers of GSM applications at the Migration Review Tribunal. International students may also be victims of unscrupulous operators who may knowingly lodge applications with no chance of success – as processing times are so long it may be many years before they experience any fallout from their dodgy practices.

13. Loss of “Safety Net” for 457 holders

People who are sponsored for 457 visas by their employers are restricted to working only for their sponsoring employer. Such people are already employed in Australia and in many cases have sufficient points to qualify for General Skilled Migration.

Whilst the employer can sponsor for permanent residence through the ENS program, the GSM program has always been a “safety net” for 457 holders. Many employers are reluctant to sponsor for ENS as it means that the employee is no longer “tied” to the employer. GSM was a way of qualifying for permanent residence even if not supported by an employer. Many 457 holders who have lodged GSM applications also face unreasonable processing delays which means that they are forced to stay with employers longer, even if the employment conditions are not favourable.

14. Risk of Further Retrospective Changes

The Minister has indicated that the GSM program will be undergo further review. It is entirely possible that changes could be retrospective and continue to affect people whose applications have already been lodged. For instance, if the Points Test pass marks are increased, this would affect all people whose applications have not yet been assessed. Given the huge number of applications in the system already, any retrospective changes could result in further significant hardship and inequity for many people.

The MIA makes the following recommendations:

- 1.** Deal fairly and transparently with the applicants in the GSM pipeline.
- 2.** Automatically place all GSM applicants on a skill matching database to enhance the possibility of their obtaining employment, and perhaps gaining employer sponsorship, thus giving them the opportunity of getting out of the GSM limbo.
- 3.** Undertake a thorough review of the GSM program - clarify the objectives and ensure the settings reflect these and are relatively consistent over time.
- 4.** Further changes to the GSM Program should be made after genuine consultation with all stakeholders, including the Migration Institute of Australia. Any changes should be clearly explained and made with fairness as a criterion.
- 5.** Exemption from priority processing should be given immediately to those applications which were about to be finalised and for which further health and police checks had been requested.
- 6.** If the priority processing regime is to be continued, there should be a parallel processing regime for longstanding applications. This should begin with identifying outstanding GSM applications that were allocated case officers before priority processing was introduced.
- 7.** Introduce a more rigorous skills assessing regime to eliminate any applicants in the GSM application pipeline who have no intention of pursuing their nominated occupation.
- 8.** Refunds should be available for GSM applicants who wish to withdraw their applications rather than remain uncertain of their future for an indefinite period of time.
- 9.** DIAC should regularly publish up-to-date statistics about the number of applications in the GSM pipeline and estimated processing times for applications. This would not only be a reasonable measure to provide current and prospective applicants, but may also reduce the number of GSM applications.
- 10.** Provide greater funding and resources to the Adelaide Skilled Processing Centre should be provided so that applications can be processed faster. The object is to allow only the queuing in the pipeline of worthwhile applications. Instead of “parking” applications until allocation to a case officer for decision after a number of years, all applications could be instead immediately vetted to determine if the application is likely to be successful and to identify other characteristics.
 - a) Improperly documented or otherwise obviously flawed applications could be immediately eliminated, reducing the pipeline content dramatically.

b) The application pipeline content could be effectively indexed by the following, thereby permitting rapid clearance from the pipeline:

i) Present Deployment

Consider a permanent residence application in a specified period of time if an applicant is currently in Australia, working (with a local or overseas work history of over 12 months) in the claimed occupation and now holding a temporary visa permitting work (eg 457, 422, even 417). The applicant is already counted inside Australia's workforce, albeit temporary. Then to queue them and then count them as a threat to the local workforce is effectively a double or spurious count. The ENS process also is inefficiently cluttered with those (not all) that may be eligible for "transfer" to that stream. Avoid the clutter by rapid decision on the GSM application itself. To not do so is double work caused elsewhere to the Department.

ii) Others such as Language Skill 7 and over in the IELTS and Sponsorship by an Australian relative.

These as very good predictors of success and/or, having a family reunion element, should receive priority processing in the "pipeline".

The rapid analysis of the characteristics of those filing GSM applications and profiling them early, will allow DIAC to match what is being achieved in attracting migrants/permanent residents to Australia and to be attentive and timely in making any needed variation in its policy settings going forward. Good management requires measurement and performance assessment that is timely. A change from the "parking" protocol is clearly needed to be changed to "immediate evaluation". The visa application charge warrants that. And the root causes of problems must be courageously addressed, urgently. Resourcing or funding the processing centre will fix that and avoid duplication in ENS processing. Otherwise it is management with the lights off.

The Migration Institute of Australia is certain that the Minister and the Department aspire to a higher level of client service in the matter of the GSM crisis. In the short term the current priorities and policy settings dysfunction are definitely bringing about dismay in the minds of applicants as regards the conduct and fairness of the Commonwealth. This can hardly be your intention or wish. It is hoped that the Institute's recommendations can assist the Minister and the Department. The feedback of the Institute is that the apparent failure of consideration for the VAC's paid, may trigger applicants seeking redress.

The MIA believes that you must engage in an open and inclusive public debate on what the objectives and settings for the GSM program should be. Its position as the largest single Australian migration program, and therefore its influence on the manifold dimensions of Australia's future, demand nothing less. It must not continue to suffer the reprehensible neglect or ad hoc changes it has experienced in recent times.

ATTACHMENT 1

Examples of Applicants caught in the pipeline

Until 23 September 2009 these applications would have received priority processing because of State sponsorship and were close to being finalised. Applicants are now confronted with the prospect of their visa applications not being further processed until late 2012 at the earliest.

Case 1

Applicant for visa subclass 176 – sponsored by West Australian Government
Occupation: Bricklayer

26 February 2009 – Application lodged

July 2009 - Applicant underwent medicals and provided Police clearance from The Netherlands

24 August 2009 – DIAC request for Australian Federal Police (AFP) clearance

29 September 2009 - Applicant provided AFP clearance

Case now in limbo

Case 2

Applicant for visa subclass 176 – Sponsored by South Australian Government
Occupation: General Electrician

20 July 2009 – Application lodged

25 August 2009 – DIAC request for Police clearance from The Netherlands and request to undergo medicals

28 August 2009 - Applicant underwent medicals

1 September 2009 - Applicant underwent medicals

7 September 2009 - Applicant provided Police clearance

Case now in limbo

Case 3

Applicant for visa subclass: 475 - Sponsored by South Australia Government
Occupation: Business and Information Professional (nec)

3 August 2008 – Application lodged

15 August 2008 - Form 47A provided to ASPC

January 2009 - Applicants provided Police Clearances from The Netherlands and underwent medicals

20 February 2009 – DIAC request for evidence of sponsorship by SA, which had not been received by the ASPC

8 April 2009 – DIAC request for form 47A for one of the secondary applicants which had gone missing within the ASPC

15 July 2009 - DIAC request for further information regarding the dependency of one of the secondary applicants, due to time of decision requirement

20 July 2009 – DIAC request for signed withdrawal letter for one of the secondary applicants

24 August 2009 - DIAC informs that application is undergoing checks or clearances from other agencies which will delay the processing of the application.

Case now in limbo

Note: This visa application has had three case officers. The first case officer had started processing the application but processing stalled during the time that the application was allocated to him/her. The first and second case officers were replaced due to reorganisation within DIAC.

Case 4

Subclass 176 application – sponsored by Western Australian Government

12 November 2008 – Application lodged

18 August 2009 – DIAC request for health and character checks

1 September 2009 – Health check finalised. Character check not finalised

Case now in limbo

Case 5

Subclass 475 application - sponsored by Queensland Government

23 December 2008 – Application lodged

27 July 2009 – DIAC request for military discharge certificate and employer reference

20 August 2009 – Employment reference sent to DIAC

14 October 2009 – Military discharge certificate sent to DIAC

Case now in limbo

Case 6

Subclass 176 application - sponsored by Western Australian Government

30 June 2009 – Application lodged

18 August 2009 – DIAC request for health and character checks

24 September 2009 – Health check sent to DIAC

27 October 2009 – Character check sent to DIAC

Case now in limbo